

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 24, 2018

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:01 p.m., with a quorum present. Mr. Art Mori, this Board's newly-hired temporary assistant, was welcomed.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, 2nd Vice Chair
- Kyoko Kimura
- Reg Baker
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Arthur Mori

Office of the Attorney General

Jennifer Waihee-Polk

II. **APPROVAL OF DECEMBER 13, 2017 MINUTES**

Vice Chair Cundiff made a motion to accept the December 13, 2017 minutes, as presented. Mr. Baker 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 13, Subtitle 7, Water Resources, promulgated by Department of Land and Natural Resources (DLNR), as follows:

1. Chapter 167, Rules of Practice and Procedure for the Commission on Water Resource Management
2. Chapter 168, Water, Use Wells, and Stream Diversion Works
3. Chapter 169, Protection of Instream Uses of Water

Discussion leader, Mr. Ritchie explained that the proposed rules, reflecting updated statutes, were in front of this Board before the public hearing. At the hearing, all testimonies were in support of the amendments; some testifiers wanted more enforcement of the State Water Code.

Mr. Ritchie made a motion to pass the rules onto the Governor for adoption. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

- B. Re-discussion and Action on Proposed Amendments to HAR Title 12, Subtitle 8, Hawaii Occupational Safety and Health Division, promulgated by Department of Labor and Industrial Relations (DLIR), as follows:
- i. Part 1, General Legal and Administrative Provisions for Occupational Safety and Health
 - a. Chapter 50, General Provisions and Definitions
 - b. Chapter 52.1, Recording and Reporting Occupational Injuries and Illnesses
 - c. Chapter 56, Program Fees and Library Policies, General Safety and Health Requirements
 - ii. Part 2, General Legal and Administrative Provisions for Occupational Safety and Health
 - a. Chapter 60, General Safety and Health Requirements
 - iii. Part 3, Construction Standards
 - a. Chapter 110, General Safety and Health Requirements
 - iv. Part 5, Occupational Safety and Health Standards for Shipyard Employment
 - a. Chapter 170, Shipyards
 - v. Part 6, Marine Terminals
 - a. Chapter 180, Marine Terminals
 - vi. Part 7, Safety and Health Regulations for Longshoring
 - a. Chapter 190, Longshoring
 - vii. Part 8, Other Safety and Health Standards
 - a. Chapter 208, Other Safety and Health Standards

Mr. Norman Ahu, DLIR's HIOSH Administrator, explained that since he was in front of this Board last month, two stakeholder meetings were held; meeting notes were provided to the members. Most of the stakeholders' concerns related to silica regulations; it was noted that adoption of many of the changes is mandatory.

Mr. Ahu re-emphasized that "Table 1" benefits the employer. HIOSH is committed to continue holding stakeholder meetings going forward. One suggestion regarding exemptions is currently being discussed; and if possible, HIOSH will accommodate the suggestion and place it in the rules.

Testifier Mr. Walter Chun, PhD., a safety and health professional and State of Hawaii consultant, has forty-five years of experience in the occupational safety and health profession. He explained how the rule amendments apply to the stakeholders and distributed his written testimony which entailed: 1) HIOSH citation penalties, 2) measures used by OSHA, and 3) industrial safety and health news.

Mr. Chun noted that the average HIOSH penalty of a homeowner in the past two years has been over \$2,000. He attended HIOSH's stakeholders' meeting, which he believed went well, but there were open questions as to how changes are going to be made and what assistance HIOSH will be giving. He would like to have all the stakeholders (businesses and homeowners) able to understand exactly what the rule changes and processes entail.

Testifier Mr. Tim Lyons, representing the subcontractor's association, explained that although he was unable to attend last month's Board meeting, his written testimony has not changed. He thanked this Board for being instrumental in encouraging HIOSH to hold the stakeholders' meetings. He added that while some progress has been made, there is not much that HIOSH can do about the silica regulations as the federal government is forcing its hands on this issue. However, the silica standard is very difficult to understand and HOISH could be more helpful in assisting the business community by providing samplings of silica and/or descriptions in certain situations.

Testifier Mr. Blake Parson, Executive Director of SMCA (Sheet Metal Contractors Association of Hawaii) stated that because there are still underlying unknowns to the ramifications of the rules, it would be impractical, for example, for his members to purchase \$10,000 worth of equipment when it turns out to be unnecessary, which is occurring now with the regulations as presented.

Chair Borge stated that because there are so many variables and issues involved with operating a small business along with understanding and following the proposed rule amendments, guidance from HIOSH is essential; without such guidance, small businesses run the risk of being cited. In response, Mr. Ahu expressed that HIOSH is willing to continue with the stakeholder meetings for training. Because HIOSH is fully cognizant of the small business' concerns, it is available to do (silica) "sampling" at no expense; he added that the proposed rules are a benefit to businesses.

Vice Chair Cundiff thanked the HIOSH representatives for reaching out to the stakeholders. Based on the discussion today, he questioned what can be done to provide the businesses with correct information so they are able to comply with the set guidelines so small businesses are able to comply with the rules. Mr. Ahu responded that the businesses must take advantage of HIOSH's ongoing consultation, in-house training, and guidelines.

Mr. Ritchie made a motion to recommend that HIOSH continue with ongoing discussions with the small business stakeholders' concerns, and to move the proposed rule amendments to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Discussion and Action on Proposed Governor's Message to the State Legislature Submitting for Consideration the Gubernatorial Nomination of Reg Baker to the Small Business Regulatory Review Board for a term to expire June 30, 2018 and June 30, 2022

Ms. Kimura made a motion for this Board to testify in support of the Gubernatorial Nomination of Mr. Baker to the Small Business Regulatory Review Board. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Senate and House Bills, Relating to the Small Business Regulatory Review Board – "Clarifies the Intent of the Small Business Regulatory Review Board's Powers when Reviewing State and County Administrative Rules that Impact Small Business"

Chair Borge explained that these bills, which clarify the Board's powers, were currently introduced in the legislature. All four bills, House Bill 2235, House Bill 2326, Senate Bill 2753, and Senate Bill 2885, are the same.

Vice Chair Cundiff made a motion to provide testimony in support of all four measures, House Bill 2235, House Bill 2326, Senate Bill 2753, and Senate Bill 2885, "Relating to the Small Business Regulatory Review Board." Mr. Baker seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Deliberation, Decision Making, and Action on the Board's Investigative Taskforce Findings and Recommendations regarding the Development and Redesign of the Board's existing Website including Contact, Features and Short- and Long-Term Goals in accordance with Section 92-2.5(b)(1)(C), HRS

Mr. Ritchie explained that last month's meeting minutes encompassed the proposal from the website's taskforce regarding the functionality of the type of website that would be best for this Board to draw small business owners to it, and to have sufficient information so users can get more involved and become more interactive; as follows:

- The "regulation review card" is to have an ability to receive testimony on upcoming meetings as well as to receive information on existing regulations;
- A feature to show how rules are made through the rule-making process;
- A link to the State's Legislative website where statutes and bills are viewed;
- The design of the website will have less of a government look with more pictures and graphics;
- Dates of the agencies' public hearings will be accessed from the website's calendar;
- A sign-up e-mail link to receive monthly agendas and to monitor specific rules will be offered.

Mr. Ritchie stated that for web maintenance and web design Hawaii Information Consortium (HIC) is very good, and suggested that two to three price quotes be procured. Mr. Cundiff added that this Board can currently take steps regarding changes to the website for its end goal. It was suggested that a dialogue be created with the three potential web designers/services.

Mr. Ritchie made a motion for the website investigative taskforce to proceed with the website design by getting price quotes from at least three different IT organizations. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

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

Chair Borge reminded the members that he and Mr. Baker will be on ThinkTech's live-stream show, "Business in Hawaii with Reg Baker" on Thursday, January 26th at 2:00 p.m.

- VI. NEXT MEETING** – The next meeting is scheduled for Wednesday, February 21, 2018, in Conference room 436, 250 South Hotel Street, Honolulu, Hawaii at 10:00 a.m.

- VII. ADJOURNMENT** – Vice Chair Cundiff made a motion to adjourn the meeting and Mr. Baker seconded the motion; the meeting adjourned at 12:05 p.m.