

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

July 18, 2019

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building
(State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- William Lydgate, Second Vice Chair
- Dr. Nancy Atmospera-Walch
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF JUNE 20, 2019 MINUTES**

Ms. Albitz made a motion to accept the June 20, 2019 minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

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

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to HAR Title 4 Chapter 66, Pesticides, promulgated by Department of Agriculture (DoAg)

Discussion leader and Second Vice Chair Lydgate stated that these rules are after public hearing where much feedback was received from testifiers. Ms. Victoria Matsumura, Case Developer at DoAg, explained that under Act 45, SLH 2018, a few more changes to the rules were made since the first time these rules were in front of this Board.

Six hearings were held beginning in November 2018; two on the Big Island, one on Oahu, one on Molokai and one on Maui. Twenty-one written comments and recommendations for additional rule changes were made; however, DoAg was unable to change some of the recommendations due to the statute's mandates.

Changes to the rules, because of the commentary at the public hearings, include the reporting requirements of RUP (restricted use pesticide) which were initially not well received by the small business community. The compromise made by DoAg was that the new reporting requirement only requires “one” form for businesses to complete which will function as both reporting and recordkeeping purposes, to be retained for two years.

Another change was that the definition of “run-off” was expanded to more closely comply with the EPA definition. Also, it was indicated that after Lobbyist Mr. Tim Lyons expressed concern about increasing the application period for approval of education credits from 14 days prior to the scheduled class date to 30 days, DoAg opted to add a provision to the fee schedule allowing a fee of up to \$100 to be charged to expedite approval of the provider offering continuing education classes; this fee can be waived if the approval process does not interfere with staff responsibilities.

In addition, there was testimony expressing concern as to whether the proposed retailer pesticide warning sign requirements was feasible. Despite these concerns, it was explained that due to a legislative directive, retail signage requirements have been required by law since 2007 and as a result, DoAg is unable to amend the rules; only the Hawaii legislature can change the retail signage requirements in statute.

Mr. Lydgate noted that retailers will likely be surprised with the “labeling of pesticides” requirement. Ms. Matsumura responded that the bigger retailers in Hawaii such as Long’s, Home Depot, etc., have been notified of the labeling requirements.

Chair Cundiff stated that DoAg has done an excellent job at reaching out to the stakeholders to ensure businesses were involved in the process. He asked if small businesses were concerned with the definition changes and the changes to the buffer zones. Ms. Matsumura responded that private citizens and some of the schools were concerned with the buffer zones, and the farmers and schools questioned how they were to know where the buffer zones are located.

Second Vice Chair Lydgate made a motion to move the proposed rules to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Sections 30 to 36, promulgated by County of Kauai Department of Parks and Recreation

Discussion leader and Second Vice Chair Lydgate stated that the proposed amendments pertain to changes at the Weke Boat Ramp, which is used by commercial boaters. In the absence of a County of Kauai representative, Mr. Lydgate read the reasons for the rule amendments, “the Department proposes to amend its existing rules and regulations governing commercial boating activity at county beach parks by: 1) moderately extending the allowable hours of operation; 2) amending compliance and enforcement provisions to allow for incremental fines rather than automatic permit revocation; 3) minor non-substantive

changes in formatting and language; and 4) clarifying the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp."

Second Vice Chair Lydgate noted that many of the changes are housekeeping in nature which will make it easier to enforce and give more leeway to commercial boat operators at the boat ramp. However, an item not addressed was that commercial operators cannot use the hose that is in the county beach park. Second Vice Chair Lydgate also noted that many of the operators were consulted by the County prior to the submission of the rules to this Board. He further mentioned that it would be helpful if a County of Kauai representative communicate with this Board after the public hearing for a proper dialogue.

Chair Cundiff added that it appears the changes to the rules are meant to assist small business and make it easier and less restrictive; Ms. Albitz concurred. Mr. Shick commented that there may be some kick-back regarding the changes to the extended operating hours.

Second Vice Chair Lydgate made a motion to move the proposed rules to public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 148.1, Certification of Adult Foster Homes, promulgated by Department of Health (DOH)

Discussion leader Ms. Atmospera-Walch stated that the rule changes impact those small businesses within Hawaii's home and community-based care homes of which foster care homes are part of. As the rules will clarify DOH's practices and align with required policies all licensed providers will be affected by the rule changes.

Ms. Tracey Comeaux, Brand Chief, and Ms. Sharon Adric, Compliance Section Supervisor at DOH's Developmental Disabilities Division, explained the rules' proposed changes as well as the history of the rules dating back to 1988. The small businesses impacted by the changes are the adult foster homes, which provide care for individuals with developmental or intellectual disabilities. Foster homes are private family homes that provide 24-hour care to not more than two adults, 18-years and older, and who are unrelated to the certified caregiver.

A specific change to the rules is that it will require each adult foster home to obtain and maintain general liability and automobile liability insurance, which is required by statute. The cost of the insurance may increase the cost of operating the adult foster home; however, the individual cost of the insurance coverage is unknown to DOH. Automobile insurance is needed because caregivers are required, as part of their responsibilities, to transport individuals who reside in the homes to medical appointments as well as to community activities and events.

If, however, an owner of an adult foster care home does not obtain the insurance coverage, DOH must receive an alternative transportation plan from the caregiver. Chair Cundiff stated that DOH has had a long period of time to prepare for the implementation of the law and to work with the stakeholders.

Ms. Atmospera-Walch made a motion to move the proposed rules to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

V. 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, on the following:

1. Review of "Discussion Leader Assignments" for Board Members' State and County Agencies' Administrative Rule Review

In preparation of discussing the board members' discussion leader assignments, a matrix spreadsheet was created and distributed for review so there is a fair workload and representation of the various agencies.

During the discussion, it was confirmed that board members from his/her own respective counties will be the discussion leader for that particular county as he/she will likely be more in-tune with the regulatory activity in that community. The following assignments were determined:

Lead Discussion Leaders

Department of Public Safety - Johnathan Shick

Back-up Discussion Leaders

Department of Accounting & General Services – Mary Albitz

Department of Agriculture – Kimo Lee

Department of Budget & Finance – Garth Yamanaka

Department of Defense – Mark Ritchie

Department of Hawaiian Home Lands - Kimo Lee

Department of Public Safety - William Lydgate

Public Utilities Commission - Jonathan Shick

Ms. Atmospera-Walch made a motion for the Board to accept the lead and back-up discussion leader assignments as discussed. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

2. Meetings with Board Members and State Department Directors

Chair Cundiff noted that meetings with the State department directors have been ongoing. However, now that adjustments have been made to the discussion leader assignments as well as changes in State director assignments, he suggested that new letters from this Board are sent to the directors, introducing the new assigned discussion leaders, if applicable.

Meetings with the directors should entail what this Board's purview is and how each can help one another. It was suggested that the letters include an introduction of the new website. "Back-up" discussion leaders probably would not need to meet with the agencies unless they really want to.

Chair Cundiff reminded the members that back-up discussion leaders are only engaged if the lead discussion leaders are unable to attend the board meeting when the agency's rule they are assigned to is being heard.

Mr. Ritchie made a motion to incorporate the Board's website into the new letters of introduction to the state directors. Mr. Shick seconded the motion, and the Board members unanimously agreed.

B. Discussion and Approval of Board's Proposed New Website Prior to Anticipated Launch Date, August 15, 2019

Chair Cundiff reminded the members that the test website link was sent out to them for review. A lot of great work has been done on the new website as it tends to represent who the Board is and what the Board does. Mr. Lydgate concurred and added that the website is a great improvement from the existing site and it is a better representation of the Board.

Ms. Rosemary Warfield, Manager of eGovernment Services & Customer Services, at HIC (Hawaii Information Consortium) indicated that the site is 98% complete. While aesthetically the website is much more attractive, it is a living, breathing thing where changes can be made. The next step is to approve the website to go live unless the members find that additional, major changes are needed.

On July 30th DBEDT staff Mr. Ritchie, Ms. Palcovich, and Ms. Alcos will partake in website training. Ms. Alcos will be the "lead" employee working on and updating the website on a regular basis. It was noted that changes and updates, after the website is launched, can be made anytime.

Mr. Ritchie stated that the "regulatory review card" section of the website has been revamped by taking a different approach; conversational language was incorporated into this section to explain why a small business would want to "submit a regulation for review." Overall, he believes the new website meets the "wish-list" of the changes the Board members wanted to have done.

Going forward, additional major changes to the website, such as creating a mailing list to request a specific agency's proposed rules, will require extra work and programming. HIC's Mr. Cosner noted that currently there are no per se means to make comments on the website but there are ways to contact DBEBT employees through the website. In regard to the public requesting an agenda, Deputy Attorney General advised the Board to be careful because there are restrictions regarding requesting and receiving agendas.

Second Vice Chair Lydgate made a motion to move the Board's new website live onto the Internet. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

- VI. NEXT MEETING** – The next meeting is scheduled for Thursday, August 15, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.
- VII. ADJOURNMENT** – Ms. Albitz made a motion to adjourn the meeting and Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 11:12 a.m.