

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

October 21, 2015

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 1:07 p.m. with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge
- Barbara Bennett
- Kyoko Kimura
- Robert Cundiff
- Phillip Kasper
- Garth Yamanaka
- Mark Ritchie

**ABSENT MEMBERS:**

- Harris Nakamoto
- Nancy Atmospera-Walch

**STAFF:** DBEDT  
Dori Palcovich

Office of the Attorney General  
Margaret Ahn

### II. APPROVAL OF SEPTEMBER 16, 2015 MINUTES

Mr. Cundiff made a motion to accept the September 16, 2015 minutes, as presented. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

### III. OLD BUSINESS

- A. Discussion and Action on Proposed Amendments to Chapter 23, Commercial Boating Activities, Article 3, Kauai County Code 1987, Governing Commercial Surfing and Stand-up Paddle Instruction, Part V, Section 40, time of Use (a), (b), Section 43 (f), and Section 43(u) and (v), promulgated by County of Kauai Department of Parks and Recreation

Chair Borge explained that a representative from Kauai’s Department of Parks and Recreation attended the September Board meeting and discussed both the proposed amendments to the boating rules and the surfing rules; the agenda, however, did not include the surfing rules. The comments remain the same as last month’s discussion in regards to the proposed amendments, such as preventing surfing and paddling schools to do business on Sundays or holidays in Special Management Areas.

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

B. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 146, Hawaii State Park System, Section 6, Fees, and the Small Business Statement After Public Hearing, promulgated by DLNR

Discussion leader, Mr. Ritchie, stated that the proposed fees are straight-forward small business concerns. Mr. Stephen Soares, Property Manager at DLNR's State Parks Division, explained that five public hearings were held; this goes beyond the statute's requirements. A total of six people attended the five hearings and all comments received were positive. It was noted that the proposed fees, which are used for operating funds, payroll, etc., have been in place for quite some time, and which the Land Board reviewed and adopted.

Mr. Ritchie made a motion to support the proposed amendments to go to the Governor for his signature for adoption. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

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

A. Discussion and Action on Proposed Amendments to HAR Title 16, Chapter 17, Captive Insurance Companies, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Mr. Sanford Saito, Administrator at DCCA's Insurance Division, introduced Ms. Holly Osumi, DCCA's Chief Captive Insurance Examiner, and Ms. Fay Okamoto, Chair of the Hawaii Captive Insurance Council (HCIC), who collectively discussed the background and history of captive insurance companies in Hawaii. The Insurance Division worked extensively with HCIC in drafting the amendments; the proposed amendments are the direct result of the State's collaboration with HCIC.

A captive insurance trade organization is made up of captive insurance managers, attorneys, actuaries, CPA firms, and banking and investment firms. They are private companies, set up by a corporation or business for the purpose of insuring itself or its affiliates; this is different than a public insurance company, such as Prudential Insurance, that sells insurance to the public. Mr. Saito stated that the two most popular captive insurance segments are general liability and property. The State's entire portfolio includes 200 captive insurance companies with total assets of \$18 billion.

Chair Borge stated that the increase in the proposed fees is significant (ranging from \$1,400 to \$6,500) depending on the size, scope, and complexity of the captive insurance company program. He questioned whether a fee increase will be done on an annual basis in an attempt to charge a more reasonable fee and to avoid charging a more sizeable fee less frequently. In response, Mr. Saito indicated that the fee increase proposal is in association with other changes to the rules, both statutory and not statutory, and a fee increase is not expected to be an annually-recurring increase. Further, captive insurance examinations are typically conducted once every three to five years. Roughly twenty-five percent of the total captive insurance companies may be considered small businesses.

Ms. Kimura made a motion to support the proposed amendments to proceed to public hearing. Second Vice Chair Bennett seconded the motion, and the Board Members unanimously agreed.

## V. ADMINISTRATIVE MATTERS

### A. Discussion and Action on the following:

- a. Update on the Board's Budget Proposal for Fiscal 2017 – Chair Borge explained that for fiscal 2017 this Board submitted, through DBEDT, an \$18,000 request for operating expenses that covers mostly travel and incidentals (i.e., attending conferences), and a \$26,000 request for clerical assistance. Although travel expenses are currently paid, Chair Borge stated that it makes sense to have a line item budgeted for this Board so funds will be available and specifically directed for the Board's use. It was explained that, in regards to the budget request process, once the budget is approved by DBEDT, it then goes to the Division of Budget & Finance (B & F) for approval, to the Governor, and then through Legislation.

Chair Borge introduced Mr. Thomas Smyth, who worked at DBEDT for 23 years before retiring. Mr. Smyth was DBEDT's legislative coordinator and explained that although there may not be sufficient funds at DBEDT, there would be more funds available at DCCA from its sizeable revenue stream of the compliance resolution fund; this is a fund where fees are collected from business owners when registering to do business in Hawaii. He suggested that the House Speaker and Senate President as well as the committee chairs hearing DBEDT's bills are aligned with this Board's budget request; the Board members concurred. In the meantime, Chair Borge has two calls into DBEDT's director to discuss various options the Board may have in regards to its funding request.

Chair Borge explained that in the past, there were many discussions with regards to this Board being transferred to DCCA. However, it was always argued that there existed a conflict of interest because DCCA is a "regulatory" agency and this Board reviews regulations. However, Mr. Smyth explained that DBEDT is also a "regulatory" agency, and DBEDT has just as many rules as DCCA with many of its rules more complicated and controversial than DCCA. It was suggested that this Board might want to speak with DCCA about the possibility of being transferred to find out if there is a nexus to DCCA's funding and this Board's purview; however, this has been put on hold for the time being. It was also reiterated to the members that this Board is a separate entity, independent of an agencies' directors' power to supervise or control, and is under DBEDT for administrative purposes only.

Ms. Kimura made a motion to support the proposed budget (\$18,000 for operating expenses and \$26,000 for clerical assistance). Second Vice Chair Bennett seconded the motion, and the Board members unanimously agreed.

- b. Board's On-going Outreach Efforts, in accordance with Chapter 201M, HRS, including update of Board Member Meetings with State Department Directors

Chair Borge encouraged the members to meet with the State department directors that they are assigned to as discussion leaders.

It was indicated that the amended brochure looked very good. DBEDT staff is still attempting to work on the Board's e-newsletter.

- VI. **NEXT MEETING** – The next meeting is scheduled for Wednesday, November 18, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii, at 1:00 p.m.
- VII. **ADJOURNMENT** – Mr. Ritchie made a motion to adjourn the meeting and Ms. Kyoko seconded the motion; the meeting adjourned at 3:00 p.m.