

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

December 11, 2013

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

I. **CALL TO ORDER:** Chair Shubert-Kwock called the meeting to order at 9:40 a.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Anthony Borge
- Barbara Bennett
- Kyoko Kimura
- Howard Lum
- Craig Takamine
- Ken Kitamura

ABSENT MEMBERS:

- Leslie Mullens

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF NOVEMBER 20, 2013 MEETING MINUTES

Ms. Bennett made a motion to adopt the November 20, 2013 meeting minutes as amended. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

A. Small Business Statement after Public Hearing for Hawaii Administrative Rules (HAR) Chapter 60.1, Air Pollution Control (DOH)

Mr. Nolan Hirai and Mr. Mike Madsen, from DOH’s Clean Air Branch, discussed the proposed amendments and the results of the public hearings which were conducted on all of the islands. The main purpose of the amendments is to initiate greenhouse gas (GHG) rules for implementing Act 234, SHL, 2007, which created a State GHG cap to be achieved by 2020; both federal (Environmental Protection Agency guidelines) and state regulations will be implemented within these rules. Vice Chair Borge noted that these amendments will impact twenty small businesses but not the municipal solid waste entities. Amendments will also establish a fee (12 cents per ton), and is intended to bring in approximately \$1.2 million in revenue.

Specifically, the GHG rules apply to Hawaii’s largest stationary sources with potential GHG emissions equal to or above 100,000 tons per year of carbon dioxide equivalent. These sources have a number of options for reducing GHG emissions; however, the indirect costs to small businesses from price increases in fuel and electricity due to these regulations cannot be determined. It was noted that if affected facilities use alternative energy sources or improve energy efficiency as a result of these regulations or similar programs, the price

of fuel and electricity could essentially go down. The State's GHG reduction plan will also establish a baseline year for a facility-wide cap to be achieved by January 2020, with minimum cuts of 16% for affected facilities for non-biogenic emissions and any biogenic nitrous oxide and methane emissions. Although the impacted companies have concerns over the costs and implementation of these rules, the rules were intended to incorporate as much flexibility as possible to assist those business concerns.

Mr. Lum made a motion to accept the small business statement after public hearing. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

B. Small Business Statement after Public Hearing for HAR Title 12 Chapter 15, Workers Compensation Medical Fee Schedule (DLIR)

DLIR Director Dwight Takamine thanked the board members for reviewing these rules, and introduced Messrs. Walter Kawamura, Administrator, and Jade Butay, Deputy Director, from DLIR. The public hearing occurred on October 30, 2013, with 22 people attending the hearing, nine provided oral testimony and 27 presented written testimony. Ninety percent of the testifiers were in support of the proposed changes to the workers' compensation medical fee schedule. Chair Shubert-Kwock stated that she supports an alternative administrative option to process the workers' compensation fee schedule, rather than amending the rules through the State's current administrative rule process.

The Chair noted that during the public hearing, many testifiers recommended that the federal program reimbursement levels be used instead of Medicare due to the complexity of care and administrative requirements to provide care to injured workers. Director Takamine stated that the state and the federal standards can be very different. However, while the federal standards do have a medical fee schedule, they are a little higher than the state's fee schedule; therefore, if a federal worker becomes injured it would be based on the federal medical fee schedule. He also explained that beginning in January 2014, additional employees will be hired to help meet the backlog of workers' compensation claims. Mr. Craig Takamine stated that the proposed rules were a positive step in assisting with the physician shortage in Hawaii.

In response to the question about DLIR having an audit, Director Takamine explained that rather than using the term audit, the standard procedure is that a survey is performed once every three years; health care providers are surveyed by DLIR personnel to assess, among other things, the amount the patients are being charged. Mr. Lum commented on the insurance costs which the small businesses pay, and questioned whether there would be additional costs. Director Takamine indicated workers' compensation is mandated by law, which is regulated by the State's Insurance Commissioner. When Vice Chair Borge asked whether DLIR had any figures representing the measurement of fraudulent transactions, Mr. Kawamura stated he will provide those figures to this Board, and noted there was more fraud committed on the claimant side rather than on the employer side; the term "fraud" under statute is very broad and covers all types of fraud.

Mr. Craig Takamine made a motion to accept the small business statement after public hearing. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Proposed Amendments to Part II of the Rules and Regulations for Water Service Connections, Section IX – Adjustment of Bills for undetected Underground Leaks and Unforeseen Damages - (Department of Water Supply – County of Kauai)

Ms. Bennett explained that she believed the proposed rule amendments are straight-forward and clear, and essentially provide more reasonable and supportive resolutions to underground leaks and unforeseeable damages where homeowners or businesses have had problems in the past. Chair Schubert-Kwock added that the proposal appeared to be a fair and practical solution to avoid punishing consumers and businesses from paying hefty bills when they are unaware of underground leaks and damages; the amendments will also provide flexibility to its customers.

Ms. Bennett made a motion to accept the rules for public hearing. Mr. Craig Takamine seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Approve Final Draft 2013 of Annual Report to the Legislature, pursuant to Section 201M-5, Hawaii Revised Statutes

The 2013 final draft of the annual report was reviewed; the report will be updated with the changes transpired in today's Board meeting.

Vice Chair Borge made a motion to accept the final draft annual report as amended. Mr. Kitamura seconded the motion, and the Board members unanimously agreed.

B. Update of Board's Fiscal Year 2015 Supplemental Budget Request

Mr. Kitamura stated that the Governor approved two separate items for this Board, the \$16,000 request for administrative and travel expenses, and \$14,000 for clerical support to be shared. The Governor is expected to submit the total budget request to the legislature during the week of December 16th. Mr. Kitamura also stated that although currently, specific funds are not allotted for this Board, the Board's expenses are still getting paid. He suggested that the Board encourage legislators that are known to the members to approve the budget request. Once the legislature approves the budget, the allocated funds would likely be available in January 2015. Chair Shubert-Kwock thanked Ms. Palcovich and Mr. Kitamura for their hard work and help on the proposed budget.

In regards to the legislature, Chair Shubert-Kwock suggested this Board write a proposal to the legislature and Governor to research an alternative administrative option to process the workers' compensation fee schedule, rather than amending the rules through the State's current administrative rule process. The Chair will look to another board member and DBEDT staff for assistance. The next step would be to draft such correspondence for submission to this Board for review and approval.

C. Status Report from Board's Investigative Committee on RegAlert

Chair Shubert-Kwock stated that the RegAlert committee met last week, and requested Mr. Kitamura, a committee member, to explain what had transpired at the meeting. Mr. Kitamura stated that the RegAlert committee recommends this Board proceed slowly through the launching of RegAlert. While he believes the technology part is not difficult, he was concerned about DBEDT staff's ability to handle the workload.

The first step would be to send the Board's agenda out by creating both an email blast system and via Twitter, which would be a "one-way broadcast," with no testimony solicited or required. However, to satisfy Office of Information Practices (OIP), Deputy Attorney General Ahn suggested that instructions be made to explain where testimony and comments to the agenda can be submitted. Further, Mr. Kitamura explained that placing the Board's agenda on Twitter would simply be a "push mechanism." The initial RegAlert soft roll-out is expected in the spring of 2014, and once the "waters are tested," the Board will assess it.

The next step would be for this Board to go on Facebook or to do a blog along with more intensive marketing efforts.

Ms. Palcovich explained that she contacted Office of Information Practices (OIP). OIP wanted this Board to know that OIP strongly discourages this Board from posting the agenda without the attached proposed administrative rules (which, depending on the month, may be 200, 300, 400, and up to 500 pages), due to potential confusion among the public. This is unless, however, a very well written disclaimer is placed on the agenda stating that attachments to the agenda may be either linked or found elsewhere. DBEDT will work with Deputy Attorney General Ahn who will be asked to assist with creating a disclaimer.

Ms. Bennett inquired as to what the specific goals and processes are, and what this Board is looking to accomplish with RegAlert. In response, Vice Chair Borge stated that posting the agenda is for preliminary informational purposes for items that affect small business as well as for getting the information out to the chambers and other business organizations and associations. Further, RegAlert would provide an information source as well as a communication piece for the legislature and as a conduit for the small business community to get involved.

Deputy Attorney General Ahn explained that because of Sunshine Law, the Board is not allowed to vote on this item in this meeting, but may vote in the next (or third) meeting. She reminded the RegAlert committee to provide this Board with a proposal, in writing, that outlines the details as to what the committee is proposing.

D. Chair's Report – Exhibit A

Chair Shubert-Kwock stated that this Board's work is done on a daily basis with DBEDT staff, and she discussed the activities outlined in the Chair's Report.

E. Delegation of authority to a board member or members to submit testimony and testify at the 2014 State Legislature

Discussion ensued regarding this Board testifying on upcoming legislature. The testimony would only reflect this Board's specific position and what it votes on at a board meeting. Vice Chair Borge noted that upcoming bills for 2014 will not be made available until January and February of 2014. Deputy Attorney General Ahn stated that a board member must make it very clear while testifying whether that member is testifying on behalf of this Board or as an individual; thus, once there are bills that this board wants to take a stance on, and a member is voted by this Board to testify, that member will be able to testify on that particular bill. In regards to the cost to send a neighbor island member to testify, there are currently no funds allocated. Vice Chair Borge added that it may be easier to submit testimony on the legislative website.

VI. ADJOURNMENT

Ms. Bennett made a motion to adjourn the meeting at 11:40 a.m. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

IX. NEXT MEETING

Next meeting is scheduled for Wednesday, January 22, 2014, at 9:30 a.m., in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii.