

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING - DRAFT

June 20, 2012

Conference Room 410 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Chair Pang called the meeting to order at 10:36 a.m. with a quorum present.

**MEMBERS PRESENT:**

- Sharon L. Pang
- Charles Au
- David S. De Luz, Jr.
- Bruce Bucky
- Peter Yukimura
- Howard West

**ABSENT MEMBERS:**

- Chu Lan Shubert-Kwock

**STAFF:** DBEDT

Mary Alice Evans  
Dori Palcovich

Office of the Attorney General

Margaret Ahn

### II. APPROVAL OF MAY 16, 2012 MINUTES

Vice Chair Au made a motion to accept the May 16, 2012 minutes as amended. Mr. Yukimura seconded the motion, and the Board members unanimously agreed.

### III. OLD BUSINESS

- A. Small Business Statement after Public Hearing for Hawaii Administrative Rule (HAR) Title 17 Chapter 1700 Overview; Chapter 1721, Medical Assistance to Aged, Blind or Disable Individuals; Chapter 1721.1 QUEST Expanded Access; Chapter 1727, Hawaii Health QUEST; Chapter 1728, QUEST-Net; Chapter 1728.1, QUEST-Ace; Chapter 1732, Coverage of Blind or Disabled Pregnant Women and Children; Chapter 1735, General Provisions for Fee for Service Medical Assistance; Chapter 1737, Scope and Contents of the Fee for Service Medical Assistance Program (Department of Human Services (DHS))

Chair Pang indicated that no one from DHS was present, and there were no changes to the proposed rules after the public hearing.

Vice Chair Au recommended that the rules proceed to the Governor for adoption. Second Vice Chair De Luz, Jr., seconded the motion, and the Board members unanimously agreed.

- B. Correspondence from Mayor Peter B. Carlisle, City and County of Honolulu, regarding request by Ms. Dale Evans, President of Charley's Taxi for the review and update of administrative rules and regulations for small business taxicab users

Chair Pang stated that Ms. Evans is continually in communication with the City and County of Honolulu regarding her taxi industry concerns, and she is graciously being received. Vice Chair Au would like to see an updated status from the City and County of Honolulu regarding Ms. Evans' request for amendments to the County's taxicab administrative rules that would authorize taxicab operators to pass on the "user" fees.

Vice Chair Au recommended that that Board send a letter to the City and County of Honolulu's Licensing Administrator, Mr. Dennis Kamimura, requesting the status, the timeline and the nature of the amendments to Subchapter 5, "Rate of Fare, Baggage Charge and Surcharge," Section 12-1.10, Revised Ordinances of Honolulu, 1990. Mr. Bucky seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS**

##### **A. Proposed Amendments to HAR Title 12, Subtitle 8, Part 10, Boiler & Pressure Vessel, (Department of Labor and Industrial Relations (DLIR))**

Mr. Keith Rudolph, Supervisor at DLIR's Hawaii Occupational, Safety and Health Division, explained that the national safety standards for boilers and pressure vessels are determined by the Association of Mechanical Engineers Boiler and Pressure Code. As the rules have not been updated since 1996, the amendments are intended to bring the safety standard for boilers and pressure vessels in-line with most current national standards. Safety codes apply to all boilers and pressure vessels regardless of the size of the business; therefore, it was noted that these rules do not specifically target small business. Although the safety codes affect the equipment a small business owns and operates, depending on the type of business and the equipment used, it will determine on how a small business will be affected.

Specific rule changes include a new requirement that "non-code" equipment be inspected. Internal inspections for power boilers would be performed every three years instead of every two years provided that external inspections by DLIR are held every six months. Amendments will allow for company employees who pass an exam to be able to do routine inspections once an installation has been inspected by DLIR. Certification requirements are modified to allow for an associate's degree or other accredited education to be counted towards experience requirements. Although fees have not increased since 1998, the proposed fee structure was adopted at the legislature in Act 103, regular session 2012, and is based on the expenses of the Boiler and Pressure Vessel Branch, as well as inspection and safety programs. The cost of a permit to continue operation is nominal. Mr. West noted that amendments will help to improve the overall safety and protection of all businesses as well as the general public.

Mr. West recommended that the amended rules proceed to public hearing, and that DLIR need not physically come back to this Board after public hearing. Second Vice Chair De Luz, Jr., seconded the motion, and the Board members unanimously agreed.

##### **B. Proposed new rules, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Part IV; and Rules and Instructions at County Beach Parks, Part V (County of Kauai – Department of Parks and Recreation)**

Deputy County Attorney Mauna Kea Trask explained that the subject rules are being proposed pursuant to earlier procedural rules approved for public hearing regarding peddlers and concessionaires at Kauai County parks. Specifically, the rules relate to commercial boating activities and surf schools/stand-up paddle instruction at County beach parks located at Hanalei Bay. The proposed rules deal with “accessory” activities such as loading and unloading of customers, washing and staging of equipment, and commercial advertisement. In essence, the rules attempt to reach a balance of accommodating a commercial business dedicated to recreation against the public’s right to use a public park for public use. The Department of Parks and Recreation will be responsible for the implementation and enforcement of the rules through existing personnel and resources currently available. Mr. Yukimura stated that the rules essentially set up boundaries to minimize disruptive encounters at the beach parks.

Mr. Yukimura recommended that these County rules proceed to public hearing and that the County need not physically come back to this Board after public hearing. Vice Chair Au seconded the motion and the Board members unanimously agreed.

- C. Proposed Amendments to HAR Title 13 Chapter 54, Puako Bay and Puako Reef, Hawaii; Section 1 Definitions; Section 2 Prohibited Activities; Section 3 Permitted Activities; Chapter 57, Keauhou Bay, Hawaii, Section 1 Definitions; Section 2 Prohibited Activities; Section 3 Permitted Activities; and Map of Keauhou Bay Fisheries Management Area, Hawaii; the Repeal of Chapter 60.3, West Hawaii Regional Fisheries Management Area; Adoption of Chapter 60.4, West Hawaii Regional Fishery Management Area, Hawaii; and Amendments to Chapter 75 Section 12.4 Lay nets (Department of and Natural Resources (DLNR))

Mr. Wayne Tanaka, Marine Law Fellow at DLNR, explained that the subject rules have not been amended for several years; thus, the proposed amendments are the result of 10 years of promulgating and 3,000 hours of volunteer time. There are approximately 70 individual aquarium collectors operating in the West Hawaii area, and 16 commercial harvesting activities affected by the proposed rules; there are also about 70 small businesses engaged in ocean recreation tour operations or similar non-extractive activities in West Hawaii. Affected by these rules are small businesses engaged in the collection of aquatic life from West Hawaii waters for sale as aquarium pets, for consumptive, or for other purposes. While these businesses will face certain restrictions on their commercial activity, it was noted that commercial ocean recreation tour operators, dive gear rental operations, and similar businesses will benefit from the rules in regards to the resource protection measures.

It was also explained that businesses engaged in the collection of aquatic life for aquarium purposes may be adversely impacted as the businesses will be prohibited to a 1,500 section of Ka’ohe Bay (known as Pebble Beach). However, the Big Island Association of Aquarium Fishermen agreed to support this proposal in order to resolve long-standing user conflicts in the area. Aquatic life that may be collected for aquarium purposes would be restricted to a “white list” of 40 species, with additional bag and size limits for three highly targeted species: yellow tang, kole, and Achilles tang. It was noted that adverse revenue impact should be nominal given that the “white list” species comprise 99% of the total fish catch and monetary value of the West Hawaii aquarium fishery. The size limits for the targeted species have been tailored to prevent the taking of fish that are already considered less suitable for the aquarium trade due to higher mortality rates or lower retail prices. The bag and size limits will also

support the commercial sustainability by ensuring greater breeding opportunities for existing fish stocks.

The amendments will dictate that aquarium collectors who wish to possess aquarium collecting gear or aquatic life collected for aquarium purposes after sunset and before sunrise must provide telephone notification to the Kona Division of Aquatic Resources offices. Aquarium collecting gear must now be labeled with the commercial marine license of the person owning or possessing such equipment, and the letters "AQ" must be permanently affixed to both sides of an aquarium-collecting vessel. Amendments also clarify the "no-netting boundaries" of the Puako Bay and Puako Reef Fisheries Management Area with an updated map.

Further, it was explained that commercial harvesters of marine life from the West Hawaii region may be adversely affected, depending on their fishing method and location of harvest. For example, commercial SCUBA spear fishers will no longer be able to use SCUBA gear and spears to take aquatic life. However, commercial spear fishers may continue to take aquatic life using spears and snorkeling gear; this includes traps and certain nets. Any adverse impact is expected to be mitigated by the potential long-term benefit to all small businesses that generate revenue from healthy fishery stocks in West Hawaii including the 70 ocean recreation businesses which generate an estimated \$35 million yearly in gross revenue. Thus, the protection of targeted and vulnerable species, particularly in depths accessible only to SCUBA spear fishers, is intended to ensure greater breeding opportunities for existing fish stocks. In addition, the "take" of certain aquatic life is prohibited under a "no-take" list of 11 species, comprised of sharks, rays and two species of mollusks. Many of these species are of limited commercial value and/or are already protected from commercial harvesting businesses, which will be offset by benefits to other small businesses that may generate revenue from healthy populations of other marine species.

Several testifiers, many of which were fishermen, testified in support of the proposed amendments. Mr. Doug Fetterly, a private citizen, testified that the sustainability of marine life is questionable and that the marine species are valuable. Ms. Alma McGoldrick, speaking on behalf of the public, indicated that she has snorkeled in these waters over the past 50 years. As the fish population has declined drastically over the past several years, she is in favor of a complete ban on the trade. Ms. Inga Gibson, Hawaii State Director at the Humane Society, testified in opposition of the rules. She explained that the proposed amendments will have no conservation value, and are nonsensical regarding the daily bag limits and daily size limits because they are not limits at all, but allow take limits that exceed reported catch. She also explained that the rules are not based on scientific data but were drafted and introduced solely at the request of commercial aquarium collectors not allowing for conservation, scientific or other critical considerations.

Ms. Renee Umberger, in opposition of the amendments, is a director of "For the Fishes," from Maui; she explained that she has educated Hawaii's communities on the impacts of the aquarium trade since 2008, with her commitment coming from 30 years as a SCUBA instructor and guide. She was representing thousands of people who have expressed a desire to see this trade banned, not regulated. This is because the costs to Hawaii's reefs, culture, businesses, and taxpayers are too high, and its benefits are negligible. Thus, she

requested that this Board direct DLNR to draft proposed rules for a state-wide ban on the aquarium trade.

In addition, Ms. Umberger explained that scientists and researchers dispute the claims that the proposed amendments will protect this resource as well as DLNR's and industry's claims of "sustainability." She noted that Hawaii's reefs are too narrow to support aquarium trade extraction, and that the aquarium trade is a major cause of coral reef degradation in Hawaii. She believed that DLNR's small business impact statement is incorrect in that the rules do not impact the state's economy. Further, she stated that several studies show that snorkelers and divers will ultimately pay more money to see more fish on the reefs. She referred to a 2008 study, which reported that 97% of scuba divers are willing to pay an additional \$55 to see healthy coral reef ecosystems, equating to an additional \$46.4 million annually. Dr. Bill Walsh, Aquatic Biologist at DLNR, addressed all the testimonies and stated that DLNR's position is that when a fish is taken from the waters it affects the reefs.

Second Vice Chair De Luz, Jr., noted that overall he would like to see DLNR take a more proactive approach in enforcing the rules, indicating that currently DLNR has a "quasi-police task force" and that the rules would have unintended consequences regarding violations of the rules.

After hearing the pros and cons of the amendments, Mr. West recommended that the proposed amended rules proceed to public hearing and that the agency physically come back to this Board to report on the results of the public hearing. Second Vice De Luz, Jr., seconded, and the Board members unanimously agreed.

D. Proposed new HAR Title 13 Chapter 77, Oahu Aquarium Life Management (Department of Land and Natural Resources (DLNR))

Mr. Alton Miyasaka, Aquatic Biologist from DLNR's Division of Aquatic Resources, explained that the proposed new rules establish limits on net fishing gear, commercial bag limits on certain species, size limits on certain species, and the "no taking" of certain species. He further explained that the reason for the rules is to conserve the natural resources by limiting the net gear to prevent the taking of too many fish at any one time with too large a gear. He noted that many of the proposals are based on suggestions from commercial aquarium collectors, which DLNR met with at least five times between July and December 2011. While some of the commercial collectors did not support all of the suggestions, DLNR was the final decision-maker on the rule proposal.

Several testifiers, many of whom are local fishermen, testified in support of the proposed amendments. Ms. Renee Umberger, director of "For the Fishes," testified in opposition of these rules noting that her sentiments are similar to her testimony provided above under IV. C. Dr. Gail Grabowsky stated she was a professor at Chaminade University where she has directed Chaminade's environmental studies program since its inception in 2000. For the past four years, she and some of her students have been quantifying the abundance of aquarium-collected fish at 25 sites around Oahu as part of a research program. Research data shows that aquarium fish on Oahu are rare when compared to abundances from Hanuama Bay; no fish smaller than a silver dollar was sited at Hanuama Bay. She surmised

that it is possible that the fish are so depleted on Oahu that those seen are the “living dead” that cannot effectively maintain a population due to their rarity.

Dr. Grabowsky also noted that food fishing is both a tradition and a necessity in Hawaii, but aquarium fish collection is neither. While aquarium fish collection and sales only make up a very small portion of the economic gain derived from coral reefs, collectors may lose their livelihoods. While she is in full support of the research that DLNR has conducted, particularly the work of Dr. Bill Walsh, Aquatic Biologist at DLNR’s Division of Aquatic Resources, she believes a ban or a moratorium on the collection of fish would help to instigate “equal quality research protocol” in order to monitor the abundance of the aquarium fish during the ban to discover if the fish return. However, she noted there is a discrepancy in the research by DLNR regarding the sustainability of aquatic resources and recommended that yearly surveys should begin and be conducted concurrently with the initiation of a moratorium.

Mr. West recommended that the proposed rules proceed to public hearing, and that DLNR come back to this Board to report on the findings of the public hearing. He also recommended that Mr. Miyasaka work closely and collaborate with opposing testifiers to take into consideration their concerns that the conclusions reached by DLNR regarding sustainability of aquatic resources and the conclusions reached by Dr. Grabowsky are opposing despite their use of a common data set. Mr. Bucky seconded and the Board members unanimously agreed.

## **V. LEGISLATIVE**

### **A. Update on Senate Bill 2739 SD2, HD1, CD1, Relating to the Small Business Regulatory Review Board**

Chair Pang indicated that a letter from the Board was sent to the Governor regarding this bill. It stated that while the Board members supported some sections of the bill, it did not support the change regarding the appointment of members by the President of the Senate and the Speaker of the House. The Board also did not support the change that the Business, Economic Development, and Tourism (DBEDT) Director, or the Director’s designated representative serve as an ex-officio voting member. It was believed that this violates the original intent and spirit of Chapter 201M, Hawaii Revised Statutes. DBEDT staff will notify the members when the status of this measure is known.

## **VI. DISCUSSION OF THE FOLLOWING BOARD ADMINISTRATIVE MATTERS**

### **A. Review of Responses from Departments of Agriculture, Accounting and General Services, and Land and Natural Resources to Chapter 201M-7, Hawaii Revised Statutes, “Periodic Review; Evaluation” request**

This agenda item was not discussed.

### **B. Recommendation to create a taskforce to review and request a budget statutorily connected to this Board, under Chapter 201M, Hawaii Revised Statutes**

This agenda item was not discussed.

C. Update of discussion leader's outreach with State agencies, and discussion leaders' role in reviewing proposed rules

This agenda item was not discussed.

D. Improving upon communication with State agencies

This agenda item was not discussed.

**VII. ANNOUNCEMENTS**

**VIII. NEXT MEETING** – Scheduled for Wednesday, July 18, 2012, 250 South Hotel Street, Honolulu, HI, Room 410.

**IX. ADJOURNMENT** – The meeting adjourned at 2:04 p.m.