

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

June 20, 2019

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

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

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- William Lydgate
- Mark Ritchie

**ABSENT MEMBERS:**

- Garth Yamanaka,  
Second Vice Chair

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF MAY 16, 2019 MINUTES**

Chair Borge welcomed and introduced Deputy Director Randall Tanaka who brings a wealth of knowledge to DBEDT due to his working at the Hawaii Convention Center and with both small and large businesses.

Deputy Director Tanaka stated that Hawaii's small businesses are the backbone of the state's revenues. While the state can conceivably lose the eighteen percent of the state's gross domestic product derived from tourism revenue, it cannot lose its small businesses.

Vice Chair Cundiff made a motion to accept the May 16, 2019 minutes, as presented. Mr. Nakamoto 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 11 Chapter 186, Certificate of Need Program, promulgated by Department of Health (DOH)

Discussion leader Mr. Nakamoto stated that these rules are a follow-up to the public hearing where no one attended and no one from the small business community provided testimony either for or against the amendments.

Mr. Nakamoto made a motion to move the proposed amendments onto 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 HAR Title 11 Chapter 5, Environmentally-Related Illness and Injury Reporting, promulgated by Department of DOH**

Ms. Diana Felton, State Toxicologist at DOH's Hazard Evaluation and Emergency Response Office, explained that the proposed amendments refer to the mandatory reporting of exposure to certain heavy metals and pesticides. Much of the reporting relates to lead poisoning cases for children. DOH follows up on every single incident, particularly the elevated ones, either with the families or the physicians; in some cases, where the poisoning level is particularly high, an environmental investigation will be performed.

When the original rules were created in 1990, only reporting of positive tests was required. However, this did not give DOH the denominator to understand how many people are being tested and an overall true prevalence of any specific problems. Therefore, the main change in the rules requires laboratories and physicians to report all the tests; currently, laboratories are performing the required electronic reporting to DOH.

The monetary impact to businesses would be the purchase of a \$30,000 bed-side point-of-care laboratory lead-testing device, although not required by law. So, if a new private practice (doctor's office) wanted to invest in one of these test screening machines, they would then be required to report their results to DOH. In terms of how many test facilities are small business, Ms. Felton stated that a large portion of the facilities testing for lead poisoning are non-profit community health centers.

Currently, only one private practice has chosen to purchase this device and six non-profit community health centers. Although most of the testing is performed by the laboratories, many of the small businesses send the lab work directly to laboratories for testing. Ms. Felton added that there is no requirement for children to be lead-tested before going to school. One area where Department of Education is involved relates to lead exposure problems, however, there is currently a push for a broader testing of children.

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

- B. Discussion and Action on Proposed Amendments to HAR Title 12 Subtitle 8 Part 10, as follows, promulgated by Department of Labor and Industrial Relations
1. Adoption:
    - a. Chapter 221.1 Existing Pressure Retaining Items
    - b. Chapter 222.1 Power Boilers
    - c. Chapter 223.1 Heating Boilers – Steam Heating Boilers, Hot Water Heating Boilers, Hot Water Supply Boilers, and Potable Water Heater
    - d. Chapter 224.1 Pressure Vessels
    - e. Chapter 225.1 Pressure Systems
  2. Amendment and Compilation:
    - a. Chapter 220 General Administrative and Legal Provisions
  3. Deletion:
    - a. Chapter 221 Existing and New Boilers and Pressure Vessels
    - b. Chapter 222 Power Boilers
    - c. Chapter 223 Heating Boilers
    - d. Chapter 224 Pressure Vessels
    - e. Chapter 225 Pressure Systems

Discussion leader, Ms. Albitz, stated that the many changes to the rules are for updating purposes. Mr. William Kunstman, DLIR's Assistant to the Director, explained the history of the elevator rules which began in 2014 and included substantial changes and increases in fees. Thus, in keeping in-line with the amendments to the elevator rules, the proposed amendments are for the subject boiler rules.

Changes will bring the rules up-to-date with the national codes and increase the fees. While some of the increases are significant, there are good reasons for the large increases because they relate to improved public safety and will assist in maintaining the operation's self-sufficiency, which entails staffing requirements such as salaries, fringe benefits, rent expense, etc.

Vice Chair Cundiff noted that because DLIR reached out to the shareholders earlier during the year it likely boded well with prepping the impacts to the companies needing to understand the huge changes to comply with the processes and procedures of boilers, which is detrimental for safety and health concerns.

Mr. Julius Dacanay, Chief Boiler Inspector, explained that the biggest business impact is with the larger companies. The businesses that attended DLIR's outreach meetings included both large and small businesses and also representatives from the insurance companies because pursuant to Hawaii Revised Statutes, insurance companies are required to make boiler inspections. It was noted that inspection fees are already incorporated into insurance premiums.

Mr. Albitz made a motion to move the proposed rules onto 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, as follows:

#### 1. Meetings with Board Members and State Department Directors

Chair Borge encouraged the members to set up meetings with the state directors, and offered assistance in setting up meetings, if needed, by DBEDT staff.

#### 2. Status and Changes to the Board's Website

Mr. Ritchie reported that the Board's website taskforce is making good progress with Hawaii Information Consortium (HIC) in the upgrading of the website. It was suggested that the members review the test website and let DBEDT staff know if there are any change suggestions.

The Regulatory Review Card section is in the process of being revamped as the public is likely not sure exactly what it is, and if a submission is sent it is unknown exactly what happens and way. Therefore, a better description is needed to explain what the regulatory review card is and how it can help a small business owner. Suggestions such as "Submitting a Regulation for Review" and "Got input?" were suggested.

#### 3. Voting and Action for Board Chair under Section 201M-5(d), HRS, and Voting and Action for Vice Chair and Second Vice Chair

Mr. Lydgate made a motion to elect Mr. Cundiff as Chair of the Board under Section 201M-5(d), HRS, and Mr. Ritchie seconded the motion. Mr. Cundiff abstained, and the remaining Board members agreed with the motion; the action passed.

Mr. Lydgate made a motion to elect Mr. Yamanaka as Vice Chair of the Board. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

Mr. Nakamoto made a motion to elect Mr. Lydgate as the Second Vice Chair of the Board. Mr. Cundiff seconded the motion and the Board members unanimously agreed.

Mr. Cundiff stated how appreciative the Board members are of Tony's leadership and wanted to thank him for his outstanding direction and passion towards the small business community. Additionally, Mr. Cundiff read the *Special Recognition from Governor David Y. Ige – Presented to Anthony Borge*, date July 18, 2019, which read:

“Mahalo nui loa for sharing the Aloha Spirit and making a difference in our island home. Your outstanding service as a member and chairperson of the Small Business Regulatory Review Board, contributions to our community and strong leadership are proof that when we work together, we can do great things. You are part of the reason that makes Hawai'i a special place where future generations can choose to call home.”

4. Review of “Discussion Leader” Assignments for Board Members’ State and County Agencies’ Administrative Rule Review

The following changes were made to the Board Members’ Discussion Leader listing:

Office of the Governor - Discussion Leader is Robert Cundiff;

Office of the Lieutenant Governor - Discussion Leader is Garth Yamanaka;

Department of the Attorney General - Discussion Leader is William Lydgate;

Department of Budget & Finance - Discussion Leader is Mark Ritchie;

Department of Commerce & Consumer Affairs - Discussion Leader is Nancy Atmospera-Walch and Back-up is Mary Albitz;

Department of Defense - Discussion Leader is Jonathan Shick;

Department of Land and Natural Resources - Discussion Leader is Mary Albitz and Back-up is Jonathan Shick;

Department of Transportation - Discussion Leader is James Kimo Lee and Back-up is Jonathan Shick;

University of Hawai'i - Discussion Leader is Nancy Atmospera-Walch and Back-up is Mark Ritchie.

**VI. NEXT MEETING** – The next meeting is scheduled for Thursday, July 18, 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** – Mr. Ritchie made a motion to adjourn the meeting and Mr. Nakamoto seconded the motion; the meeting adjourned at 11:23 a.m.