

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

June 20, 2018

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Nancy Atmospera-Walch
- Kyoko Kimura
- Reg Baker
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka,
Second Vice Chair
- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich
Ashleigh Garcia

Office of the Attorney General

Jennifer Waihee-Polk

II. **APPROVAL OF MAY 16, 2018 MINUTES**

Vice Chair Cundiff made a motion to accept the May 16, 2018 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to Chapters I – V, Board of Water Supply Rules and Regulations, in compliance with Sections 54 – 26, Hawaii Revised Statutes, for the Adoption of New Water Rates and Charges, promulgated by Board of Water Supply, City and County of Honolulu

Mr. Ernest Lau, Manager and Chief Engineer at the Board of Water Supply (BWS), advised the members that funds from the increased water rates will contribute to investments in pipe replacements due to rising sea levels and slide areas. He discussed the history of BWS, which was created in 1929, stating that it is semi-autonomous and has a separate board that governs that policies and water rates of the department. As BWS is financially self-sufficient due to incoming water fees, it operates essentially as a utility.

BWS services approximately 145 million gallons of water per day to one million customers on Oahu with 170,000 active services, 13 treatment facilities, and water sources all over the island. It has developed a 30-year program to invest in 800+ infrastructure projects island-

wide with total costs over \$5.3 billion and a 10-year financial plan. BWS has a stakeholder advisory committee; it has been meeting for the past three years and brings a lot of input into BWS's financial plans; this effort will continue.

He summarized the "initial" public hearing input which included 65 attendees at four hearings, televised on Olelo and resulted in dozens of questions across a wide range of issues. Other public input resulted in 18 written comments, four telephone calls in support of the changes, 13 in opposition, and eight comments not related to the rate changes.

Depending on the size of the water meter, the current rate charge for residential customers is \$9.26 with twelve charges per year. For non-residential water, the proposed rates per gallon are: \$4.96 – July 2018; \$5.01 – July 2019; \$5.06 – July 2020; \$5.16 – July 2021; and \$5.27 – July 2020; all rate increases will begin July 2019. Also discussed were agricultural water rates, non-potable and recycled water rates, and multi-unit residential rates.

In response to various inquiries, Mr. Lau qualified the increase in the agricultural water rates, explained the residential water rates, and stated that there are currently seven large back-up generators. Mr. Lydgate suggested that BWS consider adopting water sensors for farmers to assist in reducing the water rates. Mr. Dexter Gomes, project manager for Magic Island Productions, questioned whether BWS has been working on water conservation. In response, Mr. Lau stated that the water rebate program is being brought back and will begin with the "residential" water customers.

Chair Borge noted that water is a valuable resource and keeping up with the infrastructure has always been a challenge; he appreciated Mr. Lau's explanation of BWS's amendments. The rules are expected to come back to this Board in August 2018 after the public hearing.

Mr. Ritchie made a motion to pass the rules onto public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed New HAR Title 20 Chapter 26, Public and Commercial Activities on Mauna Kea Lands, promulgated by University of Hawaii (UH)

Mr. Jesse Souki, UH's Associate General Counsel, stated that the new proposed rules will regulate the commercial and public activity on Mauna Kea Lands, which may include managing control public access.

The businesses impacted by these rules include commercial entities using sport utility vehicles, trucks, taxis, vans and buses. Commercial tours which currently take place under prior permits issued by DLNR and transferred to the University will expire by the terms of those existing permits once a new permitting system is established under the proposed rules. Although the proposal does not establish permit fees, the rules do incorporate fines for rule violations as set forth under Act 132; permit fees are to be set at a public meeting once the proposed rules have been passed.

Mr. Souki explained the current conditions on Mauna Kea - there are between 224,000 to 300,000 visits per year; the University charges operators \$6 for adults and \$2 for students; fees are deposited into the Mauna Kea Lands Special Fund; there is currently a maximum of

eight commercial tour permits each with an allowance of two, 14-passenger vans on the mountain during evening tour periods and three during the day. These are the eight permits transferred to the University by the DLNR.

In addition, under the proposed rules, commercial activity at Mauna Kea includes the exchange or buying and selling of goods, or providing of services, or relating to or connected with trade, traffic or commerce in general. Commercial activities include activities whose base of operations are outside the boundaries of the UH management areas or provide transportation to, from, or within the UH management areas.

Testifier Mr. Rob Pacheco, president of Hawaii Forest and Trail, who also served on the Mauna Kea Management Board, expressed his support of the importance and need for the proposed rules. However, he has concerns regarding: 1) the permit's transferability which is revocable within a thirty-day period under existing permit conditions, 2) the proposed lottery concept, and 3) the current permit termination clause.

Testifier Mr. James Stagg from Taikobo Hawaii, who provides tours on Maua Kea, expressed concern regarding the loss of permits. He stated that due to the current volcano incidents, there is a need for increasing the Japanese tourism, therefore, the loss of permits will substantially hinder this effort and the company's overall business. In response, Mr. Souki explained that the permits do not terminate *per se* once the rules are passed. It will take time following the approval of the rules to develop a new permitting system. It is not the University's intention to immediately issue a 30-day termination notice. Instead, the existing eight permits will remain in effect while the new permitting system is established and then implemented. The existing eight permits have already expired but have been continued by the Office of Maunakea Management (OMKM). OMKM will work with existing permittees to provide advanced notice.

Chair Borge stated that there is obviously more rule-making to be accomplished, particularly as it relates to the concerns from the small business stakeholders regarding the permitting process and fear of losing their businesses; despite these businesses investing substantial amounts of money, there is an uncertain result. He encouraged the agency to include the stakeholders in meetings to help resolve some of their concerns, and requested that Mr. Souki come back to this Board after the public hearing to share the feedback.

Mr. Baker made a motion to pass the rules onto the Governor for public hearing. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing 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, stated that he adhered to Chair Borge's recommendation that HIOSH hear from the stakeholders; as a result, several meetings were held which he believes went well and benefited both the stakeholders and HIOSH.

During the meetings, comments and suggestions were made; in response, HIOSH was able to answer the many questions and resolve misconceptions. Also, one additional change was made due to the suggestion of one of the stakeholders. In addition, all the questions and comments posed at the meetings were recorded and are posted on HIOSH's website. It was noted that only one testifier showed up at the public hearing but the comment made was not related to the proposed amendments.

Chair Borge stated that the end result of the stakeholders' involvement was very beneficial as public health and safety are of utmost concern for everyone; he applauded HIOSH for involving the stakeholders due to this Board's recommendation.

Ms. Kimura made a motion to pass the rules onto the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

B. Re-discussion and Action on Proposed Amendments to HAR Title 19 Chapter 20.1, Commercial Services at Public Airports, promulgated by Department of Transportation (DOT)

Ms. Dre Kalili, Revenue Enhancement Manager from DOT's Harbors Division, reminded the members that pursuant to Deputy Director Ross Higashi's reporting to this Board last month, the proposed rules were re-addressed after discussion meetings with the stakeholders were held. Subsequently, there is now approval to go through a "statewide" public hearing process, which begins Monday, June 25th and ends in Kauai on Friday, June 29th. On or around July 3rd, the outcome of the public hearings will be announced.

Discussion leader Mr. Ritchie stated that the revisions appear to depict a balanced playing field. Ms. Kalili concurred and explained DOT's process in redrafting the existing

amendments. She also explained the difference in the requirements for drivers for the City and County of Honolulu versus the State's requirements.

Testifier, Mr. Arthur Hughes, owner of Island Limousine and one of Uber's first partners, expressed his concerns with having the option to be regulated by another company and paying additional fees; he believes all drivers should have fixed permanent decals/stickers on the vehicles.

Testifier Ms. Lynda Kernaghan, a Lyft and Uber driver, expressed concerns in attaining DOT's insurance requirements, and that the airport pick-up areas and sign usage had not been addressed in the rules. Ms. Kalili responded that the pick-up area is well acknowledged in the pilot program but once the program is completed in August 2018, DOT will then assess the whole program regarding the demand and actual usage of Uber and Lyft.

Chair Borge applauded the agency for revising the amendments, which is a step in the right direction, and encouraged DOT to not let it stop here but to continue a dialogue with the small business stakeholders in order to establish more conducive rules; he added that this Board wants to see small businesses flourish and grow.

Ms. Kimura made a motion to pass the rules onto the Governor for public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 15 Chapter 218, Kakaako Reserved Housing Rules, promulgated by Department of Business Economic Development and Tourism / Hawaii Community Development Authority (HCDA)

Discussion Leader Mr. Ritchie reminded the board members that HCDA already went to public hearing and is now coming back to this Board after the hearing.

Mr. Deepak Neupane, Director of Planning and Development at HCDA, provided this Board with background on the proposed amendments and stated the Governor had originally sent the rules back to HCDA prior to public hearing as he was not comfortable with a thirty-year buy-back plan, and recommended creating a ten-year plan instead. Any business impact would be to the small construction and development companies. At the public hearing, the businesses were in support of the rules and the ten-year buy-back plan.

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

V. EXECUTIVE SESSION UNDER SECTION 92-5(4), HAR

A. Consultation with the Board's attorney regarding questions and issues that pertain to the Board's Powers, Privileges, Immunities, and/or Liabilities under Chapter 201M, HRS, the Governor's Administrative Directive 18-02, and Chapter 84, Code of Ethics, HRS

The Board opted not to go into executive session; instead, Deputy Attorney General Waihee-Polk discussed the following items of concern with the members.

Regarding Chapter 201M, HRS, the Board should keep in mind that it reviews rules for small businesses; therefore, members should attempt to stay in-line with the specific administrative rules being reviewed. Members can request information from the agencies, but cannot make mandates.

In regard to Chapter 84, Code of Ethics, HRS, no board member can take official action including voting, recommending, approving or disapproving an action that directly affects a business, or any other undertaking which a member may have a substantial interest; this includes interests of spouses and dependent children. Thus, each member is responsible for recusing themselves when it would be deemed necessary. If a member believes there is a conflict of interest within a rule, notify DBEDT staff as it may affect quorum in voting on a rule. A member may also contact the Ethics Commission directly and speak with an attorney of the day. Violations of the Code of Ethics can result in voiding the action.

Regarding Sunshine Law, there should be no contact among board members on board business "outside" of an open meeting; this includes communication via telephone, email, and social media. Members were reminded that if they receive an email from DBEDT or the chair they should not reply "all" as this would potentially result in an accidental "discussion." However, two people can discuss board business if no commitment to vote is made. Violations of Sunshine Law can result in voiding the action.

Finally, in regard to "rules of order," it is helpful to be clear on the motions; so, when a motion is made it needs to be seconded and then discussed.

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 announced that Ms. Kimura will be leaving this Board and moving onto the HTA Board. He thanked Kyoko for her hard work and service as an SBRRB member since 2012. He also welcomed Ms. Ashleigh Garcia as the Board's new, temporary administrative assistant.

It was announced that DBEDT has committed funds toward revamping the SBRRB's website with HIC (Hawaii Information Consortium) and a contract is currently in the works.

Chair Borge thanked the members for being on time, especially to the neighbor island members.

Due to the Board having new members, group leader assignments will be discussed at the next meeting. Mr. Baker suggested that the discussion leader assignment listing be sent to each member to review prior to the next board meeting.

Going forward, DBEDT staff will upload the Board agenda packets on the website's monthly calendar in a couple of ways – one large upload and also two or more uploads.

- VII. NEXT MEETING** – The next meeting is scheduled for Wednesday, July 18, 2018, 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 Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 12:35 p.m.