

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

November 19, 2008

Conference Room 410 - No. 1 Capitol Building, Honolulu, HI

- I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:35 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Sharon L. Pang
- Michael Yee
- Dorvin Leis
- Donald Dymond
- Richard Schnitzler
- Charles Au

ABSENT MEMBERS:

- Peter Yukimura
- Bruce Bucky
- David S. De Luz, Jr.

STAFF: DBEDT Office of the Attorney General
Dori Palcovich Margaret Ahn
Steve Bretschneider

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES**

Mr. Au recommended approving the October 15, 2008 minutes as presented; the Board unanimously agreed.

III. **OLD BUSINESS**

- A. **Review and discussion of post public hearing statement of HAR Chapter 16-131, "Hawaii Cable Communications Systems" (DCCA) – Ms. Lauren Wong, Staff Attorney at DCCA's Cable Television Division, explained that she brought forth the pre-public hearing statements to this Board in January 2008 where it was suggested that public hearings be held on every island. The public hearings resulted in numerous oral and written public testimonies with no statements regarding any impact on small business. However, there was also testimony expressing general opposition to the rule amendments that called for the deletion of the subsection applying the Public Procurement Code, HRS 103D, to the designation and selection of access organizations. Chair Woods refreshed the members' recollection that a number of testifiers attended the Board's January meeting but the members had realized that by statute non-profit rule-writing is not within the purview of this Board; at that time it was recommended that the agency proceed with its rule-making process. Chair Woods thanked Ms. Wong for bringing the rules back to the Board even though Chair Woods believed that they did not need to come back; therefore, no action was taken by the members.**
- B. **Review and discussion of post public hearing statement of HAR Chapter 4-69A, "Pests for Control or Eradication" (DOA) – Dr. Neil Reimer, Plant Pest Control Manager of DCCA's Plant Pest Control Branch, indicated that public hearings were held in Honolulu, Hilo, Kona, Maui and Kauai with no one attending or providing oral testimony at any of the hearings. The department did however receive forty-six written testimonies that included forty-four by email and two letters by postal mail. Three testimonies were in favor of the proposed rule amendment and forty-three were opposed, with a majority of the testimonies in opposition from Puerto Rico. The written comments were critical of DOA's decision to control coqui frogs in Hawaii. Many commented that they love the coqui, that the coqui is part of their culture and a national symbol of Puerto Rico, that coquis eat and control plant insect pests, that they listen to coqui calls to fall asleep, and that it is inhuman to kill the coquis with citric acid. After a period of questions and answers,**

Mr. Schnitzler recommended that the proposed rule amendments, after public hearing, proceed to the Governor for approval; the Board unanimously agreed.

- C. Recommendation to nominate Ms. Sharon L. Pang, Mr. Charles Au and Mr. Peter Yukimura as Board members – Mr. Schnitzler recommended that the re-nominations of Board members Ms. Sharon L. Pang, Mr. Charles Au and Mr. Peter Yukimura be submitted to the Governor; the Board members unanimously agreed.
- D. Approval and recommendation of the Board's draft 2008 Annual Report and draft 201M-7 Report – Upon review of the draft reports, Mr. Dymond recommended that the reports be approved and be submitted to legislature and Governor; the Board unanimously agreed.
- E. Re-review and discussion of video-conferencing – Chair Woods explained that it is fairly clear that due to budget constraints, the funding of the neighbor island Board members' air fares to and from Honolulu will be cut back. If the Board decided to use video-conferencing (VC), the neighbor island VC centers would need to be booked three months in advance; conference room 436 in the Capitol District Building would also need to be booked. Alternatives to using VC were discussed. If the Board is unable to conduct meetings, its work cannot be accomplished and it becomes ineffective. The agencies that work with this Board will suffer because the Board would not be able hear the rules and ultimately become an impediment. It was noted that the purview of this Board affects every agency in the State and by not having meetings it will slow those agencies down in regards to the rule review process.

In an effort to keep the Board strong and to continue to perform within its purview, the discussion of the investigative taskforce process was mentioned where a taskforce would be formed for each agency to review the rules. Ms. Ahn explained that investigative task forces allow board members to vote on a specific task and then delegate that task to the members; these are intended to be very temporary and task-driven. Standing committees, on the other hand, are subject to the Sunshine Law, as it relates to posting agendas, taking minutes, etc. Much discussion ensued regarding this issue; one suggestion was to meet less often and conduct longer meetings and another was that neighbor island Board members might pay their own air fare by incorporating other personal and/or business affairs when coming to Honolulu for the Board meetings. The members cancelled the December 3, 2008 board meeting and will focus on the January 21, 2009 Board meeting.

IV. **NEW BUSINESS**

- A. Review and discussion of proposed new rule HAR Chapter 13-60.7, "Kahekili Herbivore Fisheries Management Area, Maui" (DLNR) – Mr. Francis Oishi, Program Manager at DLNR's Division of Aquatic Resources, explained that the proposed adoption of this rule would establish a herbivore fisheries management which is intended to protect important limu grazing species from harvest, thereby protecting an important ecological service to the marine environment. A decrease in "grazers" has resulted in an overabundance of seaweeds, especially alien invasive limu species that affect coral reef quality. He further explained that protecting the grazing species will help to restore the balance of corals, fish, and limu, leading to a vibrant coral reef ecosystem. In regards to the gill net ban in this area, DLNR is expecting to increase the number of fish in these waters. Enforcement, however, is not simple and so DLNR has been conducting educational training to commercial and recreational fisherman, local hotels, native Hawaiians and others in order to explain the purposes of protecting the native species. It was noted that it is DLNR's first time in creating a marine-managed area in order to increase the protection of the State's fish population and sea urchins so as to improve their health and habitat. After some discussion, Second Vice Chair Yee recommended that the proposed new rule proceed to public hearing; the Board unanimously concurred.
- B. Review and discussion of proposed amendments to HAR Chapter 16-3, "Life Insurance Replacement" (DCCA) – Mr. Mark F. Morita, Staff Attorney at DCCA's Insurance Division, explained that the agency is asking to repeal this chapter in its entirety; small businesses are not expected to be affected by the repeal. This rule was superseded by some new forms and new procedures adopted by the NAIC (National Association of Insurance Commissioners). Those procedures were adopted into statute in the year 2000 and became effective at that time; they were adopted into Article 10D, Life Insurance and Annuities, Chapter 431, HRS; thus, HAR Chapter 16-3 became obsolete and duplicative as of July 2000. DCCA had neglected to repeal this chapter until the present time. Chapter 91 allows DCCA to repeal this Chapter in its entirety; so the agency does not have to go to public hearing; the agency only needs to publish a notice

in the local newspaper. If there are no comments, the rule will be repealed. While life insurance companies and agents are affected by the statute, because the statute completely superseded the rules, the repeal of the rules will have virtually no affect. Chair Woods recommended that the proposed rule repeal proceed to appropriate process; the Board unanimously agreed.

- C. Review and discussion of memorandum from Ms. Dale Evans, Charley's Taxi, dated November 1, 2008, "Request & Notice re: Taxicab Fuel Surcharge Implementation" – Ms. Dale Evans, Chief Executive Officer of Charley's Taxi, expressed concern with the City and County of Honolulu regarding a taxicab fuel surcharge approved by the Honolulu City Council on June 6, 2008. Subsequently, due to the need to promulgate rules, the industry has been informed that implementation of the surcharge is not anticipated until January 1, 2009. Consequently as a result of this delay, Honolulu's taxicab drivers have continued to suffer economic losses and severe hardship from fuel cost increases. Chair Woods stated that the taxi owners and drivers have been absorbing the increased costs of the gasoline but have been unable to increase their fares. After much discussion, Mr. Au recommended that correspondence be sent to the Mayor of the City and County of Honolulu requesting that, effective immediately, an emergency measure be implemented to allow taxicab drivers the ability to assess up to one dollar (\$1.00) per trip until such time that rules are promulgated and adopted, with the requirement that all drivers maintain signage to be posted inside the taxicabs informing the paying customers of such a charge; the Board members unanimously agreed. It was also recommended that the provision to implement a fuel surcharge should be optional, which would be similar to baggage charges, and that it not require the fuel surcharge be put in the meter rate(s) so as to avoid requiring the drivers to change the meter rate settings. Prior to submitting any correspondence, Ms. Palcovich will work with Ms. Evans and send the Board members a draft letter for review.
- D. Review and discussion of memorandum from Mr. John F. De Virgilio, dated November 5, 2008, "Seeking a regulatory review against the Office of Consumer Affairs, etc." – Mr. John De Virgilio explained that he has approached this Board in regards to the Bill of Rights. He is requesting that this Board review the practices of the Hawaii State Office of Consumer Protection (OCP) against his now defunct start-up business, a special post-secondary institution for physical education and martial arts. He noted that he never received any type of warning or notification from OCP and that his business never opened its doors although he had created a website to advertise. Upon listening to Mr. De Virgilio's request, members indicated that it would be prudent to receive all the related documents such as OCP's complaint. Mr. De Virgilio indicated that if this Board were to determine that his rights were in fact violated that he would like the money back that he expended which includes legal fees and penalties amounting to approximately \$20,000. Chair Woods explained that this is not within the Board's purview. He also requested, in general, that this Board make sure that warnings are sent and that sufficient time is given to rectify any problems or issues that may have occurred before any penalties can be incurred.

Ms. Ahn explained that Mr. De Virgilio's concerns have nothing to do with administrative rules and that he was referred to the Ombudsman's Office because it has the jurisdiction to investigate administrative actions, not this Board. He stated however that he will follow-up with the Ombudsman's Office and will also follow-up with the Governor's Office. Chair Woods recommended that the Board request from OCP the administrative rules that governed its actions and procedures regarding Mr. De Virgilio's situation, and if it is found that such administrative rules exist, then the Board will request copies of the warning or any other notification sent to Mr. De Virgilio from OCP; the Board will then request from Mr. De Virgilio all related documentation such as the legal documents and complaint; the Board unanimously agreed.

V. Discussion and Update on the Board's 2009 Goals:

- A. Approval of Working Group's proposed amendments to Chapter 201M, HRS – Chair Woods reminded the members that the working group consisted of three Board members as well as Ms. Dale Evans and others. Vice Chair Pang explained the process by which the working group members reviewed the statute, section by section, and then explained each change proposed by the group. One of the major changes discussed is to increase the number of board members from eleven to thirteen with the additional members coming from the Island of Oahu. Upon review of the working group's proposals to Chapter 201M, HRS, Mr. Schnitzler recommended that the proposed changes be submitted to the legislature; the Board members unanimously agreed.

B. RegAlert Project – Chair Woods indicated that no responses were received for the RegAlert, “Smoking in the Work Place” rules.

C. Public Outreach Project – It was noted that since last month, none of the board members have given presentations on behalf of this Board.

VI. REPORT FROM CHAIR AND BOARD MEMBERS:

A. Discussion of Board holiday get-together – Chair Woods announced that there will be no holiday get-together as originally planned.

VII. ANNOUNCEMENTS: Nothing was discussed.

IX. NEXT MEETING – Wednesday, January 21, 2009, 250 South Hotel Street, Honolulu, HI, Conference Room 410, 10:30 a.m.

X. ADJOURNMENT – Chair Woods adjourned the meeting at 1:10 p.m.