

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

March 15, 2017

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

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

MEMBERS PRESENT:

- Harris Nakamoto, Vice Chair
- Kyoko Kimura, 2nd Vice Chair
- Robert Cundiff
- Garth Yamanaka
- Mark Ritchie

ABSENT MEMBERS:

- Anthony Borge, Chair
- Nancy Atmospera-Walch

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Dawn Apuna

II. **APPROVAL OF FEBRUARY 15, 2017 MINUTES**

Second Vice Chair Kimura made a motion to accept the February 15, 2017 minutes, as presented. Mr. Ritchie 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 Kimura explained that this is the second time this Board has reviewed the rules after the public hearing and the second time no one from DLIR has attended the meeting. Sixteen testimonies were received from the public hearing that were either against the rule amendments or asked that DLIR make additional amendments; none of the requests were made. This Board has also had no opportunity to discuss the changes with the stakeholders or with DLIR.

The rules will have a significant impact on small business as the amendments make it easier for a union to organize without a hearing or arbitration, and by a secret ballot. The members discussed the options of deferring a decision, opposing the rule proposal due to the lack of clarification and background information, and/or sending a memo to the governor recommending that the amendments not be signed for adoption.

Second Vice Chair Kimura made a motion to oppose the amendments due to the amendment's significant, negative impact on small business and because the reasoning for the amendments is unclear to this Board. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on proposed amendments to Hawaii Administrative Rules, Title 13, promulgated by Division of Boating and Ocean Recreation (DOBOR) / Department of Land and Natural Resources (DLNR), as follows:

a. Small Boat Harbors

- Chapter 230, General Provisions
- Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
- Chapter 232, Sanitation and Fire Safety
- Chapter 233, Motor Vehicle and Parking Rules
- Chapter 235, Offshore Mooring Rules and Areas

b. Boating

- Chapter 240, General Provisions
- Chapter 242, Accidents, Reports, Fines, Enforcement and Records
- Chapter 243, Vessel Equipment Requirements
- Chapter 244, Rules of the Road; Local and Special Rules
- Chapter 245, Waterway Marking Systems

c. Ocean Waters, Navigable Streams & Beaches

- Chapter 250, General Provisions
- Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches
- Chapter 253, Registration and Permit Fees
- Chapter 254, Local Ocean Waters
- Chapter 255, Waikiki Beach
- Chapter 256, Ocean Recreation Management Rules

Discussion leader Mr. Ritchie explained that the amendments are the result of an effort to clean-up the rules. Although no fee increases are proposed at this time, the business impact will likely result from the changes in DOBOR's commercial procedures.

Ms. Maria Gaydos, Legal Fellow from DOBOR at DLNR, introduced intern/law clerk Mr. Todd Tashima who assisted in promulgating the rule amendments. Ms. Gaydos believes that DOBOR/DLNR did a significant amount of public outreach over the past two years, having worked with Ocean Tourism Coalition, Trilogy Excursions, etc., and many of the

stakeholders on the neighbor islands. She added that Ocean Tourism Coalition provided recommendations to the dive flag rules, of which DLNR made changes to the rules.

The biggest business impact the commercial boaters will have is filing for a commercial permit, which requires certain documentation requirements such as a letter of good standing, articles of incorporation, etc. It was noted that Mr. Gaffney, President of Hawaii Fishing & Boating Association, who provided written testimony to this Board, was given a copy of the rules; he also provided feedback on the amendments. Vice Chair Nakamoto requested that Mr. Gaffney be notified of both public hearings that will be held on the Big Island and that the organization he represents receive copies of the proposed rules package.

Ms. Gaydos stated that although the law requires having only one public hearing, because the changes and the impact of the rules are statewide, a public hearing will be held on all the islands as well as two hearings on the Big Island; there will also be a press release and posting on DLNR's website. She added that, in the near future, administrative rules proposing an increase in fees, which will have a significant impact on small business, will be forth coming to this Board.

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

B. Discussion and Action on Proposed New HAR Title 15, Chapter 37, Solar Water Heater Variance, promulgated by Department of Business, Economic Development and Tourism (DBEDT)

Discussion leader Mr. Ritchie stated that the proposal represents a new chapter, and the rules are based on the statute. A new \$25.00 fee will be charged for a solar water heater variance permit which will be part of the on-line application process. The fee is only for residential and single-family dwellings and will likely be passed onto the homeowners by the contractors; there is currently no fee for commercial permits.

Mr. Dean Masai, Energy Analyst, explained the history and reasoning behind the purpose of the solar hot water variances. If a homeowner does not want to install a solar hot water heater, they may receive a variance; since 2010, approximately 4,600 variances have been requested and approved. Although there is an expense to purchase and install a solar water heater into a new home, over a three-year period, that cost of the solar water heater would pay for itself.

Mr. Masai also explained that if a homeowner chooses one of the following three options, a variance would be approved: 1) a solar water heater is not economical; 2) another renewable energy-saving devise will be installed; or 3) a gas tankless water heater will be installed. Only one public hearing will be held and it will be broadcast through social media and the press. It is expected that there should be no concerns with the new \$25.00 fee.

Mr. Ritchie made a motion for the new proposed rules to move forward to public hearing. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

V. LEGISLATIVE MATTERS

A. Update on House Bill 1382 HD1, Relating to Procurement

This measure creates a small business office and is moving along in the session.

B. Update on House Bill 75 HD1, Relating to the Small Business Regulatory Flexibility Act

This measure would negatively impact the timing of when this Board would review a small business impact statement and was deferred indefinitely.

C. Update on House Bill 587 HD1, Relating to Small Business

This measure appropriates funds to the Board and is being heard today in the Senate. The last committee had “blanked out” the dollar amount and passed it out to the House Finance Committee.

D. Update on House Bill 1042 HD1, Relating to the Small Business Regulatory Flexibility Act

This measure, which expands the Board from nine to eleven members and other housekeeping measures, did not cross over to the Senate.

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

This measure is the companion to House Bill 587 HD1; it did not cross over to the House.

F. Update on Senate Bill 908 SD1, Relating to the Small Business Regulatory Flexibility Act

This measure is the companion to House Bill 1042 HD1; it is being heard on Friday, March 17th.

G. Update on Senate Bill 1059 SD1, Relating to Small Business

This measure, which establishes and defines a three-year assistance initiative with the state procurement office to develop an effective small business state contracting program, is moving along in the session.

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

Vice Chair Nakamoto stated that he sits on the board of Retail Merchants of Hawaii and is currently coordinating with the Retail Merchants Chair and Chair Borge to either do a

presentation at one of its monthly board meetings and/or submit an article for its monthly newsletter.

It was announced that DBEDT approved this Board's staff to attend the Hawaii Small Business Conference at the Maui Arts and Cultural Center as an exhibitor on May 3rd and 4th.

The current brochure for this Board was distributed for review as it will be sent to a professional printer; please let staff know of any changes. Before it is printed, Vice Chair Nakamoto requested a prototype be sent to the members for final approval.

The Small Business Fair at Leeward Community College will be held on Saturday, May 6th. The SBRRB brochures will be distributed at the fair.

It was requested that the April 19th board meeting be rescheduled for 1:00 p.m., instead of 10:00 a.m. While all the members attending the meeting today are able to make the time change, the remaining two members not in attendance will be contacted.

- VII. NEXT MEETING** – The next meeting to be scheduled for Wednesday, April 19, 2017, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii at 1:00 p.m.
- VIII. ADJOURNMENT** – Second Vice Chair Kimura made a motion to adjourn the meeting and Mr. Cundiff seconded the motion; the meeting adjourned at 10:44 a.m.