

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 22, 2014

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

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

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Anthony Borge
- Leslie Mullens
- Barbara Bennett
- Kyoko Kimura
- Howard Lum
- Craig Takamine
- David Sikkink

ABSENT MEMBERS:

- None

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF DECEMBER 11, 2014 MEETING MINUTES

Chair Shubert-Kwock made a motion to adopt the December 11, 2013 meeting minutes, as amended. Second Vice Chair Mullens seconded the motion, and the Board members unanimously agreed.

Upon approving the minutes, Chair Shubert-Kwock turned the meeting over to Vice Chair Borge to assist with agenda items III, and IV.

III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing for Hawaii Administrative Rules (HAR) Title 18 Chapter 235, Income Tax Law Renewal Energy Technologies; Income Tax Credit; Citations, etc. (DoTax)

Vice Chair Borge welcomed Mr. Sikkink and asked him for his input on these as there were no representatives in attendance from DoTax. Mr. Sikkink stated that these were the same rules that were approved on a temporary basis; DoTax is now requesting the rules become permanent. Vice Chair Borge noted that some changes were made during the public hearing, but they were minor. Chair Shubert-Kwock believed these rules had already been signed off by the Governor; Ms. Palcovich will confirm.

Mr. Sikkink made a motion to recommend that the Governor approve the rules, if the rules had not already been approved. Mr. Lum seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

- A. Discussion and Action on Proposed new rules, amended rules, and proposed repeal of the following: Title 12, Subtitle 8, Part 11 from Chapter 230.1 Elevators, Escalators, Dumbwaiters, Moving Walks, and Material Lifts and Dumb-waiters with Automatic Transfer Devices through Chapter 239 Personal Automatic Trains - (DLIR)

Vice Chair Borge explained briefly the purpose of the rule proposals. Second Vice Chair Mullens, the discussion leader, explained that she had spoken to a DLIR representative who will discuss some of the rule's major changes and any consequences to small businesses. Mr. Thaddeus Tomei, Supervising Elevator Inspector for the State of Hawaii's Occupational Safety & Health Division, explained the history of elevators and that the subject rules had not been reviewed since 1998. While promulgating the rules, it was important to address all of the issues for the entire industry.

DLIR Director Dwight Takamine thanked the board members, and introduced Messrs. Walter Kawamura, Administrator, and Jade Butay, Deputy Director, from DLIR. Director Takamine discussed the history of HIOSH (Hawaii Occupational Safety and Health) and the challenges that occurred due to the lack of sufficient employees after the State's 2009 reduction-in-force. He explained that there are two sides of dealing with these rules, the Federal side and the State (HIOSH) side. Due to the reduction-in-force, DLIR was unable to fulfill sufficient and legally-required staff responsibilities. However, since then, DLIR has hired additional staff members and has provided sufficient training to fulfill and adhere to its required number of inspections. Thus, this proposal is related to the State bringing these rules up to standards required by the 2010 American Society of Mechanical Engineers.

The impact of the proposed rules will affect small business elevator contractors, construction contractors of buildings that work with elevators, dumbwaiters, escalators, moving walks, disability lifts, and kindred equipment, as well as building owners. Some of the costs will be reduced however due to modern equipment construction not needing to be retrofitted. The proposed changes to performance language requirements are expected to enable the use of less costly alternatives. There are also some costs that will increase; notably the maintenance control program requirement for new and existing installations. The costs will likely be passed onto tenants of building owners and eventually to all business utilizing services of those within buildings with elevators and related equipment. Chair Shubert-Kwock complimented Director Dwight Takamine on DLIR preparing these rules and arranging for the increased staff to perform inspections in a timely manner.

Mr. Al Denys of Denys & Associations, LLC, and a member of Community Associations Institute of Hawaii (CAI), stated that CAI is an international organization worldwide whose main purpose is to train and educate homeowners and owners of condominiums on the proper maintenance of buildings, including elevators. Mr. Denys assisted DLIR in promulgating the proposed rules, and explained that it is a very expensive endeavor to repair, install and maintain elevators. The economic cost, and health and safety of the public also plays a role in this endeavor. Mr. Jim Whitmore, a consultant, who has been in the elevator business since 1965, understands the business and concerns of elevators

and supports the proposed rule amendments. Mr. Michael Chung, a prior project engineer and currently a consultant, stated that since the new administration at DLIR took over, the stakeholders are more involved in the promulgation of the rules, of which he is also in support of.

The question of how all the stakeholders and affected contractors will be educated with regards to these proposed rules was posed. Director Takamine explained that it is very important for DLIR to continue on-going discussions with the stakeholders, particularly when it has to do with compliance of the laws. In regards to the cost of repairing a smaller building such as a three-floor apartment, the approximate cost is \$125,000 to \$150,000. This cost is only for the elevator with potential, additional costs required for meeting fire code, etc. For repairing an elevator in a medium-sized building, the cost would be in the neighborhood of \$350,000.

Ms. Mullens made a motion to pass the rules onto the Governor for public hearing. Mr. Lum seconded the motion, and the Board members unanimously agreed.

It was mentioned that the (SBRRB) Board has evaluation sheets at the back of the conference room, which are completely optional, and may be submitted anonymously; further, these evaluation forms have no impact on reviewing the administrative rules.

V. ADMINISTRATIVE MATTERS

A. Discussion on Board's Fiscal Year 2015 Supplemental Budget Request

DBEDT and the Department of Budget & Finance approved the Board's proposed budget requests, as did the Governor. The budget proposal is now with the Senate Ways and Means Committee.

B. Update and Discussion of Board's "introduction" meetings to State agencies

Chair Shubert-Kwock stated that she had her first "introduction" meeting with Attorney General David Louie and Deputy Attorney General Debbie Emerson, which lasted about fifteen minutes, and was beneficial.

When a question was posed as to what may be discussed at these meetings, Chair Shubert-Kwock recommended that the (SBRRB's) Board's brochure be presented as an introduction as to what this Board does, and who the board members are. Ms. Palcovich mentioned that in the past, board members discussed what rules, if any, the agencies were planning to bring to this SBRRB Board during the year as a "heads up."

C. Discussion and Action on the Reactivation of RegAlert, an electronic email alert system for announcement of proposed and amended administrative rules that impact small business

Vice Chair Borge stated that the reactivation of RegAlert will take more time than initially expected in order to put together a proposal. This is because the RegAlert project first began with email communications, but currently, with the proposal to place the Board's agenda on Facebook, Twitter, and mass e-mailings, it has become quite an endeavor. He referred to the State of Hawaii's "*Social Media – Use of Services Offered by Social Media*

Sites for Official Purposes,” which recommends comparisons and best practices to similar communications. Thus, it would be important to compare what other boards have done in similar situations. He suggested that more board members be included on the RegAlert committee with a well thought-out proposal.

Chair Shubert-Kwock stated that one of the key concerns is the time issue; Vice Chair Borge added that this project will take more resources and time. Thus, the initial idea of “soft launching” this project in March will not occur. Ms. Bennett noted that this board will likely be making a big mistake if it thought it can extend itself out to Facebook, Twitter, emails because this board currently does not have the capability nor the man-power. Chair Shubert-Kwock would like to see the reactivation of RegAlert because of its importance to this Board’s stakeholders, but on a less time-consuming project.

Vice Chair Borge made a motion that the members of the RegAlert investigative committee be amended as follows: Chair Shubert-Kwock, Vice Chair Borge, Mr. Craig Takamine, and DBEDT representative Mr. David Sikkink or another DBEDT representation. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

D. Review current Board Member terms

The members reviewed the list of Board member’s terms. Ms. Bennett and Mr. Lum’s terms will be ending in June 30, 2014.

E. Review draft report of 201M-7 Periodic Review; evaluation, HRS

Chair Shubert-Kwock explained that this report is submitted to the Legislature; it is not the annual report but consists of existing rules that impact small business. The report is due at the end of 2014, but may be submitted anytime during the year. Upon reviewing the draft, DBEDT staff will finalize and put in “final draft” form for the Board’s approval.

F. Discussion and Action on the Delegation of authority to a board member or members to submit testimony and testify to the 2014 State Legislature

Vice Chair Borge made a motion to amend the Agenda to add “discussion and action on Senate Bill 2487, Relating to the Small Business Regulatory Flexibility Act, which repeals Chapter 201M, Hawaii Revised Statutes, the Small Business Regulatory Flexibility Act.” Mr. Lum seconded the motion, and the board members, totaling eight, unanimously agreed. This adheres to the requisite two-thirds vote, or six members, needed to affirmatively amend an agenda, pursuant to Sunshine Law.

See Section V. G., below, under Administrative Matters.

G. Discussion and Action on Senate Bill 2487, Relating to the Small Business Regulatory Flexibility Act, which repeals Chapter 201M, Hawaii Revised Statutes, the Small Business Regulatory Flexibility Act

Chair Shubert-Kwock explained that this bill was recently introduced by Senator Rosalyn Baker, which passed its first reading and has been referred to the Senate's Commerce and Consumer Protection Committee. The bill impacts this board because, if approved as written, it would effectively end this Board. The members were unclear as to why this bill was introduced, and that Senator Baker was one of the originators of the Small Business Regulatory Flexibility Act. However, it was noted that the proposal of repealing this bill was not the first time this issue has come up and may have to do with a carry-over issue in the past.

Second Vice Chair Mullens suggested that a few of the Board members be nominated to speak with some of the legislators that helped introduce this bill for fact-finding purposes. The top three legislators that signed the bill are Senators Baker, Dela Cruz and Solomon. Vice Chair Borge concurred and urged that those board members who know these legislators to contact them. Ms. Kimura offered to contact Senator Baker, and Mr. Sikkink was asked to find out what DBEDT's position is on this bill.

Vice Chair Borge made a motion to designate Chair Shubert-Kwock and himself, Vice Chair Borge, to approve this Board's testimony to be written by DBEDT staff, and to present the testimony to the legislators, with Chair Shubert-Kwock having the ability to designate an alternate Board member if she or Mr. Borge are unavailable to attend and testify, and to testify in support of the Board's continued operation, and in opposition to Senate Bill 2487, Relating to the Small Business Flexibility Act. Ms. Bennett seconded the motion, and the Board members unanimously agreed.

H. Discussion on the Chair's Report regarding affairs relating to the Small Business Regulatory Review Board; Exhibit A

Chair Shubert-Kwock discussed the activities outlined in the Chair's Report.

It was asked whether or not the Board members would be willing to do an annual performance evaluation of the DBEDT staff member in regards to her work with this Board. Ms. Bennett stated that any evaluation is helpful in a work relationship, but she suggested that such an evaluation should be done later in the year. Vice Chair Borge added that it would be ineffective if this Board's evaluation of its administrative assistant is not used by DBEDT. Ms. Palcovich was suggested to contact DBEDT's personnel manager to find out if and how an evaluation from this Board would impact an employee's overall performance review. No Board action was taken on this issue.

IX. **NEXT MEETING**

Next meeting is scheduled for Wednesday, February 19, 2014, at 9:30 a.m., in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii.

X. **ADJOURNMENT**

Ms. Kimura made a motion to adjourn the meeting at 12:15 p.m. Mr. Sikkink seconded the motion, and the Board members unanimously agreed.