

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

November 19, 2014

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 9:30 a.m. with a quorum present.

MEMBERS PRESENT:

- Anthony Borge
- Barbara Bennett
- Kyoko Kimura
- Harris Nakamoto
- Wayne Tanaka
- Ashley Leahey
- Mark Ritchie

ABSENT MEMBERS:

- Craig Takamine

STAFF: DBEDT
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF OCTOBER 15, 2014 MINUTES

Ms. Kimura made a motion to accept the October 15, 2014 minutes, as presented. Second Vice Chair Bennett seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Discussion and Action on the Small Business Statement After Public Hearing for Proposed Amendments to HAR Title 13 Chapter 95.1, Island-Based Fisheries Rules, promulgated by the DLNR

No action was taken by the Board due to the Governor previously signing off on the rules.

- B. Discussion and Action on the Small Business Statement After Public Hearing for Proposed Amendments to HAR Title 13 Chapter 77, Oahu Aquarium Life Management, promulgated by DLNR

Mr. Alton Miyasaka, Biologist from DLNR's Division of Aquatic Resources, discussed the purpose of the proposed amendments and explained that the amendments apply only to Oahu. The amendments reflect DLNR's attempt to address various conflicts and issues that have been initiated by commercial fishers. It was explained that aquarium collecting is very controversial in the state, it is heavily regulated on Maui, and there is a history of challenges within the industry. When promulgating the rules, DLNR attempted to prevent overcrowding

of the fish, and created certain standards to keep the fish safe and sustainable. Penalties for crimes committed against the rules are not more than \$500, or 30 days in jail.

Mr. Miyasaka explained that the industry's total sales per annum range between \$1 Million and \$2 Million with most of the revenue trading in the wholesale market; the export market is estimated to be about 80% to 85% of the total, and it is the tenth largest fishery in the State. Approximately 400 permits are granted each year, and the number of fish collected is about 200,000. Permits are not required for those using hand-nets that are less than three-feet in length. Chair Borge noted that this is an industry that is percolating and it should be sustained and protected; the rules, as presented, are reasonable for businesses.

Testifier, Mr. Dennis Yamaguchi, a commercial fisherman since the early 1970's, asked the Board to pass the rules as presented as the changes will help to improve upon the quality of the fish and the possibility of over-crowding. Testifier, Mr. Mathew Ross, a commercial fisherman for the past eight years, supports the rules and finds that the proposed bag limits are reasonable; he believes that any restrictions in the rules are similar to other fishery restrictions in the State. Testifier and second-generation commercial fisherman Mr. Jerry Isham explained that he is proud to be part of the proposed rule package. Although the rules are not perfect, positive results will come out of the regulations as they are reasonable and realistic, in particular, to the net size and the environmental impact. In response to Ms. Leahey's inquiry, Mr. Isham stated that the biggest issue against the rules is a "moral" one as some activists are against collecting fish and animals as a hobby rather than keeping them in their natural habitats.

Mr. Tanaka made a motion to recommend to the Governor to approve the rules after the public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing for the following proposed amendments of: 1) HAR 11 Chapter 54, Water Quality Standards, and Chapter 55, Water Pollution Control, promulgated by DOH

No action was taken by the Board due to the Governor signing off on the rules.

IV. NEW BUSINESS

A. Discussion and Action on the Repeal of HAR Title 17 Chapter 1722.3, Basic Health Hawaii, and Proposed Adoption of HAR Chapter 1719.1, State Funded Aged, Blind and Disabled Program, and HAR Chapter 1731, Premium Assistance Program, promulgated by DHS

Chair Borge introduced Ms. Evelyn Yamamoto and Ms. Aileen Befitel, Program Specialists with DHS's Med-QUEST Division, who discussed the history, background, and court case that resulted in the DHS proposal to this Board.

New Chapter 1719.1 establishes the State Funded Aged, Blind and Disabled Program, which will cover non-pregnant adult non-citizens who are aged, blind or disabled and who are not eligible for the federal Medicaid program due to immigration status. Eligible individuals will

receive medical assistance benefits that are identical to the benefits received by aged, blind and disabled individuals under Medicaid. Ms. Yamamoto noted that current beneficiaries will be “seamlessly” transferred to this new program, and their benefits will remain unchanged. The program will also be expanded to allow other eligible non-pregnant adult non-citizens, who are aged, blind or disabled.

New Chapter 1731 establishes the Premium Assistance Program for non-pregnant adult non-citizens who are not aged, blind or disabled and not eligible for the federal Medicaid program due to immigration status. This state funded program will pay for an eligible individual’s share of their health insurance premiums to the qualified health plans purchased through the Connector. Also, eligible individuals, who are considered the most vulnerable of Hawaii’s population, must be enrolled in a silver level qualified health plan and receive advanced premium credit and maximum cost-sharing reduction through the Connector. This will ensure that eligible individuals, who currently total between 800 and 1,000, continue to have health insurance and do not end up in emergency rooms or admitted to hospitals uninsured.

Upon the adoption of these two new State funded programs, existing Chapter 1722.3, Basic Health Hawaii, will be repealed. According to DHS, the net effect of these proposals is estimated to be a savings of approximately \$15 million of State funds, and the receipt of an additional \$20 million of Federal funds into the State’s total healthcare system.

Mr. Nakamoto explained that this program is near and dear to him and questioned what, if any, impact the rules have on small business. It was indicated that while the proposed rules should not impact small businesses on a financial basis, they may instead, benefit those businesses that would potentially increase their clientele base due to the open enrollment of the program. The rules will also have no impact on children under 18 years of age or pregnant women. It was noted that funding strictly comes from state appropriations and not state taxes.

Mr. Nakamoto made a motion to recommend that DHS’s proposals proceed to public hearing. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 85, Section 49, Degree of Supervision, promulgated by DCCA

Ms. Constance Cabral, Executive Officer for the Hawaii Medical Board at DCCA, explained that the proposed rule amendments will allow physician assistants (PA’s) to write orders and prescribe Schedule II medications in areas, other than hospitals or extended care facilities such as physician offices and clinics, while under a physician’s supervision.

Ms. Kimura noted that currently an assistant cannot prescribe in the office even under the supervision of a physician as they can only prescribe at a hospital, and she believes the rules might affect the overall cost of business as it may raise the premium of health care. Mr. Ritchie stated that the proposal is very business friendly. In response to his question as to whether other states allow PA’s to write orders and prescribe Schedule II medications in areas other than hospitals, Ms. Cabral explained that most of the other states do allow PA’s to prescribe in all practice settings. Mr. Nakamoto added that allowing PA’s to write prescriptions is very helpful in spread-out rural areas.

Ms. Kimura made a motion to recommend to the Governor's Office to go to public hearing. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 95, Pharmacists and Pharmacies, promulgated by DCCA

Ms. Lee Ann Teshima, Executive Officer for the Hawaii Board of Pharmacy at DCCA, explained that several changes are being made to the existing rules, which are mostly housekeeping and for clarification; Ms. Kimura concurred that the proposed amendments are housekeeping in nature.

Mr. Nakamoto made a motion to recommend to the Governor to go to public hearing. Ms. Kimura seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Discussion Regarding State of Hawaii Procurement Office's (SPO's) Initiative to Implement a Small Business Set-Aside Program, pursuant to Chapter 103D, Section 901 through 906, HRS

Chair Borge reminded the members of SPO's initiative to implement the State's small business set-aside program pursuant to State statute that was discussed at the last board meeting.

On October 29, 2014, SPO staff set up a meeting to discuss the purpose and scope of the program with potential stakeholders. Ms. Palcovich, who attended the meeting, stated that it entailed mostly introductions with an explanation of the program. However, during the meeting it was mentioned that it might make more sense for State workers to oversee the set-aside program rather than the members of this Board who are all volunteers. Chair Borge noted that one of the hurdles that this advisory group will face is to come up with a definition for "small business." There has been no word, to date, from SPO since the meeting.

B. Discussion on the Board's Budget Request to the Legislature for Fiscal Years 2016 and 2017

Chair Borge mentioned that this Board has been working hard for a budget for the upcoming 2016 and 2017 fiscal years. The current amount proposed is \$44,000 for travel expenses and a low-level clerical position. The Board has the support of the Director's Office, but it will not be known until the beginning of fiscal 2016 if the budget request is approved.

It was noted that a meeting was scheduled a few weeks ago with Senator Baker, Chair Borge, and Mr. Nakamoto to find out why Senator Baker introduced a bill during the last legislative session that repealed this Board's statute. Senator Baker believed leadership issues existed and that the direction of the Board was off-track in regards to advocating for small business. Instead, this Board was holding up and slowing down the rule review process, which became a hindrance to the agencies and ultimately to small business. Currently, any misunderstandings appear to be cleared up and straightened out; if this Board

continues to stay on task, and does its due diligence, there should be no negative impact on small business. During the meeting, Senator Baker indicated that she would support the Board's budget request.

C. Discussion on Revisions to Board's Power Point Presentation for Outreach Purposes to Business Organizations and Associations, and Next Steps for Outreach

The members reviewed the power point presentation and made some changes to it. A second draft will be reviewed at the next meeting. Mr. Nakamoto suggested that the Board create a one-page script to use when in attendance at other organizational and board meetings as a guide to explain what the Board is about, what its mission and purpose are, and how it can assist small businesses. Second Vice Chair Bennett questioned whether the Board's brochure could be used as a fact sheet, which is in need of an updated photograph; Chair Borge requested that Mr. Nakamoto work on preparing a fact sheet.

Ms. Kimura suggested that the number of administrative rules this Board has reviewed be included in the power point presentation; Second Vice Chair Bennett suggested that the Board's website address be included. Members discussed the Board's website and agreed that it will need to be improved upon. In addition, DBEDT staff will work on getting business cards for outreach purposes for those members who would like them.

D. Discussion on Hawaii's Chamber of Commerce Small Business & Entrepreneurship Advocacy Committee Meeting held on October 22, 2014, on the following agenda item, "Legislative Package for 2015: Provide Resources to Existing Small Business Programs like Business Action Center, and Small Business Regulatory Review Board"

Mr. Ritchie will attend the next Hawaii Chamber of Commerce's Small Business & Entrepreneurship meeting, scheduled for December 5, 2014. He stated that even though the Chamber has the "Small Business Regulatory Review Board" on its agenda, there has been no one attending the meetings to represent the Board.

Chair Borge and Ms. Palcovich met with Mr. Pono Chong, Vice President of Business Advocacy & Development, at the Hawaii Chamber of Commerce. Chair Borge noted that the Chamber is attempting to change its image to be a viable supporter of small business as well as large business, and is reaching out to other business associations on various business and legislative issues. The Chamber's website communicates to its members and to affiliates of the Chamber, which may assist this Board in posting administrative rules that impact small businesses.

E. Discussion and Action to Elect a Board Vice Chair

Chair Borge announced that Vice Chair Takamine has resigned from this Board; Mr. Takamine and his hard work on this Board will be missed. DBEDT staff and the Board members wish him well

Second Vice Chair Bennett made a motion to nominate Mr. Tanaka as Vice Chair. Mr. Ritchie seconded the motion, and the motion unanimously passed.

F. Discussion and Action on Proposed Members' "Discussion Leader" Assignments for the State Departments and Counties' Administrative Rule Review

Upon reviewing the discussion leader assignments, the following changes were made:

- Office of the Lieutenant Governor – Ashley Leahey
- Department of Budget & Finance – Wayne Tanaka
- Department of Education – Wayne Tanaka
- Department of Land and Natural Resources – Ashley Leahey
- University of Hawaii – Ashley Leahey

G. Discussion and Action on Proposed Second Draft of the Documents for State Agencies and Counties to Use when Submitting Proposed New and Amended Administrative Rules for: 1) Small Business Impact Statement, Section 201M-2, HRS, and 2) Small Business Statement after Public Hearing, Section 201M-3, HRS

The revisions to the two impact statement checklists were reviewed. Two additional items were recommended to be included as follows, attaching a statement of the topic of the proposed rules or general description of the subject involved, and requesting the webpage address as to where the draft rules are made available. Chair Borge explained that the purpose of these additions is to minimize past problems and to put the onus back on the agencies to attach back-up documents to the agenda on the Lieutenant Governor's and Agencies website. The overall purpose of the checklists is for consistency among the agencies.

In regards to the distribution of the new checklists, the Board will attempt to go to the highest power such as the (new) Governor and/or (new) Agency Directors. It was suggested that the checklists be posted on the Board's website, and that DBEDT staff directly contact some of the agencies she has worked with over the years.

VI. NEXT MEETING – The next meeting is scheduled for Wednesday, December 10, 2014, in Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii.

VII. ADJOURNMENT – Ms. Leahey made a motion to adjourn the meeting and Ms. Kimura seconded the motion; the meeting adjourned at 11:50 p.m.