

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

February 11, 2008

No. 1 Capitol District Building – Conference Room 436

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:43 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Sharon Pang
- Peter Yukimura
- Donald Dymond
- Richard Schnitzler
- Bruce Bucky

ABSENT MEMBERS:

- Dorvin Leis
- Michael Yee
- Charles Au

STAFF:

DBEDT

Dori Palcovich
Steve Bretschneider
Pearl Imada-Iboshi
Ilene Deutsch

Office of the Attorney General

Margaret Ahn

GUESTS:

James Hardway – Special Assistant to the Director, Department of Labor and Industrial Relations (DLIR)
Jamesner Dumlao, Operations Manager, Hawaii Occupational Safety and Health (HIOSH), (DLIR)
Paul Yuen, Supervising Attorney, Insurance Division, Department of Commerce and Consumer Affairs (DCCA)

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the January 10, 2008 board meeting were approved as presented.

III. **OLD BUSINESS**

- A. Review and discussion of post public hearing statement of HAR Chapter 16-171, “Miscellaneous Insurance Rules” (DCCA) – Mr. Paul Yuen, Supervising Attorney of DCCA’s Insurance Division stated that two people attended the public hearing; the proposed rule amendments pertain to technical changes such as spelling and grammar. Vice Chair Pang recommended that these rules proceed to the Governor for adoption; the Board unanimously agreed.
- B. Review and discussion of post public hearing statement of HAR Chapter 11-79, “Licensing of Dietitians” (DOH) – Chair Woods stated that the Governor had signed the proposed rule changes for adoption prior to this Board’s final recommendation; a letter to the Governor will be sent on behalf of the Board regarding this oversight.
- C. Update on Mr. Michael Sheehan’s small business request regarding commercial permits in Hanalei, Kauai – Chair Woods updated the members of Mr. Sheehan’s request and noted that his attorney is preparing a petition under 201M-6, HRS. Mr. Yukimura disclosed that his cousin was mayor of Kauai at that time of Mr. Sheehan’s concern. Ms. Ahn stated that because Mr. Sheehan’s case was not being discussed today and because there was no financial impact there is likely no conflict. However, if Mr. Yukimura felt that he cannot be objective when the case is heard before this Board, he would need to recuse himself.

Ms. Ahn explained the petition process under 201M-6, indicating that small businesses are allowed to file a petition with the agency if there is an objection to a rule. The agency is required to investigate and take action upon submission of the petition with a copy forwarded to this Board. The agency is also required to submit a written response to the petitioner and the Board within 60 days, stating what action the agency plans to take, if any. If the agency decides not to take action, the small business petitioner may

seek review of the decision with this Board. The small business, in any case, can approach this Board first before going to the agency, which would not be a petition under 201M-6. Ms. Ahn added that the Board has broad authority to look at small businesses that have complaints with administrative rules.

IV. NEW BUSINESS

- A. Review and discussion of HAR Chapter 12, Subtitle 8, Hawaii Occupational Safety and Health, "Part 2, General Industry Standards" (DLIR) – Mr. Jamesner Dumlao, Operations Manager at DLIR's HIOSH distributed two handouts, one that refers to the current regulations in place and the other that refers to the Federal Register; the latter rules are those which HIOSH is proposing to adopt. Mr. James Hardway, Assistant to the Director, stated that the reason the department is reverting to the Federal Register standard is because the amendments provide greater clarity to employers regarding when they should and should not pay for employee protective equipment. Ms. Pang recommended that the proposed rules proceed to public hearing; the Board unanimously agreed. Mr. Hardway indicated that the notice of public hearing is published in the newspaper, per law, and copies of the notice will go to the various impacted associations.
- B. Discussion of recruiting new board members – Chair Woods stated that three board members have been renominated by the Governor, Messrs. Leis, Yee and Dymond. Packets containing resumes and recommendation letters will be sent out shortly. A Senate hearing will be held for confirmation of their reappointments. Chair Woods will be submitting testimony on their behalf along with DBEDT's Director Liu. Chair Woods added that the Board needs two additional representatives from Kauai and the Big Island. Ms. Ahn confirmed that board members can be current or former owners or officers of a business and not necessarily a small business. Messrs. Bucky and Yukimura will speak with various contacts; Chair Woods will contact the Kauai Economic Development Board, and Mr. Schnitzler will contact the aquaculture businesses on the Big Island for potential nominees.

V. LEGISLATIVE BUSINESS

- A. Update on opening day of the Hawaii Legislature – Mr. Schnitzler indicated that he, Vice Chair Pang and Ms. Palcovich, on behalf of this Board, attended the opening ceremonies of the legislature on January 16, 2008. Gifts of macadamia nuts and copies of the Small Business Bill of Rights brochure were provided to Senators Rosalyn Baker, Kalani English, Will Espero, Carol Fukunaga, Sam Slom and Representatives Tom Brower, Jill Tokuda, Clift Tsuji, Kyle Yamashita; thank you letters were received from most of them.
- B. Discussion and recommendation for ratification of Board's legislative testimony – Chair Woods stated that in previous years, a legislative taskforce had been formed to allow for discussions on legislation between board members and legislators. Ms. Ahn explained that such a taskforce can operate outside of the sunshine laws. Chair Woods commented that if discussions can be held between taskforce members, the board chair, and DBEDT staff, the thoughts of the Board would be known. As a result, it was recommended that the Board establish a legislative taskforce comprised of the following members, Chair Woods, Vice Chair Pang, Mr. Schnitzler, and Mr. Bucky; the Board unanimously agreed.
- C. Review and discussion of current legislative bills, including:
 - 1. HB 2257 and HB 2258, "Relating to Public Accountancy" - Chair Woods explained that these two bills, introduced by Representative Robert Herkes, relate to a peer review bill and allow certified public accountants to provide services to clients in a state other than the accountant's home state. She explained that the industry is divided and the accountancy board is unable to come to a compromise; the Governor vetoed the bills last year because of this division. There is concern that allowing out-of-state firms to do business in Hawaii will take away business from Hawaii's accounting firms. The legislators requested that this Board help draft the rules for the accountancy board, but since no funds have been allocated, the Board would be unable to contract this project out. The bills have been deferred.
 - 2. HB 2736, "Relating to the Small Business Bill of Rights" – Representative Yamashita introduced this bill because he sensed there would be a better chance that it would pass in this year's legislature than in past years. Chair Woods noted that recently, two board members' basic business rights have been ignored. This bill passed the first reading with an amendment. Mr. Dymond recommended that the Board support this bill and continue with the outreach of the Bill of Rights brochure; the Board unanimously agreed.

3. HB 2781, "Relating to Small Business" – Chair Woods explained that Representative Yamashita also introduced this bill, which proposes a much more in-depth small business impact statement. The bill also proposes that the Board's 201M-7 existing rule review report and the 201M-5 annual report be combined; both DBEDT and this Board testified in favor of this bill but opposed the combining of the Board's two reports. Chair Woods mentioned that we contacted Mr. Michael Hull from the Federal Small Business Administration's Office of the Advocacy for his input of the bill; which was positive. There is a national regulatory review process that reviews federal legislation and they have developed a number of processes that this Board can utilize. While the rules must not exceed the existing federal rules, they can be less stringent than federal regulation. She explained that the agencies will most likely oppose this bill because the proposed information in the small business impact statement is complex. Much discussion ensued. Chair Woods and Ms. Palcovich will pursue speaking with Representative Yamashita if the bill crosses over to the Senate. Additional monies would be needed for additional staff. Mr. Bucky recommended that the Board continue with its framework of this bill and support it; the Board unanimously agreed.
4. HB 2686, "Relating to Administrative Procedure" – Chair Woods explained that Representative Oshiro introduced this bill. It involves the administrative rules procedures during the rule drafting process as it relates to Chapter 91. Specifically, prior to the official public hearing, interested parties would need to participate and assist in the drafting of the rules. Chair Woods stated that while this bill is proactive in terms of the work that this Board does, it is not proactive for the agencies. The bill is expected to be heard by both the finance and judiciary committees. After much discussion, Vice Chair Pang recommended that the Board support this bill; the Board unanimously agreed.

VI. ANNUAL PLAN – Update of the following projects:

- A. Speaker's Bureau – Training by Hastings and Pleadwell has been deferred to the March meeting. Mr. Bucky stated that he would like to have this Board do a presentation in front of the Hawaii Jeweler's Association; the association meets monthly at 6:30 in the evening; Chair Woods will follow up with Mr. Bucky regarding the Board's presentation.
- B. Agency Letters / 201M – Nothing was discussed.
- C. Legislative Project – Meetings with legislators are discussed above.
- D. Regulatory Alert Project – Chair Woods spoke to Director Liu regarding the creation of a Regulatory Alert project. He referred her to Ms. Yuka Nagashima, Executive Director & CEO of DBEDT's High Technology Development Corporation; this area assists agencies with their websites. After her initial discussion Ms. Nagashima, Chair Woods explained that the process would entail a letter of agreement between the business organizations and the Board outlining regulatory or legislative alerts on the Board's website where the business organizations would, in turn, submit the alerts to their members. The rules would be attached to each alert with a response link that would come back to the Board with the small businesses comments. It was determined that this project may not cost as much as what was initially anticipated. Interest has been shown by the Hawaii Restaurant Association, the State Chamber, Maui Chamber and Small Business Hawaii.

VII. Report from Chair and Board Members - Mr. Dymond indicated that Ms. Gail Ann Chew, Executive Director of the Hawaii Restaurant Association, had not been provided to the City & County of Honolulu Liquor Commission's proposed rule changes, despite Ms. Anna Hirai, Assistant Administrator from the Liquor Commission, stating at the January board meeting that this organization as well as others had been provided these rules. Mr. Dymond will follow-up with the other organizations that were listed. Along the same lines, Mr. Schnitzler indicated that the Department of Land and Natural Resources had, at a previous board meeting, stated that impacted organizations regarding the Miloli'i Subsistence Fishing Area proposed rules were also provided information on the rules, but those impacted were in fact not aware of them.

Mr. Dymond explained that his business was cited along with eight other businesses last summer for serving alcohol to minors. The Liquor Commission used the same technique with each business; patrons came into the restaurants and ordered drinks, left the premises and two liquor investigators approached the restaurants' servers requesting the manager. The manager and server were not allowed to view the patrons after the incident occurred; even so, the servers must defend themselves against a criminal misdemeanor charge. Mr.

Dymond further explained that the restaurants that pleaded “no contest” were fined \$500 whereas the restaurants that contested were fined \$1,000. He noted however that because the prosecution was unable to present its case within the required 180-day time limit, the servers will likely not be prosecuted. Mr. Dymond’s motion to dismiss will be heard on February 20th; he is awaiting the 30-day period to request judicial review. He stated that the statute governing the Liquor Commission provides that if a server reasonably and consciously believes a patron is not a minor, the law is not broken. This defense was made to the Circuit Court by Mr. Dymond but was dismissed because he was informed that the Liquor Commission does not apply the rules of evidence. Chair Woods explained that these events have previously been reviewed with Mr. Dymond on an informational basis. Therefore, depending on the outcome of Mr. Dymond’s judicial review request, there is a possibility that this Board may do a complete review of the County of Honolulu’s Liquor Commission administrative rules.

Mr. Schnitzler explained that he owns a macadamia nut processing, packaging and marketing operation where the company’s cleaning equipment system has always met Environmental Protection Agency’s standards. About two months ago, a State Clean Air Branch representative inspected the company’s equipment, claimed problems with the system, and the representative provided Mr. Schnitzler with a cease and desist order. The company was required to shut down its operations, resulting in layoffs for a few days. Since then, thousands of dollars worth of water testing has been done. Mr. Schnitzler wrote a letter to the Governor’s Policy Advisor, Ms Linda Smith, who advised him to contact the State’s Waste Water Management. He alerted Waste Water Management that unnamed companies had equipment that was not permitted. It was noted that this ordeal is now an ongoing problem with constant testing of one or more systems.

VIII. Report from Committees – Nothing was discussed.

IX. Announcements – Chair Woods encouraged the members to attend all board meetings if possible, as all the meetings are scheduled a year in advance.

Chair Woods noted that the Ombudsman’s Annual Report was distributed to each member for review.

The June 18th board meeting needs to be rescheduled; an email will be sent to coordinate a new day. As Chair Woods will be unable to attend the March 19th board meeting, Vice Chair Pang will be chairing. Mr. Schnitzler indicated that he may also not be attending this meeting.

X. NEXT MEETING - Wednesday, March 19, 2008, No. 1 Capitol Building, 250 South Hotel Street, Conference Room 410.

XI. ADJOURNMENT – Chair Woods adjourned the meeting at 12:55 p.m.