

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

September 19, 2018

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:08 a.m., with a quorum present.

MEMBERS PRESENT:

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Mary Albitz
- William Lydgate
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto
- Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Ashleigh Garcia

Office of the Attorney General

Jennifer Waihee-Polk

II. APPROVAL OF AUGUST 15, 2018 MINUTES

Mr. Ritchie made a motion to accept the August 15, 2018 minutes, as presented. Vice Chair Cundiff 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 Chapter 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 City and County of Honolulu’s Board of Water Supply, stated that five public hearings were held with a total of 65 attendees, with only one person providing testimony. Subsequently, the proposed rules have been adopted with an effective date for the new water rates of September 15, 2018. Chair Borge complimented Mr. Lau for the good job BWS has done in notifying the community of the rate changes and for engaging small businesses in the process.

Ms. Albitz made a motion to support the adoption of the proposed administrative rules. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on Proposed New Amendments to HAR Title 18 Chapter 237 General Excise Tax, promulgated by Department of Taxation (DoTax)

Mr. Jacob Herlitz, DoTax Administrative Rules Specialist, explained that the proposed new rule section defines where intangible property is used for purposes of the general excise tax exemption for gross income received from intangible property used outside the state; pursuant to Act 183, SLH 2018. He further explained that this law was intended to close a “loophole” in the tax law for clarification purposes where different states are involved.

Specifically, the new rule section defines where intangible property is used based on whether the customer is a business, individual, military or government; examples of how this new rule would take effect were discussed. Mr. Lydgate requested that when Mr. Herlitz reports back to this Board, after the public hearing, that information be provided as to why the rule amendments came about and to whom the changes may affect.

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

B. Discussion and Action on Proposed Amendments to HAR Title 12 for the following chapters, promulgated by Department of Labor and Industrial Relations:

1. Chapter 229, General, Administrative and Legal Provisions;
2. Chapter 230.1, Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumbwaiters with Automatic Transfer Devices; and
3. Chapter 240, Elevator Requirements for Individuals with Disabilities

Mr. Norman Ahu, DLIR’s HIOSH Administrator, explained that one of the branches he oversees under HIOSH (Hawaii Occupational Safety and Health) Division covers the rules on elevators and escalators, etc. While many of the proposed rule changes mirror existing practices, changes also include fee increases, averaging approximately 7.5%.

Mr. Ahu noted that fee increases are intended to pay for the self-sustaining branch expenses which have increased over the years. It was also noted that small business stakeholders were involved in the rule promulgating process; these stakeholders were essentially fine with the proposed changes, particularly with the fee increases, as it is generally understood that overall prices and costs have gone up.

Mr. William Kunstman, Assistant to the Director, stated that the biggest changes to the rules occurred in 2014; so, the current rule proposals are mostly minor housekeeping measures, aside from the fee increases. There are approximately 7,000 elevators in the State of Hawaii with all of them requiring annual permits and either three- or five-year safety tests.

Vice Chair Cundiff commended DLIR for getting the stakeholders involved and questioned whether the 7.5% increase was sufficient enough to sustain the branch’s ongoing expenses. Chair Borge added that HIOSH may want to look ahead and determine the cost demand

versus the cost efficiencies of the updated software, etc. Mr. Ahu concurred, noting that on a technological level, HIOSH has the “leading edge” in the industry.

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

V. LEGISLATIVE MATTERS

A. Update on Proposed Amendments to Chapter 201M, HRS for the 2019 Hawaii Legislative Session, “Relating to the Small Business Regulatory Review Board”

Chair Borge explained that this legislative bill is a housecleaning measure that was heard during this past legislative session. It clarifies the powers of this Board by adding that the Board may consider any request from small business owners for review of a rule that is proposed and amended as well as adopted by a state agency; it also changes “ordinance” to “rules” when making recommendations to the county council or the mayor for appropriate action.

The Board members will make an effort to reach out to those legislators involved in the approval process of this measure.

Vice Chair Cundiff made a motion to reactivate this proposed bill during the 2019 legislative session, Ms. Albitz seconded the motion, and the Board members unanimously approved.

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 mentioned that House Speaker Scott Saiki is in the process of working on assisting in finding potential candidates for this Board as there are three vacancies from the House; there is also one vacancy from the Senate.

DBEDT staff indicated that the board meetings for 2019 were in the process of being scheduled; it was confirmed by the members that meetings on the third Wednesday of the month at 10:00 a.m. was convenient.

VII. NEXT MEETING – The next meeting is scheduled for Wednesday, October 17, 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 Vice Chair seconded the motion; the meeting adjourned at 11:17 a.m.