

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

February 17, 2016

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:04 p.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Harris Nakamoto
- Kyoko Kimura
- Garth Yamanaka
- Mark Ritchie

ABSENT MEMBERS:

- Barbara Bennett
- Robert Cundiff
- Nancy Atmospera-Walch
- Phillip Kasper

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF January 27, 2016 MINUTES

Mr. Ritchie made a motion to accept the January 27, 2016 minutes, as presented. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing, and Proposed Amendments to HAR Title 11, Chapter 62, Wastewater Systems, promulgated by Department of Health (DOH)

Ms. Sina Pruder, DOH Wastewater Manager, explained that State representatives from the Big Island and Maui sent a letter to Governor Ige asking that the proposed amendments not be adopted, however, there is currently no status as to whether the Governor will or will not sign off on the adoption of the rules. Chair Borge stated that the letter recommended that the Counties oversee where and when cesspools should be allowed; Ms. Pruder responded that the State has jurisdiction over such systems. Ms. Pruder was quite surprised at the representatives' letter considering there was very minimal opposition to the amendments during the community and public hearings. Mr. Bob Whittier, DOH Geologist, noted that DOH's findings are counter to the representatives' geologic commentary made in its letter, and he explained his reasoning.

Mr. Yamanaka stated that one of the major negative factors with the changes is the costliness to install a septic system, particularly in the Big Island. It was noted that large capacity cesspools are federally mandated but not small-capacity cesspools; however, the State did

receive supportive commentary from the Environmental Protection Agency regarding these rule changes. In summary, Vice Chair Nakamoto thanked DOH for spending the time on the process, involving the stakeholders, and following this Board's requests prior to the public hearings.

Vice Chair Nakamoto made a motion to approve the proposed amendments for adoption. Mr. Ritchie seconded the motion, Chair Borge, Vice Chair Nakamoto, Ms. Kimura, and Mr. Ritchie voted in support, and Mr. Yamanaka voted in opposition. As a result, the motion did not pass.

IV. NEW BUSINESS

A. Discussion and Action on Proposed Amendments to Rules & Regulations of the Liquor Control Commission of the County of Kauai, promulgated by Department of Liquor Control, County of Kauai

Mr. Gerald Rapozo, Director of Liquor Control for the County of Kauai, explained that the rules were last amended in 2006, and that overall the proposed rules will supplement State law. Mr. Kimura noted that while the fees were insubstantial, the paperwork appeared to be burdensome, yet necessary. It was noted that the stakeholders from three of the classes reviewed the initial proposed changes and one change was made from the input. Workshops prior to the public hearing will be conducted for vetting from the stakeholders.

Ms. Kimura made a motion to move the proposed amendments to public hearing. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed New HAR Title 3, Chapter 182.1, State Electrical Code, and Repeal of HAR Title 3, Chapter 182, State Electrical Code, promulgated by the State Building Code Council, Department of Accounting and General Services (DAGS)

Mr. Ed Suzuki, Administrative Specialist for the State Fire Council, which is administratively attached to DAGS, provided history and background of the State Building Code Council. The State Electrical Code is based on the Federal Code and updated every three years; the last State Electrical Code was updated in 2008. Overall, the Code is available to avert tragic consequences, and individuals that install electrical equipment are trained in regards to safety as well as the latest additions of the Code.

Affected small businesses would be from any construction trade, utilizing small portable generators. While there are no fines or fees associated with the rule proposal, there are costs associated with purchasing compliant portable generators, power cords and other related devices. The price of GFCI (ground fault circuit interrupter) devices can be quite pricey, ranging upwards to \$20,000; however, less costly power cords and other devices with a GFCI device are readily available. Mr. Suzuki stated that there is very little deviation in the electrical code from state to state and he is unaware of any other potential impact to the small business community.

Chair Borge noted that written testimony in support of the proposed changes were received from Electrical Contractors Association of Hawaii and International Brotherhood of Electrical Workers. Also, Mr. Mike Stone from National Electrical Manufacturers Association, representing over 400 manufacturers of electrical products both in the United States and globally, provided oral and written testimony in support of the changes. In addition, Mr. Tim McClintock, Regional Electrical Code Specialist from National Fire Protection Association, attended the meeting and provided written testimony in support of the changes.

Mr. Yamanaka made a motion to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 11, Chapter 55, Water Pollution Control, promulgated by DOH

Mr. Alec Wong, Manager at DOH's Clean Water Branch, explained that the proposed amendments include a number of changes including the renewal and revision of the NPDES (National Pollutant Discharge Elimination System), which is a permit system that authorizes certain types of point source discharges, as well as storm water discharges to surface waters such as streams, lakes, and oceans.

Each "general permit" authorizes a category of discharges and has one set of requirements for a group of similar types of activities or facilities, such as once-through cooling water for air-conditioning systems or storm water discharges from construction activities. It was noted that many of the changes are federal; i.e., Environmental Protection Agency requirements, and many of the permits will be expiring at the end of the year.

In regards to the impact on small business, while small, medium and large-sized businesses may be impacted by the revisions of the NPDES, in regards to discharge issues, small businesses, such as restaurants and laundries, would not be governed by the rules as they are governed by the Counties.

Vice Chair Nakamoto made a motion to move the amendments to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed New HAR Title 4, Chapter 138, Hawaii-Grown Cacao and Hawaiian Chocolate, promulgated by Department of Agriculture (DoAg)

No one from DoAg attended the meeting, however, Deputy Attorney General Ahn explained that the industry requested these proposed rules and assisted in the rules' promulgation.

Mr. Ritchie made a motion to move the amendments to public hearing. Vice Chair Nakamoto seconded the motion, and the Board members unanimously agreed.

V. LEGISLATIVE MATTERS

A. Discussion, Status and Action on House Bill 774, HD1 SD1, "Relating to Small Business"

Chair Borge explained that Representative Kawakami's office indicated that because this bill went through to Conference committee at the last legislative session, it does not have to go through the same process this year, but will only go to conference committee. He reminded the members that the bill makes an appropriation to DBEDT for this Board to hire additional staff.

B. Discussion, and Action on House Bill 1912, "Relating to Administrative Rules"

This bill establishes a taskforce to review administrative rules and to recommend the repeal of rules that are no longer statutorily authorized; the chair of this Board would be a member of the taskforce. The measure was deferred indefinitely.

VI. ADMINISTRATIVE MATTERS

A. Discussion on *The Need for Modernizing Hawaii's Informal Rulemaking Procedure*, by Denver S. Coon, William S. Richardson School of Law, Spring 2014

Chair Borge provided the Board members with a summary of this study and believed it was relevant. Sometime in the near future, the author will be extended an invitation to come to a Board meeting to further discuss his study.

VII. NEXT MEETING – The next meeting is scheduled for Wednesday, March 16, 2016, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.

VIII. ADJOURNMENT – Ms. Kimura made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 2:45 p.m.