

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

May 21, 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
- Barbara Bennett
- Kyoko Kimura
- Howard Lum
- Craig Takamine
- Harris Nakamoto
- Mark Ritchie

ABSENT MEMBERS:

- None

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. APPROVAL OF MARCH 19, 2014 MINUTES

Ms. Kimura made a motion to accept the March 19, 2014 minutes, as amended. Vice Chair Borge seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Re-review and Action on the Small Business Statement After Public Hearing on Proposed Amendments promulgated by the Department of Agriculture (DOA) for Hawaii Administrative Rules (HAR) Title 4 Chapter 143, Standards for Coffee

Chair Shubert-Kwock stated that these rules have been signed off by the Governor, effective May 24, 2014. However, there are some testifiers attending today's meeting with concerns about the rule changes.

Ms. Jeri Kahana, Administrator at DOA's Quality Assurance Division, explained that the rule amendments apply to green coffee as opposed to roasted or blended coffee; the rules were last amended in 2001. She discussed the different grades and the natural processes of coffee. Mr. Takamine thanked everyone for attending the meeting. He heard from various people in the community regarding the rule changes, was educated, and had an opportunity to understand the issues at hand.

The following summarizes many of the comments made by testifiers. Mr. Colehour Bondera, a member of Kona Coffee Farmers Association, stated its mission is to look after the interests

of the Kona coffee farmers. On behalf of this Association, he was requesting that this Board re-open its March 19, 2014 proposed amendments to the Standards of Coffee rules. Mr. Joachim Oster, also a member of Kona Coffee Farmers Association, explained that the rules, as written, will have an adverse effect on home roaster sales. Several of Mr. Oster's concerns included: there was no basis for the increase in fees, the measure of the "quality" of coffee is deceptive; there is no data regarding the new defect score for coffee beans affected by pinholes; there is a significant recordkeeping burden on Kona farmers for transport of cherry, parchment, and green coffee in instances where no sale is involved; the new "geographic region statement" language is questioned as to whether DOA will sanction the use of this form by Hawaii coffee farmers to represent "origin" to foreign buyers; it is unclear if the provision for entry of public or private premises or vehicles was approved by the Hawaii Attorney General's office as meeting constitutional standards; whether DOA will no longer make the service of the "certification of origin only" with no express grade determination or cupping; and if DOA has data indicating if the increase in defect limits for prime.

Mr. Roger Kaiwi Machen represents the Kona Coffee Council; he was in support of the rule changes as they resulted in a very reasonable process. Mr. David Bateman, who considers himself a "small farmer," owns a total of 45 acres with his wife in the Big Island. He believes the rules make everyone's life easier and he fully supports the changes as they help with the "quality" of the coffee. Mr. Jim Wayman is president of the Hawaii Coffee Company, which is an umbrella group for the coffee organizations in Hawaii; it has 82 members. He explained that a small business task force was created to review the proposed rules and although not everyone unanimously agreed on all the changes, there was a broad consensus of the rules prior to going out to public hearing. Mr. Derek Lanter, sales and operations manager of Waialua Estate Coffee and Chocolate, and a member of the Hawaii Coffee Growers Association and the Hawaii Coffee Association, fully supports the proposed changes to the rules; he was involved in the promulgation of the rules for the past three years. Mr. John Cross, general manager of Ka'u Coffee Mill, explained that he was the "new kid on the block." He reviewed the proposed rules and made recommendations, which DOA was receptive to.

Ms. Bennett thanked everyone who participated and who provided insight and testimony on the rules. Upon hearing from the testifiers, Chair Shubert-Kwock encouraged the Department of Agriculture and those attending the meeting to work together, going forward, with good harmony.

No action was taken by the Board members.

IV. NEW BUSINESS

A. Discussion and Action Proposed Amendments promulgated by Department of Health (DOH) for HAR Title 11 Chapter 54, Water Quality Standards

Mr. Alex Wong, Branch Chief from DOH's Clean Water Branch, discussed the proposed rule revisions and explained that the rule's final outcome is expected to result in clarification and improving DOH's ability to carry out the program's mission. Changes to the rules include provisions for intake credits, field citations, statute compliance, and housekeeping and formatting changes.

With regards to small business impact, most of the small businesses impacted would be those in construction, but it was noted that all other businesses may be indirectly impacted as well. This is largely due to “run-off” that may seep from a company’s building. Vice Chair Borge stated that the rule amendments are good for the trade associations to have; any business impact has to do with violations.

Vice Chair Borge made a motion to approve the rules to proceed to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments promulgated by DOH for HAR Title 11 Chapter 55 Water Pollution Control

Mr. Alex Wong, Branch Chief from DOH’s Clean Water Branch stated that the rule changes relate to permitting and also housekeeping measures; fines have not changed. Specifically, the revisions include intake credit federal regulation citation, specification of the minimum number of samples for recreational water criteria required in permits, changes in field citations, and changes in formatting. The impact on businesses is minimal as the rules would affect larger business entities, municipal treatment works, or underground storage tank operators, which are few in Hawaii.

Vice Chair Borge made a motion to approve the rules to proceed to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments promulgated by DOH for HAR Title 11 Chapter 62, Wastewater Systems

This agenda item was deferred until the next board meeting at the request of DOH.

V. LEGISLATIVE MATTERS

A. Ratification of Board’s Testimony and Update on Senate Bill 2487 SD1 HD2 Relating to the Small Business Regulatory Flexibility Act

Chair Shubert-Kwock announced that this measure did not pass through the legislative Session, and discussed the various versions of the measure throughout the session. While it was very disappointing, it is hopeful that next year, with the increased knowledge as to what this Board does, there would be a better chance of making changes to the statute. She noted that DBEDT was silent until the end of the session when the bill created an office for this Board. She believes that DBEDT does not want this Board at DBEDT, as over the years it was apparent that this Board is not welcome; but she noted that there is always a chance that DBEDT will come around.

In regards to ratifying the testimony that was submitted for the final version of this measure, Deputy Attorney General Ahn suggested that if major changes to a Board’s bill occurs during the legislative session, that testimony be submitted by an individual board member if the Board does not have time to meet. Chair Shubert-Kwock added that, going forward, when the Board approves upcoming testimony at a board meeting, it should include approval for future changes to the measure. While it was questioned whether board members can vote

outside a board meeting via email communication, Deputy Attorney General Ahn stated that one option would be to send proposed testimony and whoever chooses to can submit it individually. Vice Chair Borge noted that board members are able to testify on-line, which is a quicker and easier process.

Ms. Kyoko made a motion to ratify the testimony as written, and Mr. Nakamoto seconded the motion. Chair Shubert-Kwock, Vice Chair Borge, Ms. Bennett, Ms. Kimura, Mr. Lum, Mr. Takamine, and Mr. Nakamoto approved the motion; Mr. Ritchie abstained. The motion passed.

B. Update on Governor's Message No. 503, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Harris Nakamoto, for a term to expire June 30, 2015

Chair Shubert-Kwock congratulated Mr. Nakamoto on his recent appointment to this Board.

C. Ratification of Board's Testimony and Update on Governor's Message No. 623, Submitting for Consideration to the Small Business Regulatory Review Board, Gubernatorial Nominee, Barbara Bennett, for a term to expire June 30, 2018

Chair Shubert-Kwock congratulated Ms. Bennett on her recent appointment to this Board.

Ms. Kyoko made a motion to ratify the testimony as written, and Mr. Nakamoto seconded the motion. The motion passed.

D. Discussion of Senate Bill 2249 SD1 HD1, Relating to Public Agency Meetings

Chair Shubert-Kwock updated the members on the new format of the agenda, which is a direct result of this measure. The agendas are now more comprehensive as the rules may either be attached to the agenda, as previously done, or may be found on-line via a link notated on the agenda. Deputy Attorney General Ahn stated that the language from Chapter 91 was placed in this measure with regards to what is required in a public hearing notice.

VI. ADMINISTRATIVE MATTERS

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

Chair Shubert-Kwock noted that this Board's budget request for operating expenses and clerical support were not approved during the legislative session. She acknowledged that Ms. Palcovich worked very hard on providing the various requested budget information to the House and Senate committees.

B. Update on Individual Board Members' Meetings with State Agencies to Introduce the Board's Statutory Requirements and Mission to the Agencies

Ms. Kimura stated she met with the Department of Transportation (DOT) in March. It was conveyed to her that this Board was "a waste of time," and that it did not make a difference as to what this Board says or does about a DOT rule.

C. Chair's Report – Exhibit A

Chair Shubert-Kwock discussed the activities outlined in the Chair's report; she distributed evaluation surveys that were submitted from testifiers of prior board meetings.

D. Action and Voting of Board Chair, pursuant to Section 201M-5 (d), Hawaii Revised Statutes, and Election of Vice Chair and Second Vice Chair

Deputy Attorney Ahn stated that there is a provision in the Board's statute that states the chairperson shall serve a term of not more than one year unless it is removed earlier by a two-thirds vote. While it could be viewed ambiguously, where the chair can only serve one year, the Department of the Attorney General decided to interpret the statute that the same person may be voted in as chair on annual elections.

Ms. Bennett complimented and thanked Chair Shubert-Kwock for a job very well done as the head of this Board in a very difficult year and a half. She believed that Chair Shubert-Kwock's passion and dedication brought this Board where it needed to go. Chair Shubert-Kwock thanked Ms. Leslie Mullens, who recently resigned as a board member, and wished her the best.

Mr. Lum made a motion to nominate Ms. Shubert-Kwock as Chair, and Mr. Nakamoto seconded the motion. Ms. Bennett made a motion to nominate Mr. Borge as Chair, and Mr. Takamine seconded the motion. Upon tallying the silent votes, Ms. Palcovich stated that five votes were in favor of Mr. Borge and three votes were in favor of Ms. Shubert-Kwock.

Ms. Bennett made a motion to nominate Mr. Takamine as Vice Chair, and Mr. Borge seconded the motion. Mr. Lum made a motion to nominate Ms. Shubert-Kwock as Vice Chair, and Mr. Nakamoto seconded the motion. Upon tallying the silent votes, Ms. Palcovich stated that a majority of the votes were in favor of Mr. Takamine.

Ms. Shubert-Kwock made a motion to nominate Ms. Bennett as Second Vice Chair, and Mr. Lum seconded the motion; the motion unanimously passed.

VII. **NEXT MEETING** – Scheduled for Wednesday, June 18, 2014, 250 South Hotel Street, Honolulu, HI, Room 436.

VIII. **ADJOURNMENT** – Ms. Bennett made a motion to adjourn the meeting. Mr. Lum seconded the motion, and the meeting adjourned at 12:40 p.m.