

Small Business Regulatory Review Board

MEETING MINUTES

June 20, 2024

ZOOM Meeting Recording

- I. **CALL TO ORDER:** Chair Albitz called the meeting to order at 10:01 a.m., with a quorum present.

MEMBERS PRESENT:

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- James (Kimo) Lee
- Sanford Morioka
- Mark Ritchie

ABSENT MEMBERS:

- Garth Yamanaka
- Dr. Nancy Atmospera-Walch
- Tessa Gomes

STAFF: DBEDT

Jet'aime Ariola

Office of the Attorney General

John Cole

II. APPROVAL OF May 16, 2024 MINUTES

Vice Chair Cundiff motioned to approve the May 16, 2024 meeting minutes, as presented. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 13 Chapter 109 Rules for Establishing Forest Stewardship, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader and Second Vice Chair Shick requested that Ms. Tanya Rubenstein, Cooperative Management Forester from DLNR's Division of Forestry and Wildlife, explain how the public hearing went and if there were any changes that came out of the hearing.

Ms. Rubenstein stated that on May 10th, she went in front of the Board of Land and Natural Resources and received approval to move forward with the rules without any changes to the original proposal. The public hearing was held on March 24th; two oral and three written testimonies were received, all in support of the changes. The business testifiers included the president of Forest Solutions, Inc., based out of Hawaii Island, and Siglo Tonewoods.

Mr. Ritchie made a motion to pass the proposed rule amendments onto the Governor for adoption. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS

A. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to the following, promulgated by Department of Commerce and Consumer Affairs (DCCA)

1. HAR Title 16 Chapter 107, Relating to Horizontal Property Regimes
2. HAR Title 16 Chapter 119.1 through 119.8 Relating to Condominiums

Mr. Kedin Kleinhans, Senior Condominium Specialist at DCCA's Professional & Vocational Licensing Division (PVLD) introduced his team. They were in front of this Board to repeal Chapter 16-107 upon the simultaneous adoption of Chapter 16-119.1 through 16-119.8, which will supplement Chapter 107.

Mr. Kleinhans explained that most of the proposed rules already exist in Chapter 107; there are also a few new rules and requirements. Examples of some of the new provisions include various budgetary and record-keeping requirements, which may involve additional fees to pay for services performed by CPAs or property management companies. Language of the provisions were drafted with the intent to provide an open-ended approach to satisfying the proposed requirements.

DCCA's Blue Ribbon Committee was formed years ago, with members representing small business owners, organizations that represent small businesses, and individuals who may be impacted by the adoption of new administrative rules relating to condominiums. The primary objective of the Blue Ribbon Committee is to discuss and recommend proposed rule language to implement Chapter 514B, HRS; as such, the Committee compiled the proposed rule package. Members of this Committee include, among others, property management companies, small real estate associations, and an architectural company.

Vice Chair Cundiff suggested that while there appears to be a good cross-section of representatives on the Committee, because of the long-term tenure of the committee, that its members be notified of the process of the rules to reach out for any additional stakeholder comments.

Mr. Ritchie made a motion to pass the rules on to public hearing. Mr. Morioka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 16 Chapter 4, Massage Therapy, promulgated by DCCA

Ms. Rise Doi, Executive Officer at DCCA's PVLD, explained that the proposed rules have been worked on for quite some time.

Chair Albitz referenced written testimony from Ms. Rachael M. Klein, Klein Natural Health and Wellness Center which stated that “it is crucial that small business and continuing education providers not exclusive to massage therapy be able to offer courses, and that there be enough approved classes that licensees can find excellent material available in their area.” Ms. Klein is concerned that the proposed language is overly restrictive.

Ms. Doi responded to Ms. Klein’s comments and confirmed that the Board of Massage Therapists wants to make sure that continuing education is based on recognized national certified organizations and that the standards of the course requests and content meet the Board’s recognition and approval. However, she noted that there is still an avenue for someone to request additional, various courses subject to the Board’s review and approval. The cost of the continuing education courses may vary in price depending on the providers; some of the courses have no cost.

The Sanitation Rules require that the Board of Massage Therapy adopt administrative rules establishing standards of sanitary practices for massage therapy establishments; thus, a new subchapter is being added. Small business outreach was performed via an open meeting for which public notice was given. Also noted was that the proposed rule changes set the playing field for all types of massage therapist vocations.

Chair Albitz requested that DCCA actively get the word out through outreach to the stakeholders about the rule changes.

Mr. Ritchie made a motion to pass the rules on to public hearing. Vice Chair Cundiff seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 16 Chapter 72, Acupuncture Practitioners, promulgated by DCCA

Ms. Rise Doi, Executive Officer at DCCA’s PVLD, noted that one of the board members of the Board of Acupuncture was in the meeting remotely. The purpose of the changes is to update and clarify definitions, scope of practice, education and training requirements, sanitation, use of titles, and non-substantive changes.

The rules require that beginning January 2022, all applicants applying for a license as an acupuncturist are required to pass exams administered by the National Certification Commission or Acupuncture and Oriental Medicine or its successor testing agency, necessary to obtain a diplomate of Oriental Medicine or its equivalent as determined by the Board.

Chair Albitz reiterated that DCCA actively get the word out through outreach to the stakeholders about the rule changes.

Chair Albitz made a motion to pass the rules on to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Small Business Impact Statement and Proposed Amendments to HAR Title 11 Chapter 208.1, Underground Storage Tanks, promulgated by Department of Health (DOH)

Discussion leader Mr. Morioka requested that Ms. Lauren Cruz, DOH's Environmental Health Specialist, provide background information on the proposed rule changes. Ms. Cruz explained that the purpose of the rule changes is to update the underground storage tanks (UST) systems and the cleanup of releases from UST systems. Tank system owners and operators are required to clean up releases and remediate contaminated soil, groundwater, and surface water to a level that is protective of human health and the environment.

The proposal adds two new contaminants to the rules that are included in Table 1 in the rules; the action levels for five of the existing contaminants in Table 1 are also being updated. The Tier 1 screening levels are based on the department's Environmental Action Levels, which are based on toxicological data (dangers of exposure to a specific chemical contaminant) and risk assessments considering potential pathways of human health and environmental exposure to contaminants.

Ms. Cruz added that the department is allowing for deviation from these levels only as long as they are determined to be protective of human health and the environment. There is no anticipated impact to the small businesses because in most cases, such as gasoline stations which have already upgraded their gasoline tanks, this reduces the likelihood that there will be any releases. Ms. Cruz also noted that by 2028, all gasoline stations are required to be updated to double-wall tanks.

A public comment period occurred from April to May of this year with only one set of comments from one stakeholder; the stakeholder was not a small business but a large environmental consulting company.

Vice Chair Cundiff made a motion to pass the rules on to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

E. Discussion and Action on the Small Business Impact Statement and Proposed New HAR Title, Subtitle 14, Hawaii Invasive Species Council, Chapter 325, General Provisions and Chapter 326 Control and Eradication of Invasive Species, promulgated by DLNR

Discussion leader and Second Vice Chair Shick explained that rather than having a financial impact on small businesses, the rule proposal allows Hawaii Invasive Species Council (HISC), after notice to departments, counties or an agent, to access private property to control or eradicate an invasive species that was identified by HISC.

Ms. Chelsea Arnott, Program Supervisor from HISC/DLNR, explained that her main role is program support to the HISC. The HISC was established in 2003 by Hawaii Revised Statutes and the purpose of HISC is to provide policy level direction, coordination and planning amongst the state departments and federal agencies. The last meeting of HISC was May 29, 2024, which unanimously approved the initiation process for these proposed rules.

Testimony was received at this May 29th meeting. Although none of the testimony was from small businesses, the comments received questioned why there aren't more species listed on the invasive species list. Ms. Arnott noted that DLNR's Deputy AG recommended that a small list be initiated first that includes the more invasive species, and then in the future to work from that.

Ms. Arnott specifically highlighted Chapter 194-5 Entry to Private Property, Chapter 194-6 Entry to Public Property, and Chapter 194-7 Ability to Adopt Rules. She explained how the Miconia, which poses a great threat to the integrity of Oahu's forested watershed is considered highly invasive, is a prolific seeder and its tiny seeds can remain invisible in the soil for up to 18 years. She further explained the list of invasive species which have very high impact as the species are either currently in Hawaii or are not known to occur.

A summary of the proposed rules include: 1) Invasive species identified by the council for control and eradication; 2) Requirements for control or eradication on private property; 3) Notice; 4) Requirement for control or eradication by private property owner; 5) Requirements for control or eradication on public property; and 6) Warrants.

In response to Vice Chair Cundiff's question as to whether there might be any pushback or impact on small business, Ms. Arnott explained that because there are no fines or fees associated with the rule proposal, she doesn't anticipate any impact. However, the only time there might potentially be impact is when there is proof of any "knowing or intentional" introduction of one or more of the listed invasive species on a small business property. Also, discussed was if hypothetically the State would have to go into a small business' farm and perform ratification of a crop, which may become a financial loss.

Second Vice Chair Shick made a motion to pass the rules on 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, Hawaii Revised Statutes (HRS)

1. Update and Discussion on Becker Communications, Inc., regarding the Board's Small Business Outreach

Nothing was reported.

2. Presentations to Industry Associations

Pursuant to Board member Mr. Yamanaka's suggestion, Program Specialist Ms. Ariola contacted DCCA's Business Action Center and is currently working with staff there to download and link to this Board's Small Business Bill of Rights and SBRRB's brochures.

Ms. Ariola attended the PBN Business Panel on May 31st in Kauai. An update on the PBN Business Panel in the Big Island that is taking place July 12th.

Mr. Ritchie reminded Ms. Ariola to register for the Small Business Fair that is being held on September 28th at Leeward Community College.

3. Staff's Small Business Outreach

Ms. Ariola attended the PBN Business Panel on May 31st in Kauai. Another event sponsored by PBN Business Panel will be held on the Big Island on July 12th. Board member Mr. Yamanaka has been recommended to be a panel speaker at this event, and Mr. Lee also indicated that he will be attending. Ms. Ariola will follow-up with them both.

VI. LEGISLATIVE MATTERS

A. Update, Discussion and Action, if necessary, on the following legislative matters:

1. House Bill 2354 HD1 SD1 Relating to the Small Business Regulatory Review Board – Clarifies that the Small Business Regulatory Review Board has the authority to review legislation affecting small businesses in response to a request from small business owners.

There has been no activity on this measure.

2. Senate Bill 2974 SD2 HD1 Relating to Economic Development – Establishes a Business Revitalization Task Force within the Department of Business, Economic Development, and Tourism to identify methods to improve Hawaii's general economic competitiveness and business climate, including the mitigation of regulatory and tax burdens; requires a report to the Legislature.

There has been no activity on this measure.

VII. ELECTION OF BOARD OFFICERS

A. Discussion and Action on the following:

1. Chairperson, pursuant to Section 201M-5(c), HRS

Mr. Cundiff motioned to nominate Mr. Jonathan Shick as this Board's Chair for the 2024–2025 session. Mr. Ritchie seconded the motion and the Board members unanimously agreed.

2. Vice Chair

Mr. Ritchie motioned to nominate Ms. Mary Albitz as the Board's Vice Chair. Mr. Lee seconded the motion and the Board members unanimously agreed.

3. Second Vice Chair

Mr. Ritchie motioned to nominate Mr. Sanford Morioka as the Board's Second Vice Chair. Mr. Cundiff seconded the motion, and the Board members unanimously agreed.

VIII. NEXT MEETING – Thursday, July 18, 2024 at 10:00 a.m., via Zoom and in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.

IX. ADJOURNMENT – Vice Chair Cundiff motioned to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:24 a.m.