

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

February 15, 2017

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:01 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Harris Nakamoto, Vice Chair
- Kyoko Kimura, 2<sup>nd</sup> Vice Chair
- Robert Cundiff
- Nancy Atmospera-Walch
- Mark Ritchie

**ABSENT MEMBERS:**

- Garth Yamanaka

**STAFF:** DBEDT

Dori Palcovich

Office of the Attorney General

Dawn Apuna

II. **APPROVAL OF JANUARY 25, 2017 MINUTES**

Vice Chair Nakamoto made a motion to accept the January 25, 2017 minutes, as presented. Mr. Cundiff 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 12, Subtitle 7, Boards, Chapter 41, Hawaii Labor Relations Board – Rules of Practice and Procedure, promulgated by Hawaii Labor Relations Board (HLRB) / Department of Labor and Industrial Relations (DLIR)

Second Vice Chair and Discussion Leader Kimura explained that these rules came in front of this Board in March 2015 prior to the public hearing. The amendments cover employers with \$5 million in revenues and with a concentration in agriculture; subsidiaries and related businesses are aggregated to come up with the total \$5 million in revenues.

An HLRB representative, who had indicated no one would not be coming to the meeting today, will be sending the proposed amendments to the Governor on March 1<sup>st</sup> for approval and adoption.

Second Vice Chair Kimura stated that the changes essentially make it easier for a union to organize, whereas currently once a petition is filed with a majority of the interested employees a formal election is performed. However, in accordance with the amendments, a union election card procured under a secret ballot, is collected from the employees with the majority of the votes winning.

A public hearing was held in November 2016 with several testimonies and suggestions provided at the hearing. However, as this Board did not receive the testifiers' comments made at the public hearing, it appeared that HLRB did not make any changes to the proposal based on the comments.

Chair Borge believed there is nothing wrong with keeping the rules status quo, as the changes will have a severe, negative impact on small businesses. Mr. Cundiff suggested that this Board reach out to HLRB and request the specific comments made at the public hearing. Chair Borge added that this Board send a letter to the Governor advising that the adoption of the rules be held in abeyance until the Board receives sufficient information regarding the ramifications of the amendments to the business community.

Mr. Cundiff made a motion to send a memo to the Governor with a copy to the rule-drafting agency requesting that the adoption of the proposed amendments be delayed until the March 15, 2017 board meeting for the following reasons: 1) the amendments may have a significant, negative impact on small businesses; 2) testimonies from the stakeholders at the public hearing were not received by this Board; and 3) stakeholders were not available for questioning at this meeting. Second Vice Chair Kimura seconded the motion, and the Board members unanimously agreed.

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13, Chapter 16, Relating to Conveyances, promulgated by Department of Land and Natural Resources (DLNR)

Mr. Ritchie explained the history of the rule amendments in regards to the determination that prior to public hearing, the rules did not need to come before this Board due to the proposed minimal increase in fees. Subsequently, a complaint was received from the Hawaii Association of Realtors claiming that in accordance with due process the rules should have come before this Board prior to the hearing. In speaking with the current Registrar at the Bureau of Conveyance, DLNR had reached out to small business organizations, such as the Hawaii Association of Realtors, during the rule-making process and at the public hearing.

Chair Borge stated that although the fees have not increased since 1999, it would be more palatable if they were increased in smaller increments over several years. He added that it is important to relay to DLNR to ensure that the stakeholders are engaged and to thank them for the follow-through and follow-up with this Board.

Vice Chair Nakamoto made a motion for the amendments to proceed to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS**

A. Discussion and Action on Proposed Rules of Practice and Procedure of the Kauai Historic Preservation Review Commission, promulgated by the County of Kauai Public Access, Open Space, and Natural Resources Preservation Fund, as follows:

1. Chapter I. General Provisions
2. Chapter II. Organization & Parliamentary Rules
3. Chapter III. Public Records, Inspection and Availability
4. Chapter IV. Rule Adoption, Amendment, or Repeal Procedures

Vice Chair and Discussion Leader Nakamoto introduced Mr. Kaaina Hull, Deputy Director and Ms. Jodi Sayegusa, Deputy County Attorney, who explained the background, history and purpose of the proposed new administrative rules, along with the impact on small business. Ms. Sayegusa stated that these rules will assist in having more formalized procedures for the Kauai Historic Preservation Review Commission's (Commission's) meetings, as well as procedures to engage in rule-making.

Mr. Hull explained that the Commission is similar to other county's historic preservation review commissions. Its primary purpose is to preserve, promote and protect historic resources in Kauai. The Commission oversees two venues, the archeological venue and the architectural and structural venue. In regards to the impact on small business, if there is a historic resource or property, and business owners want to make changes to it, they are required to go in front of the Commission for approval to help prevent any changes that would be detrimental to the historical intent of the property.

In response to a question posed by Chair Borge, Mr. Hull stated that County of Kauai's tax program only recognizes tax exemptions for historical "residential" properties, not for "commercial" properties. However, there is currently a draft ordinance in front of the Commission that allows tax exemptions to be given to commercial properties.

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

#### **V. LEGISLATIVE MATTERS**

A. Discussion and Action on House Bill 1382, Relating to Procurement

Chair Borge explained that this measure was spear-headed by Ms. Sarah Allen, Administrator of the State Procurement Office (SPO). It establishes a temporary small business assistance initiative, small business advisory group, small business office, and small business procurement coordinator position at SPO. Mr. Ritchie noted that DBEDT is currently monitoring this measure.

Vice Chair Nakamoto made a motion to delegate authority to Chair Borge to submit and testify in support of House Bill 1382, Relating to Procurement. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Governor's Message to be Submitted for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Robert Cundiff, for a term to expire June 30, 2020

Vice Chair Nakamoto made a motion for the Board to support this measure. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Update on House Bill 75, Relating to the Small Business Regulatory Flexibility Act

There was a hearing on this measure yesterday with decision-making set for 2:00 p.m., today. The bill is flawed as it changes the time when a pre-public hearing statement is submitted to the Board, which would be after-the-fact, or ten days before it moves to the Governor for adoption. It is unclear who or what agency may have initiated this proposal.

D. Update on House Bill 587, Relating to Small Business

This measure appropriates funds to the Board; the Committee blanked out the dollar amount and passed it out to the Finance Committee.

E. Update on House Bill 1042, Relating to the Small Business Regulatory Flexibility Act

This measure expands the Board from nine members to eleven and other housekeeping measures. The Committee amended the bill to show that the two new members are to be nominated by the Board.

F. Update on Senate Bill 762, Relating to the Small Business Regulatory Review Board

This is the companion to House Bill 587; it was heard and passed out as is.

G. Update on Senate Bill 908, Relating to the Small Business Regulatory Flexibility Act

This is the companion to House Bill 1042; it was heard and passed out as is.

## VI. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS

Chair Borge stated that a conference call will be secured for the next board meeting with the Wisconsin SBRRB in order to capture ideas on procuring outreach efforts.

Chair Borge reminded the members to let DBEDT staff know who is interested in participating in the taping of Reg Baker's "Business in Hawaii" show scheduled for June 8, 2017.

Vice Chair Nakamoto announced that Retail Merchants of Hawaii is having its annual meeting on March 22, 2017, and he would like to request having this Board provide a five- to ten-minute presentation during the event.

Second Vice Chair Kimura stated that Maui will be having a State-wide small business conference on May 3<sup>rd</sup> and 4<sup>th</sup>, at the Maui Arts and Cultural Center; booths are being sold for the event.

Mr. Ritchie stated that on May 6<sup>th</sup>, the Small Business Fair will be held at Leeward Community College; this Board's brochure will be handed out at DBEDT's table.

**VII. NEXT MEETING** – The next meeting is scheduled for Wednesday, March 15, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

**VIII. ADJOURNMENT** – Mr. Ritchie made a motion to adjourn the meeting and Mr. Cundiff seconded the motion; the meeting adjourned at 11:21 a.m.