

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

February 18, 2021

- 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
- William Lydgate
- Jonathan Shick
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walsh

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

II. **APPROVAL OF January 21, 2021 MINUTES**

Vice Chair Albitz made a motion to accept the January 21, 2021 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 Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 241 Vessel Registration, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader, Ms. Rodighiero, stated that the purpose of the rule amendments, which were after public hearing, is largely to implement titling of vessels operated in state waters.

Mr. Todd Tashima, Legal Fellow from DLNR's Division of Boating and Ocean Recreations (DOBOR), explained that public hearing was held on January 6, 2021 through Zoom with no testifiers attending or submitting testimony. Subsequently (on February 12, 2021), the Board of Land and Natural Resources (BLNR) provided DOBOR with approval on the rules.

Mr. Lydgate motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Section 5A-11.4 of the Kauai County Code, Home and Related Exemptions Rules, promulgated by County of Kauai – Department of Finance

Mr. Brad Cone, Real Property Tax Manager from County of Kauai's Department of Finance, explained that there should not be any impact to existing businesses that currently have a home exemption. The proposed language requires that a new business owner who moves to Kauai must be in his/her home a certain number of days and are required to file an N-11 state income tax form.

For example, if a business owner/therapist was operating out of his/her home and parking becomes an issue in the neighborhood, in such a situation, the owner would be required to go through the "continual use" process where it would be changed from "homestead" to "commercial home" use.

It was noted that none of the testimonies received at the public hearing were from small businesses.

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

C. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 16 Chapter 71, Certified Public Accountants and Public Accountants, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader, Ms. Rodighiero, stated that the rule proposal represents three separate changes. Mr. Relley Araceley, Executive Officer at DCCA, added that the public hearing was held on December 18, 2020, and three testifiers were in support of the rule changes.

One of the changes to the rules will add the word "section" to all numerical sections indicated in the definition of "public accounting practice." This is because currently all references to the statute do not include either the term or the symbol for "section." The language modification would be inline and consistent with the national association's change.

The second change would allow an examination candidate to retake a failed section in the same quarter of the year if the candidate's grade for the previous attempt of that same section had been released. An applicant must pass all four sections of the exam before being considered for licensure in the state.

The third change proposes to change the word license to "permit" to clarify that supervisors of an applicant holds a permit rather than a license. Currently, to engage in the practice of public accountancy in the State, a person must obtain both a CPA license and a permit to practice. This amendment will ensure that applicants have experience under the supervision of a person who performs public accountancy work as opposed to someone who simply has their CPA license and does not perform accountancy work.

Mr. Shick made a motion to move the proposed amendments to the Governor 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 HAR Title 11 Chapter 219, Parking for Persons with Disabilities, promulgated by Department of Health (DOH)**

Discussion leader, Mr. Nakamoto, thanked Mr. Kirby Shaw, Executive Director, and Mr. Bryan Mick, Program and Policy Development Unit Coordinator from DOH's Disability and Communication Access Board for attending today's meeting.

Mr. Mick explained that this proposal represents a comprehensive, overhaul of the rules largely due to changes in the statute made by the State legislature. Four of the rule changes would likely have small business impact.

The first proposed change exempts parking spaces reserved for people with disabilities in employee parking facilities from the signage requirements where such parking spaces are assigned to specific employees with disabilities. This would, in essence, be a benefit to the employee and the businesses.

The second change will exempt temporary parking spaces reserved for persons with disabilities or temporary access aisles from the "striping" requirements of the rules. This often comes up in construction cases where a portion of a parking lot is corded off for construction sites.

The third change requires the posting of a "No Parking in Access Aisle" sign to identify the access aisle in parking lots with four or less parking spaces. The access aisles are those parking spaces with the diagonal striping; it is very important that these aisles remain clear. However, this would likely require a small expense to a business - approximately \$200 for a sign and installation if a sign is needed.

The final change, with potential business impact, is the creation of a new parking permit due to the possibility of less revenue from the loss of parking expenses and the installation of signage if there are currently no signs in the parking area. Presently, there are three types of disability parking permits issued to qualified applicants: longer term placards, temporary placards, and special license plates. All three confer the privilege to park in any metered parking space without payment of metered parking fees for a maximum of 2.5 hours or the maximum amount of time the meter allows, whichever is longer.

However, effective July 1, 2022, the three existing permits will confer only the privilege to park in a parking space reserved for persons with disabilities, and only the fourth permit - the disabled paid parking exemption permit, will confer the privilege to parking in a parking space reserved for persons with disabilities and/or to park in any parking area where payment is required. This would be via parking meter or an unattended pay station without payment of parking fees for the first 2.5 hours or the maximum amount of time the meter allows, whichever is longer.

Chair Cundiff recognized that DOH had been reaching out to the impacted stakeholders since 2018, and Mr. Mick stated that there was very little specific feedback from small businesses.

There are currently about 100,000 individuals in Hawaii that have existing parking placards, which will continue to stay in place. With the new permit, which provides for free parking, approximately 3,000 to 5,000 of the existing permittees would qualify.

Mr. Shaw stated that it would behoove DOH, as the disabled parking permit issuer, to make the effort to ensure that small businesses are provided with all the information they need to follow the proposed rules. Mr. Ritchie added that the rule changes would allow small businesses to adequately serve their customers with physical impairments.

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

## **V. LEGISLATIVE MATTERS**

### **A. Discussion and Action on the following Legislative Matters**

#### **a. House Bill 636 “Relating to the Small Business Regulatory Review Board”**

This measure provides appropriation for staffing, commissioner interisland travel, and other related operating expenses associated with the small business regulatory review board under the Department of Business, Economic Development and Tourism. It was introduced by House Representative Gene Ward.

As of today, it has not been scheduled for a hearing; therefore, it will likely not be moving forward. Thus, the Board will operate with whatever funds DBEDT will provide. He noted, however, that DBEDT has been completely supportive of this Board and has paid for all its expenses.

Mr. Ritchie made a motion to approve that Chair Robert Cundiff, the Board's staff member, Ms. Dori Palcovich, and DBEDT employee/Board member Mr. Mark Ritchie represent this Board in a meeting with DBEDT director and/or deputy director to discuss this Board's operating budget/funding for the upcoming fiscal year as well as the status of House Bill 636. Mr. Shick seconded the motion, and the Board members unanimously agreed.

#### **b. Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of Harris Nakamoto to the Small Business Regulatory Review Board for a term to expire June 30, 2024**

Mr. Ritchie made a motion to recommend supporting the nomination and providing testimony in support of Mr. Harris Nakamoto to this Board when the Legislature schedules a hearing for this measure. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

- c. Upcoming Governor's Message Submitting for Consideration for the Gubernatorial Nomination of James (Kimo) Lee to the Small Business Regulatory Review Board for a term to expire June 30, 2024

Mr. Ritchie made a motion to recommend supporting the nomination and providing testimony in support of Mr. James (Kimo) Lee to this Board when the Legislature schedules a hearing for this measure. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

- d. House Bill 1148 and Senate Bill 1262 "Relating to Land and Natural Resources"

This measure authorizes the board of land and natural resources to adopt, amend, and repeal administrative fee schedules without regard to chapter 91, Hawaii Revised Statutes (HRS), and establishes a process for the board to adopt, amend and repeal administrative fee schedules, including public notice and meeting requirements.

Chair Cundiff explained that this bill had committee hearings and was passed out. In summary, the bill is taking the fee schedules out of DLNR rules and instead making it an administrative measure, rather than an actual rule. Historically, fee schedules have been in rules which this Board has discussed many times throughout the rule-making processing.

Deputy Attorney General Ahn confirmed that this measure, notwithstanding any other law to the contrary, would allow DLNR to adopt, amend or repeal fees by taking fees out of Chapter 91, HRS. By doing so, and because this Board's purview is over administrative rules, fees adopted by DLNR would no longer constitute rules and therefore no longer come before this Board. It was noted that this bill clearly only speaks for the Board of Land and Natural Resources; Chair Cundiff noted, however, that it could open the door for further legislation.

Mr. Todd Tashima confirmed with the Board's interpretation stating that he has not consulted with the AG's office about this bill, but it would remove fees from the Chapter 91, HRS process. He further stated that House Representative David Tarnas initiated and introduced HB1148 to help DLNR largely because of the concerns of DLNR's Division of State Parks in regard to how the COVID-19 pandemic caused a substantial reduction in tourists to the state parks and the restrictions in changing of fees when they are in administrative rules.

Mr. Tashima added that because DOBOR has fees governed by statutes, those fees would not be affected by HB1148. However, fees already set in DOBOR rules would come under this measure.

Ms. Meghan Stats, Assistant Administrator at DOBOR, in response to the question about approaching Governor Ige for assistance on "emergency" fees, stated that DOBOR cannot speak for State Parks and she is unaware if the Governor can allow for emergency fees. However, the concept of taking fees out of the rules relates to when state parks, similar to other states, would lose a great deal of money (from parking) when tourism hit a low season but incur more fees during higher visitor seasons; therefore, the ability for BLNR to raise the parking fees would allow for these seasonal fluctuations.

Although there would still be a process through public hearing for the change in the fees to be reviewed, it would not come before this Board under its governing statute, Chapter 201M, HRS. It was confirmed that while the fees from the rules would be taken out of the Chapter 91, HRS, process, it would still have to be reviewed by BLNR, which is subject to the Sunshine Law.

Second Vice Chair Yamanaka was concerned that the process would take this Board out of reviewing proposed fees in the rules and may create a precedent for other departments. Given that this Board is an advocate for small business, he will plan to pass on the information in this bill to the Big Island chambers of commerce and various business organizations.

In regard to a question about charging various fee ranges in the rules, Mr. Tashima responded that, specifically regarding DOBOR's statute, in Chapter 200-10, HRS, there is a term referring to an inflation index (i.e., cost-of-living index), but that index does not really exist. Therefore, the AG's office has advised DOBOR that it cannot charge anything over its cost; all fees must be backed-up with actual costs. Further, DOBOR has been advised that placing a price index into the rules is not allowed.

Second Vice Chair Yamanaka noted that many times small businesses and chambers of commerce are simply not aware of all bills, such as this one. He, again, suggested that this Board "get the word out" about this measure for comment, then keep track of the comments, and then make a decision as to what action to take. It was noted also that there does not appear to be any malicious intent on DLNR's part to help solve issues and problems within its agencies. Chair Cundiff added that Mr. Tim Lyons submitted commentary to this Board on this agenda item.

Second Vice Chair Yamanaka made a motion that this Board's staff forward communication on House Bill 1148 "Relating to Land and Natural Resources" to the various Hawaii small business organizations to create an awareness and provide feedback to the Board. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

## **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 Cundiff noted that there is currently nothing to report under administrative matters.

## **VII. NEXT MEETING - Thursday, March 18, 2021 at 10:00 a.m.**

## **VIII. ADJOURNMENT – Mr. Nakamoto made a motion to adjourn the meeting and Vice Chair Albitz seconded the motion; the meeting adjourned at 11:36 a.m.**