

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

December 10, 2014

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

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 9:30 a.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Barbara Bennett
- Kyoko Kimura
- Harris Nakamoto
- Wayne Tanaka
- Ashley Leahey
- Mark Ritchie

ABSENT MEMBERS:

- Craig Takamine

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF NOVEMBER 19, 2014 MINUTES

Mr. Nakamoto made a motion to accept the November 19, 2014 minutes, as presented. Vice Chair Tanaka seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing for Proposed Amendments to HAR Title 11 Chapter 62, Wastewater Systems, promulgated by DOH

Discussion leader Mr. Nakamoto explained that the proposed changes to the rules include removal of cesspools, changes to ownership, and reducing the number of lots from 50 to 15 regarding proposed subdivisions that are allowed to use individual wastewater systems instead of centralized treatment systems. Testimonies received at the public hearings throughout all the islands revealed several concerns that included reduced property values and environmental concerns; much of the business impact affects the real estate industry.

Chair Borge summarized that while several testimonies received by DOH had recommendations for changes and some of those changes were made, the impact on small businesses throughout the state is significant. The number of cesspools that would have to be removed during a one-year period from date of sale equates to approximately 20,000, with Oahu residents resulting in 46% of the total; in addition, Molokai needs to change 562 cesspools and Kauai requires a number of changes. Although DOH stated that the average

cost of a cesspool change-out is between \$12,000 and \$30,000, it is actually more depending on the lot size. Also, some of the landowners will have to use micro-environmental septic tanks, which would cost quite a bit more.

Chair Borge noted that, on the other hand, it is important to alleviate the potential contamination of drinking water and waste build-up of seacoast waters. He believes there should be some funding mechanism available to make it economically viable to the landowners, such as tax credits or rural grants. Also, the proposed changes reflect EPA guidelines to align with the clean water act, which is across the United States, not just Hawaii. Overall, these changes will financially impact small businesses, ranging from mom & pop stores to handymen to contractors to restaurants, all of which will come from discretionary income. While it is positive to remove septic tanks, the overall methodology will be financially detrimental to small business. Chair Borge also noted that a direct financial impact would be imposed on the real estate industry; i.e., realtors and all those associated with this industry such as builders and landowners; the financial impact will be indirectly passed onto others that feed off of the construction industry, such as restaurants, etc.

Second Vice Chair Bennett stated that it is very disappointing that a DOH representative did not attend this meeting because the changes will clearly impact homeowners and ultimately small business. Further, to go back to the past 50 years and attempt to change to septic tanks in a one-year period, thereby impacting Hawaii small businesses when this State has just experienced its worse financial and greatest depression in years, is unreasonable. Ms. Kimura noted that DOH's impact statement states that the rule changes "do not impact small business," which this Board does not agree with. It was mentioned that although no one was present from DOH, a representative was invited to this Board meeting and the several written testimonies that were submitted to the Board, all in opposition of the proposed rules, were submitted to the DOH representative as well.

Ms. Kimura made a motion to recommend to the Governor not to approve the proposed amendments for adoption as the financial impact is too sudden, too great, and is detrimental to Hawaii's small business. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Small Business Statement After Public Hearing for the following Proposed Amendments and Adoption, promulgated by DoTax:

1. HAR Title 18 Chapter 231, Section 91-01 through 100-01, Cash Economic Enforcement; Citations

Discussion Leader Mr. Ritchie stated that when the Board first reviewed these rule amendments prior to public hearing, the members agreed they were business-friendly and not onerous to small business.

Mr. Jacob Herlitz explained that the public hearing was held on October 24, 2014; subsequently, a few non-substantive technical changes were made. The Governor signed off on the rules on November 19, 2014, and they became effective on November 30, 2014.

Mr. Ritchie made a motion to support the approval of the adoption of the rule amendments. Second Vice Chair Bennett seconded the motion, and the Board members unanimously agreed.

2. HAR Title 18 Chapter 231, Section 3-10(a), Compromises

Mr. Jacob Herlitz explained that, as is the case with the above proposal, (Cash Economic Enforcement; Citations), the Governor signed off on these rules on November 19, 2014, and they became effective on November 30, 2014.

Mr. Ritchie made a motion to support the approval of the adoption of the rule amendments. Second Vice Chair Bennett seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on recommendations to the following rules, promulgated by DHS:

1. Proposed Amendments to HAR Title 17 Chapter 1737, Section 75, Dental Services

Ms. Evelyn Yamamoto, Acting Medical Assistance Program Officer from DHS's Med-QUEST Division, provided information on the changes to these rules. She explained that the amendments will cover non-emergency dental services for individuals aged twenty-one years and older, subject to the appropriation and availability of funds. In addition, minor housekeeping amendments were made to this section. Amendments will require a contract modification and systems modification to ensure payments, subject to the appropriation and availability of funds for the additional dental services. While the Governor requested \$4 Million in general funds, the Legislature appropriated \$1,500,000; this amount is expected to cover three months of services and is subject to release by the Governor.

Ms. Yamamoto stated that this service is one that was cut during the economic downturn, and is now part of Medicaid as an added "fee for service." DHS is also pursuing matching federal funds, which generally takes months. The impact to small business, which is minimal, if not positive, relates specifically to dentists who will be notified of the rule changes via notice of the public hearing.

Mr. Nakamoto made a motion to recommend to the Governor to approve that the rule amendments go to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

2. Proposed New HAR Title 17 Chapter 1747, Working Disabled Adults Group

Ms. Edie Mayeshiro, Coverage Program Specialist from DHS's Med-QUEST Division, explained that this chapter establishes the Working Disabled Adults Group, which will provide medical assistance for disabled working adults who are U.S. citizens, or eligible

non-citizens, when their income exceeds the current allowable thresholds for Medicaid assistance.

The proposed rule contains the financial, resource, freedom of choice enrollment, benefits, and disenrollment information for participation and it is implemented under the provisions of the Tickets to Work and Work Incentives Act of 1999. While it is estimated to cost the State approximately \$639,000 annually, new tax revenue resulting from the employment and anticipated increase in spending of these individuals is expected to decrease the net cost to the State.

Ms. Yamamoto noted that this is a supplemental program, and it has yet to go through the State Legislature. However, because it is similar to another Med-QUEST program, DHS is hopeful that the legislators will approve the allocation for this program during the 2015 legislative session. Mr. Nakamoto believes this is a good program to have, and it is positive to the small business community.

Mr. Nakamoto made a motion to recommend to the Governor to send the proposed new rules to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

3. Proposed New HAR Title 17 Chapter 1747.1, State Funded Working Disabled Adults Program

Ms. Evelyn Yamamoto and Ms. Edie Mayeshiro explained that this new chapter establishes the State Funded Working Disabled Adults Program, which will cover certain lawfully present disabled non-pregnant adult non-citizens who are working and not eligible for the federal Working Disabled Adults Program. This program will provide medical assistance benefits that are identical to the benefits provided to an individual who is eligible under the Working Disabled Adults Group and contain the financial, resource, freedom of choice enrollment, benefits and disenrollment information for participation. These new rules are expected to have minimal impact on small business interests.

Second Vice Chair Bennett made a motion to recommend to the Governor to send the proposed new rules to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Review and Action of Board's draft 2014 Annual Report Summary to the Governor and the Legislature, pursuant to Section 201M-5(f) Hawaii Revised Statutes (HRS)

Mr. Luis Salaveria, who will be assuming the role of the Director of DBEDT in 2015, thanked the Board for inviting him and provided the members with a snapshot of his career and business background. Each member also introduced themselves and explained their business backgrounds.

Mr. Salaveria stated that his role and responsibility is to be an advocate for DBEDT. He plans to be very involved with this Board and its proceedings. His philosophy is quite

simple as his role is to eliminate barriers to assist in doing the job, provide guidance, and to set strategic plans to move forward. When asked about this Board's budget request for fiscal years 2016 and 2017, Mr. Salaveria stated that it was Budget and Finance's attempt to create a "status quo" budget until the new Governor has time to review and understand budget requests and the State's total budget and financial condition. Chair Borge thanked Mr. Salaveria for coming to the meeting and extended this Board's assistance to him.

The members reviewed the Board's draft annual report, which is due to the Governor and the Legislature twenty days prior to the opening of the 2015 legislative session. Suggested edits were made to the report, and DBEDT staff will look to reformat the "administrative rule review" section of the report in 2015.

Second Vice Chair Bennett made a motion to accept and approve the 2014 annual report with the recommended changes to the annual report. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

B. Approval of the Delegation of Authority to a Board Member or Members to Submit Testimony and Testify on behalf of this Board at the 2015 State Legislature

Chair Borge stated that there should be at least two assigned members to represent this Board during the hearings at the upcoming legislative session. It was noted that board members, Ms. Leahey's and Mr. Tanaka's gubernatorial nominations will be coming up for Senate approval during the 2015 session.

Ms. Kimura made a motion to approve to delegate Chair Borge and Vice Chair Tanaka to submit testimony and testify on behalf of this Board at the 2015 State Legislature. Second Vice Chair Bennett seconded the motion, and the Board members unanimously agreed.

C. Discussion on Second Revision to the Board's Power Point Presentation Regarding the Board's Mission pursuant to Chapter 201M, HRS, for Outreach Purposes to Business Organizations and Association and Next Steps for Outreach

Several suggestions were made to the Board's power point presentation, such as adding page numbers, new photographs, and a group shot in the middle of the first page; Ms. Leahey will provide current photos to include in the presentation, as well. In regards to the Board's fact sheet, it was suggested that the State seal be added.

Mr. Nakamoto stated that around February 2015, the next step would be to perform outreach to the business organizations, distribute the fact sheets, and to let the businesses know that this Board supports the small business community in regards to regulations. In the meantime, a speaker's bureau, consisting of a calendar of events will be created. It was also suggested that press releases be sent to publications such as *Hawaii Business Magazine* and *Pacific Business News*.

D. Discussion of Board and Commission Parking Permits

Chair Borge explained that the prior laminated parking passes will no longer be used after 2014. Each member needing to park for the meetings will receive a daily “special events” parking pass to be placed on the rearview mirror of the car.

- VI. **NEXT MEETING** – The next meeting is scheduled for Wednesday, January 28, 2015, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii.
- VII. **ADJOURNMENT** – Ms. Kimura made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 11:30 a.m.