

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

November 19, 2020

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

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

ABSENT MEMBERS:

- Harris Nakamoto
- Dr. Nancy Atmospera-Walsh
- William Lydgate

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

II. **APPROVAL OF October 15, 2020 MINUTES**

Vice Chair Albitz motioned to accept the October 15, 2020 meeting minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** - Before Public Hearing

- A. Discussion and Action on the Proposed Amendments to HAR Title 13 Chapter 241, Numbering of Vessels, promulgated by Department of Land and Natural Resources

Discussion leader Ms. Rodighiero stated that after she spoke with DOBOR's Legal Fellow, Mr. Todd Tashima, it was determined that the proposed rule amendments allow DOBOR to act as a DMV, but for boats. This is the result of a law that was passed in 2018 requiring boats to be titled as well as registered with the State. As such, this proposal outlines the titling of boats and the fees associated with the titling.

DLNR's DOBOR Administrator, Mr. Edward Underwood, explained that Hawaii is the fifth state to follow the Uniform Title Act. In regard to the fees, the fee amount being charged does not represent "catch up" from the last time the fees were increased, which was ten years ago. The fees solely represent the cost of implementing the program.

In terms of how long it will take for boat owners to get their boats titled, Mr. Underwood said that the process will likely take about a year to complete as there is no need to rush it. Titling is expected to be done when re-registration of the boats is being done.

Mr. Ritchie motioned to send the proposed rule amendments to public hearing. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

IV. OLD BUSINESS – After Public Hearing

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to HAR Title 12 Chapter 229, General, Administrative and Legal Provisions, promulgated by Department of Labor and Industrial Relations and Natural Resources

Discussion leader and Vice Chair Ms. Albitz stated that there were no attendees at the public hearing and no comments were submitted. DLIR's HIOSH Administrator, Mr. Norman Ahu said that his division continues to work with the stakeholders and small business owners who seem to appreciate HIOSH's ability to do the best it can, given the current pandemic.

Mr. Blair Suzuki, Operations Manager at Otis Elevator, testified that he was disappointed in how the process proceeded as neither Otis Elevator nor other stakeholders received notice of or knew that the rules went to public hearing. He added that although there was a stakeholder meeting with HIOSH in September, there has been no effort on HIOSH's part to reconvene another meeting or to keep the stakeholders apprised of the status of the rules. In response, Mr. Ahu stated that the minimum legal requirements for posting the public hearing notice in the newspaper of 30 days was followed and fulfilled.

While Mr. Ahu's attempt at resolving some of the stakeholders' issues and concerns were appreciated, Mr. Suzuki believed that things appear to have regressed in the past few months. This is largely because HIOSH has not scheduled elevator inspections until the end of the year, which will ultimately impact the safety of a company's operations. He added that the stakeholders need an "action plan" from HIOSH.

Mr. Ahu explained that HIOSH is currently short two to three elevator inspectors and may lose another one largely due to the fear of traveling and being exposed to COVID; this is why the fee increase is so important. Currently, there are only six inspectors; however, with the additional funds, new inspectors will be hired. Because it takes six months to a year to fully train inspectors to learn the system and the standards, HIOSH is currently doing its best to extend the permits and accommodate the businesses.

Mr. Suzuki, on behalf of Otis Elevator and its represented stakeholders, were in strong opposition of the fee increases as they would not help to improve receiving building permits and inspections. Mr. Ahu understood but did not concur.

Upon hearing the concerns of Mr. Suzuki and responses from Mr. Ahu, Chair Cundiff reminded the attendees that this Board's purview is to review business impact, not to review the implementation of the rules. At the prior stakeholder meeting there appeared to be, at least, some progress and agreement made towards addressing the process and the proposed fee schedule. Even though no feedback was provided at the public hearing, it also appears there is some general acceptance to the rationale of the fee increase. Thus, if HIOSH does not move forward with an increase in the fee schedule it will not allow for the ability to fund the additional elevator inspectors and/or fund a process that will assist in making the inspection process move forward.

Vice Chair Albitz was concerned that the notice of public hearing was announced in the minimal way versus reaching out to the stakeholders. In response to a suggestion for "self-certification" Mr. Ahu replied that it would likely not be a reasonable alternative due to potential liability.

Further, Chair Cundiff explained that this Board is aware of the stakeholders' ongoing concerns as to how DLIR is conducting the process relative to inspections, which need to continue to be addressed. There also needs to be ongoing dialogue between small business stakeholders and HIOSH relative to agreements that may have been made based on recommendations from small businesses in prior stakeholder meetings to ensure that there are ongoing improvements. While it may not be at a time that small businesses would like to see, it is important to continue the dialogue to ensure that small business is being heard, that the activity is ongoing, and that there are improvements coming.

In response to asking HIOSH for a commitment to continue to conduct dialogue with the stakeholders, engage with them on an ongoing basis, and collectively look to viable solutions that may not entail union impact or other difficulties, Mr. Ahu concurred and HIOSH is committed to working with Mr. Suzuki and the small business stakeholders moving forward. It was recognized that it may take time to address the immediate need of elevator inspections done so that the stakeholders may conduct business in compliance with state regulations.

In response to Chair Cundiff's question as what would occur or what resolution would result if the fee increase was not instituted, Mr. Suzuki was not sure. This is largely because there has been a lack of commitment to change the process by the state with potential improvements. Further, he believes that an increase in the fees should be tied to measurable metrics, and that the business community needs to be informed as to what exactly they are paying for and why it cannot be done in the current manner.

Mr. Ritchie suggested that comments made during this discussion be incorporated into the memo to the Governor along with the recommendations, and Vice Chair Albitz commented that the motion to the Governor might state "with reservations." Mr. Shick added that there still appears to be a needed commitment on DLIR's part to make the stakeholders comfortable, so measurable committed actions should be included with the Board's motion.

Vice Chair Albitz motioned to send the proposed amendments to the Governor for adoption provided that commitments made by HIOSH/DLIR are in conjunction with its discussions with stakeholders on process improvements and are implemented through measurable outcomes. Mr. Shick seconded the motion, and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Discussion and Action on the Board's Draft 2020 *Annual Report Summary* for Submission to the Hawaii State Legislature, under Section 201M-5(f), Hawaii Revised Statutes (HRS)

Chair Cundiff noted that the total number of rules reviewed during the calendar year 2020 is significantly down largely due to the pandemic and because agencies and businesses are not necessarily operating as "business as usual."

Mr. Ritchie motioned to approve the Board's draft 2020 *Annual Report Summary* with one noted correction and the possible update of the Chair's message. Vice Chair Albitz seconded, and the Board members unanimously agreed.

B. Review of Proposed Board Meeting Dates for 2021

Board members reviewed and concurred with the upcoming meeting schedule for 2021.

C. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

No updates to the Board's advocacy activities and programs were provided.

VI. NEXT MEETING - Thursday, December 10, 2020 at 10:00 a.m., if necessary.

VII. ADJOURNMENT – Ms. Rodighiero motioned to adjourn the meeting and Mr. Ritchie seconded the motion; the meeting adjourned at 11:15 a.m.