

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

July 29, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:06 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Garth Yamanaka
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walch
- William Lydgate

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF June 17, 2021 MINUTES**

Mr. Yamanaka motioned to accept the June 17, 2021 meeting 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 the Small Business Statement After Public Hearing and Proposed New HAR Title 11 Chapter 53, Section 401 Water Quality Certifications, promulgated by Department of Health (DOH)

Discussion leader and Vice Chair Albitz stated that the rule changes will help to improve and streamline water quality certifications (WQC). At the public hearing, few businesses responded or voiced concerns with the changes.

Mr. Darryl Lum, DOH Waste Water Branch's Engineering Section Supervisor, explained that a recent public hearing was held for these rules, which are issued by the State of Hawaii for projects that require federal permits and/or licenses that may result in discharges in waters of the United States. The rules certify that the state's water quality standards will not be violated against.

The WQC program was created by the federal Clean Water Act to ensure that the federal government does not issue permits that will violate the state's water quality standards. Some examples of projects that require oversight include harbor dredging, installing a pier along the ocean, etc.

DOH's proposal involves a new chapter, HAR Chapter 53 because currently the WQC rules are in HAR Chapter 54. Anytime there is a revision or amendment to the water quality standards, the Clean Water Act requires that the EPA approves it. However, with the WQC program only the state approves it, not EPA, which is the main reason why DOH created the new chapter.

The proposal entails revisions to the WQC application processing that includes new definitions, background information, updating of federal regulation references, and pollution control measures that DOH is required to have in order to protect water quality. A "virtual" public hearing was held in February 2021 with 44 individuals attending; all comments were in support of the proposed chapter.

Vice Chair Albitz motioned to forward the proposal to the Governor for adoption. Second Vice Chair Shick 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 HAR Title 11 Chapter 54, Water Quality Standards, promulgated by DOH

Discussion leader and Vice Chair Albitz stated that there did not seem to be any small business impacts with these rule changes.

Mr. Robert Phan, Environmental Health Specialist at DOH's Clean Water Branch, explained that the water quality standards for the state of Hawaii have three components. The first component is for designated uses, the second is the criteria for water quality standards, and the third involves anti-degradation requirements.

As already mentioned, a joint public hearing was held on February 1, 2021 for review of chapters 53, 54, 55, and 56 with the latter chapter previously heard by this Board. There were 90 written testimonies for Chapter 54; 83 of the testimonies, or 90%, were opposed to an amendment that requires class AA marine waters remain in its natural pristine state by prohibiting point source discharges of industrial waste water.

All of the testimonies in opposition were received from members of the Kaneohe Yacht Club. In response, DOH is deferring the changes to the section of the rules for the class AA marine waters in order to work on drafting alternative language. No other changes were made to the proposed amendments to Chapter 54.

Vice Chair Albitz motioned to forward the proposed amendments to the Governor for adoption. Ms. Rodighiero 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 11 Chapter 55, Water Pollution Control, promulgated by DOH

Discussion leader and Vice Chair Albitz stated that these after public hearing rules essentially did not have any business impacts nor were there any business-related comments at the public hearing.

Mr. Lum explained that these rules are the state's NPDES (National Pollutant Discharge and Elimination System) permit rules. This permit system is required by the federal Clean Water Act and authorizes certain types of point source discharging and storm water discharges to surface waters; the EPA has authorized DOH to administer this program in Hawaii.

This rule package will relocate some of the NPDES permitting rules into this chapter from Chapter 54, which among other changes, added federal regulations from municipal drainage systems.

Of the 44 attendees at the combined virtual public hearing, one person testified on these rules with five organizations and five individuals submitting comments. Mr. Lum expanded upon the comments made at the public hearing by environmental groups; these were also included in the rules packet provided to this Board. However, any changes DOH made to the rules after the public hearing based on these comments did not have any small business impact.

Vice Chair Albitz motioned to forward the proposed amendments to the Governor for adoption. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

**IV. NEW BUSINESS** – Before Public Hearing

A. Discussion and Action on the Proposed Amendments to HAR Title 16 Chapter 171 Subchapter 3, Miscellaneous Insurance Rules, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Second Vice Chair Shick stated that many of the rule changes will help streamline and standardize the rules. Ms. Eunice Park, Staff Attorney for DCCA's Insurance Division, explained that this proposal was precipitated by changes to the insurance code chapter during the 2021 legislative session.

These changes create a uniform duration of the license and registrations that the Insurance Division provides to insurance licensees and registrants. In addition to housekeeping measures, the main changes will allow the Insurance Division to utilize an electronic system for processing insurance licensing, registration, renewal, and reinstatement fees. The amendments have an effective date of January 1, 2022.

The proposed changes will apply to small businesses that are currently required to be registered or licensed by DCCA's Insurance Division. Such businesses include insurance agents, agencies, adjusters, service contract providers, vehicle protectors and many others.

Finally, the proposed changes will not require additional costs to small businesses but rather would result in cost savings due to utilizing the electronic process by streamlining the application procedures.

Second Vice Chair Shick motioned to move the proposed amendments to public hearing. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

B. Discussion and Action on the Proposed Amendments to HAR Title 3 Chapter 40 Rules Governing Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and Other Record Data, promulgated by Department of Accounting and General Services (DAGS)

Mr. Ritchie stated that the Board has seen situations like these where a department will propose a fee increase when it has not increased its fees in years. This fee proposal relates to the land court and plan maps which small businesses are required to pay; the average fees will increase by 50 percent and is authorized by the HRS.

Mr. Meyer Cummins, Land Boundary Surveyor at DAGS, confirmed that his office has not updated its fee schedule in several years, despite technological advances, as the existing rules do not address "digital" copies. Many of the existing costs have developed over time. He added that most of the funds received from fees go into DCCA's general fund.

In terms of background information, Mr. Cummins explained that his office at DAGS checks maps that are registered with the land court, and also checks maps and descriptions for subdivisions that will be recorded. In the past, these checks required hundreds of manhours, running calculations, and checking land titles from historic documents. However, most of this information is currently available on line and some of the information is free to the public; so, the time involved in researching the information has significantly dropped.

Despite this, because the fees have not been increased, in some cases, nearly 30 years, there is a large disparity as to what the actual cost is for research versus the fee being charged. Although the cost of checking and processing may cost \$50 to \$60, based on the current fee schedule, only \$10 to \$15 is being charged.

Mr. Cummins also explained that his office has yet to reach out to the public regarding the rule changes. However, on an annual basis, his office does reach out to land surveying companies to educate surveyors, developers, and law firms on how to make changes, etc. Chair Cundiff acknowledged and concurred that it was probably a good time to increase the fees. He also highly recommended that DAGS take the opportunity to reach out to the stakeholders to share the reasons for the proposed changes and for feedback.

Mr. Ritchie motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion and the Board members unanimously agreed.

C. Discussion and Action on the Proposed Amendments to Section 5A-6.4 of Kauai County Code, Real Property Tax Classification Rules, promulgated by the County of Kauai Department of Finance

Mr. Mike Hubbard, Real Property Tax Manager at the Department of Finance - County of Kauai, explained that the proposed rules represent an amendment to Kauai's tax classification. The rules are intended to create and ensure equity between entities operating in similar fashions.

Kauai's tax system is based on the "actual use" of a property and so the rules will help define those uses. Taxing on "actual use" was established for the County of Kauai in 2013; subsequently, the County promulgated the original rules in 2015. Presently, the initial need to amend these rules arose from two separate changes in the Kauai County Code. Therefore, the amendments in these rules mirror the County Code's changes.

The first change, which was modified in 2020, relates to home exemption, Section 12-6 (h), where the qualifications under the Homestead Act have been strengthened. The second change relates to the residential investor classification under Section 12-6 (i) where the threshold of the assessed value was reduced from \$2 million to \$1.3 million. This section further denotes how to be excluded from the residential investor classification, which is the third highest tax rate. In addition, other sections throughout the chapter have been clarified and modified.

Confirming Chair Cundiff's initial comments, there is not a specific impact to small business but instead the proposed rules create equity across the board. Finally, Mr. Cummins noted that his office will be reaching out to the various stakeholders and educating the businesses that may have, for example, unique circumstances where they have a living unit or dwelling on their properties.

Vice Chair Albitz motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Proposed Amendments to HAR Title 5 Chapter 5-11, Notaries Public, promulgated by Department of the Attorney General

Mr. Dean Soma, deputy attorney general at the Department of the Attorney General explained that because Act 54, SLH 2020 added a new online remote notary public designation, these rules needed to be modified. While modifying the rules, the department took the opportunity to update other sections in the rules. Although not a lot was changed, some of the modifications include adding definitions and a "notification of status" with a \$25 fine, if not notified.

Deputy Attorney General Soma stated that many of the larger businesses, such as banks, were more interested in getting the online designation than the smaller businesses. The designation change was prompted by both the pandemic and the companies' needs and interest.

Vice Chair Albitz motioned to move the proposed amendments to public hearing. Ms. Rodighiero 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**

#### **1. Board's Fiscal Budgets**

Chair Cundiff noted that this Board spent a total of \$1,790.73 this past fiscal year. Historically, this Board has had an annual fiscal budget of \$12,000, and during this past year it was reduced to \$10,800 (total of \$12,000 minus a 10% holdback or \$1,200).

Recently, he, Mr. Ritchie and Ms. Palcovich met with DBEDT Director Mike McCartney and discussed several board-related topics - past and current budgets; hybrid meetings, virtual and in-person board meetings; and Phase II of the Board's website.

Overall, Director McCartney is very supportive of this Board and understands the value it brings to the department and to the state, and he will continue to provide his support as needed. We will also continue dialogue with Director McCartney as to what we would like to accomplish going forward, such as Phase II of the Board's website project. Phase II will entail offering more pro-active interaction with small businesses; some of the budget would be used for this next phase.

If in-person meetings were resumed and neighbor island members were to attend the meetings the total expense, which includes the cost for travel, would be approximately \$16,000. However, we will continue in the current mode of operation with remote meetings via Zoom. He added that while more and more state boards are moving towards in-person meetings, we will continue to monitor the situation to see at what point we might be able to conduct in-person meetings keeping in mind that we will need to be sensitive to the cost.

Chair Cundiff noted that effective January 1, 2022, the Sunshine law will allow for virtual meetings. Deputy Attorney General Alison Kato confirmed this and explained that the Sunshine law will change to virtual meetings as long as there is one physical location with audio/visual connection that members of the public can attend. Chair Cundiff added that this new law will allow for hybrid meetings.

Deputy Attorney General Kato also mentioned that the current law does not allow for this but requires all locations to be disclosed; however, presently that is suspended by the Governor's emergency proclamation. Additionally, a new emergency proclamation comes out every two months; the current proclamation end August 6, 2021.

Also, in regard to updating the Board's website, Mr. Ritchie stated that Phase II would allow small businesses to go to the website and specifically sign-up for the department's rules that they would like to receive, rather than receiving an email for every rule that is reviewed by the Board. It was suggested that Phase II of the website be placed on next month's agenda for discussion.

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

Chair Cundiff motioned that wherever Harris Nakamoto is assigned as a discussion leader, the back-up discussion leader will take over the primary role; and wherever Harris Nakamoto is assigned as a back-up discussion leader, in the event the current primary discussion leader cannot attend a board meeting, the discussion leader will be assigned on a rotational-basis of the Board's Chair (Robert Cundiff), Vice Chair (Mary Albitz) and Second Vice Chair (Jonathan Shick); Mr. Lee seconded the motion and the Board members unanimously agreed.

**VI. NEXT MEETING** - Thursday, August 19, 2021 at 10:00 a.m.

**VII. ADJOURNMENT** – Chair Cundiff made a motion to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:50 a.m.