

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING August 20, 2020

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:05 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walsh
- William Lydgate
- James (Kimo) Lee
- Jonathan Shick
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

None

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF JULY 16, 2020 MINUTES**

Vice Chair Albitz made a motion to accept the July 16, 2020 meeting minutes, as presented. Mr. Lydgate seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** - After Public Hearing

- A. Discussion and Action on the Proposed Amendments and the Small Business Statement After Public Hearing of HAR Title 19 Chapter 17, Rules and Regulations Governing Recreational Stops, promulgated by Department of Department of Parks and Recreation – City and County of Honolulu

Chair Cundiff introduced Ms. Michelle Nekota, Director of the City and County of Honolulu’s Department of Parks and Recreation. He disclosed that because he currently serves as a board member on Parks and Recreation, he was recusing himself to eliminate any potential conflicts of interest to this Board’s action.

Discussion leader Mr. Shick asked Ms. Nekota to review the rule changes. She stated that there was only one change made as a result of testimonies received at the November 20, 2019 public hearing; the amendment brings back a 15-minute grace period for recreational stops. She added that there are five permits issued per park district if there is a need to stay

more than 15 minutes; the permits are valid Monday through Friday from 6:30 a.m. to 6:30 p.m.

In addition to advertising the public hearing notice in the local newspaper, communication through the neighborhood board meetings were also performed. Although it was not initially realized how small businesses would be impacted, at the first public hearing, several small businesses suggested the reinstatement of the 15-minute grace to allow clients to stretch their legs, use the facilities, take pictures, etc.

Mr. Ritchie made a motion to move the proposed amendments to the Mayor for adoption. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS** – Before Public Hearing

##### A. Discussion and Action on Proposed Amendments to Title 19, Chapter 108, High Occupancy Vehicle Lanes, promulgated by Department of Transportation (DOT)

Ms. Laura Manuel from DOT's Highways Division explained that the amendments include electrical vehicles (EVs) in the Zipper Lane as DOT supports the continued exception for EVs to use HOV lanes. Act 168 allows EVs to use a high occupancy vehicle (HOV) lane regardless of the number of persons in the vehicle.

Second Vice Chair Yamanaka clarified that the amendment would be adding a definition of electric vehicle and allow EVs to utilize the Zipper lane as well as any HOV lane. Chair Cundiff suggested that the amendment could possibly affect small business if they use EVs; Ms. Manuel agreed.

Mr. Lee 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 Title 12, Subtitle 8 Hawaii Occupational Safety and Health (HIOSH) Division, Part 11 Elevators and Related Systems, Chapter 229 General, Administrative, and Legal Provisions, promulgated by Department of Labor and Industrial Relations (DLIR)

Vice President and discussion leader Albitz Introduced Mr. Norman Ahu, DLIR's HIOSH Administrator. He explained the specific changes and history of the rules. The rules and codes apply to any entity, including small businesses, that own or are responsible for elevators or related systems. The changes will initially impact elevator contractors, construction contractors of buildings using elevators and related systems, and building owners. The rules include increased fees for inspections and safety tests, which will also affect building owners, tenants and all businesses responsible for elevators or related equipment.

Most of the fees were originally set with the passage of Act 102, Session Laws of Hawaii, 2012. The statutory language set the fees but allows for the DLIR Director to adopt rules pursuant to Chapter 91 to amend the fees. It was the Legislature's intent to provide the flexibility for the Director to change fees to ensure the self-sufficiency of the Boiler & Elevator Branch (Branch).

The last fee increase was effective on January 1, 2019, were in varying amounts, and reflected an average increase of 7.5%. The Branch funding was converted to a self-sufficiency special fund in 2012, whereby its operations are only supported by revenues from the fees it charges. However, since 2012, the increased fees have not accounted for the Branch's full cost to operate and provide its statutory inspection services.

The Branch is currently in dire financial straits due to the cumulative operating deficits. The fee increase is therefore an initial step to help cover full operating costs to ensure its self-sufficiency. In reviewing the Branch's operating costs, the current payroll was identified along with all needed positions that were vacant due to the lack of funds. The funds were then averaged and normalized non-payroll costs including monthly inspection travel to the neighbor islands and IT support fees. The projected test year's full operating costs were then compared to the average revenue of 2018, 2019, and 2020 to identify the revenue shortfall; the shortfall as a percentage of revenue was applied to all fees across the board.

In addition, the collective bargaining and fringe rate costs have increased substantially since Act 107 created the special fund for the Branch as special funds are required to pay the fringe costs of salaries. The fringe rate was 41.54% in fiscal Year 2012-13, and for fiscal year 2018-19 the rate was 50% to 60.08%, an increase of 25% to 45%.

It was noted that the Branch is already experiencing monthly operating net losses and may soon have to take extreme cost-cutting measures that may include staff reductions. It is hoped that this increase will generate approximately \$250,000 annually to help remedy the free-falling situation for this self-sustaining operation. It was also noted that a stakeholder meeting was held on July 21, 2020, where approximately 35 stakeholders, consisting of elevator service companies, consultants, and owner associations, were invited to review a PowerPoint presentation on the reasons for the fee increase.

Mr. Blair Suzuki, Operations Manager of Otis Elevator, does not believe that proper due diligence was done on behalf of the state to ensure that a fee hike is the only solution as many of HIOSH's suggestions did not result in any improvements. He believed that a further study or audit is necessary to evaluate how the branch is running, what steps should be taken to improve the inefficiencies given the current resources, and how it will be managed.

Mr. Suzuki also suggested that more stakeholder outreach is needed as the issues will not be fixed with merely a rate hike. Further, there is no connection as to how the permitting process will be improved such as ensuring that stakeholders will receive permits faster or that elevators will be made safer. Thus, he does not support the rate hike other than the fact to say it is to make whole a division that is not currently operating efficiently.

Regarding Mr. Lydgate's question to whether the business cost is going to be passed onto the customer or whether the costs will impede upon profits, Mr. Suzuki responded that it will affect everyone across the board, including small businesses. Buildings must pay the state for their annual permits which are not received in timely manner, businesses must pay for inspections due to periodic testing every three to five years, alterations and installations must be performed, etc.

In regards to Second Vice Chair Yamanaka's concern as to a third-party's inspection work and why it is not viewed as a solution rather than raising fees, Mr. Ahu responded that raising fees is a relief alternative and it is a statutory requirement to have state certified inspectors and inspections. He again reiterated that any changes must be brought to the Legislature.

Chair Cundiff believed that small businesses would not be opposed to fee increases if they understood that the increase would affect efficiency of DLIR operations as it would, in the long-term, result in lower costs. However, a fee increase would likely not solve systematic problems. In any case, there also appears to be a disconnect between HIOSH/DLIR and the stakeholders.

Although it was suggested that a third party be used to perform the inspections, Mr. Ahu noted that this would entail need to be presented to the Legislature. The statute currently states only an inspector employed by HIOSH/DLIR, meeting certain qualifications, can conduct inspections. Further, HIOSH/DLIR would need to oversee this process to ensure that the third parties are doing it correctly and efficiently.

Chair Cundiff recommended that a phase-in increase be instituted rather than the 17% increase and questioned if there was an alternative as to what the small business will receive with the increase. Mr. Ahu responded that the proposed increase does not include many other factors such as HGEA contract pay increases as well as the elevator supervisor position that is vacant.

Chair Cundiff commended Mr. Ahu in reaching out to the stakeholders prior to the SBRRB meeting and for looking at the statute changes, which are not a short-term solution but a long-term solution. However, he added that HIOSH needs to get a better understanding as to what the stakeholder concerns are and how to address them before going to public hearing.

Regarding what other options are available and how this Board can support the small businesses, Mr. Suzuki stated that the state should e-mail all customers that apply for annual permits and inform them of the rate increase so more input can be provided. Further, the state must show the stakeholders what they are getting for the rate increase; such as whether the increase will result in stakeholders receiving permits in a quicker and/or more efficient manner, etc. He added that it appears too soon to have increased fees as the only available option.

Mr. Lydgate made a motion to defer the proposed rule recommendation until the September 17, 2020 Board meeting for DLIR to meet with small business stakeholders to discuss concerns and suggestions for resolution. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

## **V. ADMINISTRATIVE MATTERS**

### **A. Discussion and Action on Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS**

No updates were discussed.

**VI. NEXT MEETING** - Thursday, September 17, 2020 at 10:00 a.m.

**VII. ADJOURNMENT** – Mr. Ritchie made a motion to adjourn the meeting and Ms. Rodighiero seconded the motion; the meeting adjourned at 12:20 p.m.