

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

November 15, 2017

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:02 p.m., with a quorum present.

MEMBERS PRESENT:

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

ABSENT MEMBERS:

- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Jennifer Waihee-Polk

II. APPROVAL OF OCTOBER 18, 2017 MINUTES

Vice Chair Cundiff made a motion to accept the October 18, 2017 minutes, as amended. Ms. Kimura 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, Chapter 15, Hawaii Worker's Compensation Medical Fee Schedule and Exhibit A, Workers' Compensation Supplemental Medical Fee Schedule, promulgated by Department of Labor and Industrial Relations (DLIR)

Ms. Kimura reminded the members that this Board heard these rule changes, which relate largely to fees, prior to the public hearing. There was quite a bit of testimony at the public hearing, with one testifier strongly opposed to the acupuncturists' fee increase despite other acupuncturists supporting it.

Ms. JoAnn Vidinhar, Administrator at DLIR's Disability Compensation Division, explained that 23 testifiers attended the public hearing. Six of those testified about the acupuncturist's fee increase; two opposing testifiers claimed there was no shortage of acupuncturists; four were in support of the increases. As DLIR used results from the last survey that was conducted,

and also looked at the past three years of fees, because acupuncturists did not have a rate increase in over thirty (30) years, DLIR kept the recommended increase in the fees.

Chair Borge stated that it is important for the small businesses who will be receiving increased fees to become engaged in the vetting process in order for employees to be adequately covered. In response, Ms. Vidinhar explained that her division was asked by the Legislature to convene a “workers’ compensation working group,” (consisting of all industry stakeholders), in order to discuss and understand concerns that will ultimately provide for a fair and equitable fee schedule; Chair Borge requested the working group list.

Ms. Kimura made a motion to send the amendments to the Governor for adoption and Mr. Ritchie seconded the motion; all members agreed except Mr. Baker who abstained.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13, Chapter 74, License & Permit Provisions and Fees for Fishing, Fish, and Fish Products, promulgated by Department of Land and Natural Resources

Deferred until next Board meeting.

C. Discussion and Action on the Small business Statement After Public Hearing and Proposed Amendments to HAR Title 23, Chapter 200, Regulations of Controlled Substances, and Chapter 201, Regulated Chemicals for the Manufacture of Controlled Substances, promulgated by Department of Public Safety (DPS)

Mr. Jared Redulla, DPS Administrator, explained that the proposed rule changes had been delayed since 2015 when this Board first heard them, due to various administrative changes, retirements and a procedural error. However, public hearing occurred over the summer of 2017 with no testifiers attending and no testimony received.

Background of these rules was explained; because the states on the mainland as well as Hawaii are in an opioid epidemic, the governor created an opioid task group to review all the focus areas surrounding the opioid problem. While Hawaii does not currently have the same opioid epidemic as the mainland, it was reported that last year Hawaii’s accidental overdose deaths exceeded the amount of traffic fatalities.

The proposed increase in the registration fees is expected to cover services provided by DPS. The fees are collected and placed into a revolving fund to pay for investigative activities/incidents involving registrant issues and controlled substances (of which, 800 incidents occurred last year) as well as for administrative expenses. Fees are paid by manufacturers, distributors, practitioners such as doctors, dentists, veterinarians, medical facilities such as hospitals, long-term care facilities, pharmacies, out-of-state pharmacies that move products into Hawaii, and scientific researchers.

The fees will also help pay for DPS's universal, prescription drug monitoring program which is the most prevalent tool Hawaii has in assisting its prescribers and practitioners. The drug monitoring database allows prescribers and practitioner's access to provide appropriate health care decision-making along with looking at potential acts of diversion such as criminal activity and fraud.

Chair Borge questioned whether DPS is able to track the effectiveness of the monitoring. Mr. Redulla responded that DPS's most important key resource is the prescription drug monitoring base which is the key to monitoring what is being dispensed to the public and what prescribers are doing. Thus, with this information, DPS expects that health care providers will make better and safer alternative decisions in treating patients. Insurance companies are also looking to this type of information as they want to make sure that what is being paid out is appropriate and not fraudulent.

Vice Chair Cundiff made a motion to send the amendments to the Governor for adoption. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 18, Chapter 231, Administration of Taxes, promulgated by the Department of Taxation (Do Tax), as follows:

1. Amendments to Section 3-14.17, Revocation of Licenses Because of Abandonment

Mr. Jacob Herlitz, DoTax Rules Specialist, explained that the rule amendments allow DoTax to revoke tax licenses due to abandonment by publishing notice on its website for a 45-day period. Although the current rules require DoTax to notify licensees via postal mail, because there are currently hundreds of thousands of licenses considered to be abandoned, it would be extremely costly to mail notices out. The rule changes apply to any tax license.

At the public hearing, one testifier raised concerns that the proposed rule changes violates the due process clause of the U.S. Constitution. DoTax respectfully disagreed with these concerns and have relied on the Department of the Attorney General's conclusion that the rules are "as to form." It was Mr. Herlitz's understanding that if a business' license is cancelled, it could be reinstated several years later.

Second Vice Chair Yamanaka made a motion to send the amendments to the Governor for adoption. Mr. Baker seconded the motion, and the Board members unanimously agreed.

2. Proposed New Section 3-14.26, Registration of Representatives

Mr. Jacob Herlitz explained that the proposed new rule paves a foundation for DoTax to set guidelines connected with its new computer system so that businesses who represent taxpayers would be allowed to electronically act on behalf of their client and electronically access the client's confidential taxpayer information.

At the public hearing, one testifier voiced concerns about possible future regulatory problems. Mr. Herlitz stated that simply registering a name and password and ensuring power of attorney does not pose any future regulatory issues; it was noted that this process is currently taking place.

Second Vice Chair Yamanaka made a motion to send the amendments to the Governor for adoption. Mr. Baker seconded the motion, and the Board members unanimously agreed.

3. Amendments to Section 9.9-03, Taxpayers Subject to EFT Program

These amendments require a participant in the EFT (electronic funds transfer) program to electronically make all payments including those based on annual returns for any tax type. Although statutorily, DoTax has authority to enroll taxpayers under the EFT program whereby taxpayers are required to pay electronically, taxpayers are currently required to only pay “periodic” returns, not “annual” reconciliation tax returns. Thus, the changes will require payments to be electronically made for “annual” reconciliation as well as “periodic” returns.

Mr. Baker commented that when DoTax requests “public commentary,” it places notice on its website and in the newspaper. However, in an attempt to engage more feedback and participation, he suggested alternatives to “getting the word out” such as submitting an email broadcast to solicit feedback and by involving the chambers of commerce and trade associations so that they can disseminate to their members. He added that these alternatives may likely engage the businesses for more feedback and make for a healthier process.

Mr. Ritchie made a motion to send the proposals to the Governor for adoption and recommended that in an attempt to receive more feedback, commentary, and participation from small business taxpayers, DoTax considers sending out email broadcasts and involving the chambers of commerce and trade associations. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

IV. LEGISLATIVE MATTERS

A. Update on the Board’s Proposed Bill for the 2018 Legislative Session – “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

Mr. Ritchie attended the recent Governor’s bill briefing where there were no objections to the Board’s proposed “housekeeping” bill. Final approval has yet been made.

In regards to the Board’s budget proposal, DBEDT prioritized the Board’s requests for: 1) operating expenses, and 2) website upgrade expenses as 33rd and 34th, respectively, out of 36 total requests. Chair Borge will work on setting up an appointment with the Department of Budget & Finance Director Wesley Machida; Mr. Baker will also attend.

V. ADMINISTRATIVE MATTERS

A. Assignment of Board Members for “Discussion Leader Assignments” for State and County Agencies’ Administrative Rule Review

The members reviewed the existing discussion leader assignments and arrived at the following new assignments:

- Office of the Governor – Robert Cundiff, Backup
- Department of Accounting & General Services – Reg Baker, Back-up
- Department of Agriculture – Garth Yamanaka, Back-up
- Department of the Attorney General – Robert Cundiff, Back-up
- Department of Budget & Finance – Mark Ritchie, Back-up
- Public Utilities Commission – Kyoko Kimura, Discussion Leader / Reg Baker, Back-up
- Department of Business, Economic Development & Tourism – Robert Cundiff, Back-up
- Department of Commerce & Consumer Affairs – Reg Baker, Discussion Leader / Kyoko Kimura, Back-up
- Department of Education – Harris Nakamoto, Back-up
- Department of Hawaii Home Lands – Garth Yamanaka, Back-up
- Department of Labor & Industrial Relations – Reg Baker, Back-up
- Department of Taxation – Reg Baker, Discussion Leader / Garth Yamanaka, Back-up
- Department of Transportation – Nancy Atmospera-Walch, Back-up

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 thanked Mr. Baker for the “plug” he made on his weekly live-streamed show, “Hawaii Business with Reg Baker,” encouraging small businesses to attend this Board’s monthly meetings. Mr. Baker noted that he has “penciled in” Thursday, January 25, 2018 for this Board to be on this show. If any members are interested in being part of the show, let DBEDT staff know.

Chair Borge sent a letter to the Governor asking for assistance in amending the Governor’s Administrative Director 09-01; he will follow-up with the Governor on this.

VI. NEXT MEETING – The next meeting is scheduled for Wednesday, December 13, 2017, 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 Second Vice Chair Yamanaka seconded the motion; the meeting adjourned at 11:40 a.m.