

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

December 9, 2003

No. 1 CAPITOL DISTRICT BUILDING ROOM 436

**CALL TO ORDER:** Chair Woods called the meeting to order at 11:00 a.m., with a quorum present.

#### MEMBERS PRESENT:

- Lynne Woods
- David Rietow
- Dorvin Leis
- Al Inoue
- Phyllis Shea
- Brian Zinn
- Denise Walker
- Robert Speers, Ph.D.
- Jeanette Chang

#### ABSENT MEMBERS:

- Edward MacDowell

#### STAFF:

##### DBEDT:

Thomas Smyth  
Dori Palcovich  
Shawn Pelley

##### Office of the Attorney General

Junie Hayashi

#### GUESTS:

Kalbert Young, Small Business Advocate, Maui County  
Patrick Felling, Environmental Ombudsman, Department of Health (DOH)  
Steven Chang, Branch Chief, Solid & Hazardous Waste Branch, DOH  
Jennifer Tosaki, Recycling Coordinator, Solid & Hazardous Waste Branch, DOH  
Lane Otsu, Planner, Solid & Hazardous Waste Branch, DOH  
Mark Housaker, CPA, Bowen Housaker  
Craig Hida, Attorney, Torkildson Katz Fonseca Jaffe Moore & Hetherington  
Charles Ota, Vice President – Military Affairs, The Chamber of Commerce of Hawaii

### WORKING LUNCH AS THE MEETING PROGRESSED

**II. INTRODUCTION OF NEW BOARD MEMBER:** Chair Woods welcomed the newest member, Ms. Jeanette Otsuka Chang, to the Board. Ms. Chang agreed to be the “discussion leader” for the Department of Commerce and Consumer Affairs.

**III. APPROVAL OF MINUTES:** Minutes of the November 12, 2003 meeting were unanimously approved.

**IV. PUBLIC COMMENTARY:** Chair Woods introduced Mr. Kalbert Young, Small Business Advocate, Maui County.

Mr. Patrick Felling, DOH Small Business Ombudsman, explained that he assists small businesses so that they may not be unnecessarily impacted by DOH environmental rules.

Mr. Steven Chang, DOH Branch Chief, discussed proposed rules, “Deposit Beverage Container Recycling.” See discussion in VI. New Business.

Mr. Charles Ota, Vice President – Military Affairs, The Chamber of Commerce of Hawaii, discussed the administrative rule, “Military Housing Privatization Initiative Program General Excise and Use Tax Exemptions.” See discussion in V. Old Business.

#### V. OLD BUSINESS:

**A. Update on Maui County permitting for Hawaii Kite Boarding Association – Data on community and public meetings** – Chair Woods discussed the latest developments of Maui County’s permitting issues for the Hawaii Kite Boarding Association. Maui County has been advised by the County Corporation Counsel not to accept permit waivers. She will keep the Board abreast of further developments.

- B. Update of Legislative Items – including the proposed Regulatory Flexibility Act (RFA) Bill – Mr. Smyth gave a brief update on the Governor’s administration bill package. Chair Woods reviewed the proposed RFA bill with the members and explained that it will not be included in the Governor’s administration package. Mr. Smyth explained that there is no single reason why the RFA bill was not included, except that there appears to be a reluctance to include additional bills. Much discussion ensued about the RFA. It was unanimously agreed that the RFA will be put “on hold” in order to concentrate on the “Small Business Bill of Rights.” It was also agreed that because an RFA bill still exists from last year, if one of the board members decides to submit the bill to an independent representative, that member would inform the Board.
- C. DBEDT Review of Administrative Rules in fiscal year 2004 – The Board reviewed the rules that have been analyzed by DBEDT so far this year. Mr. Charles Ota, Vice President, Military Affairs at the Chamber of Commerce of Hawaii discussed one of those rules, “Military Housing Privatization Initiative Program General Excise and Use Tax Exemptions,” and explained that the Chamber of Commerce of Hawaii supports the rule. After much discussion, the members were concerned with the length of years that the developers would recoup their investment, although, recognizing that this is a decision only the investors can make. Overall, the Board supported the concept that military housing is below standards and the proposed rules would allow the developer to provide upgraded facilities more affordably. Given the government guaranteed program, it was felt that these rules were the most creative solution.
- D. Update on Presentations to Small Business Groups – Chair Woods is scheduled to do a presentation to the Rotary Club in Maui. It was requested that the Board’s presentation be put on CD-Rom and distributed to the members.
- E. Small Business Bill of Rights – 1) Current status; 2) New proposal by Dr. Speers – Vice Chair Rietow explained that, as previously discussed, it had been decided that Dr. Speers and Chair Woods would work together on the “Small Business Bill of Rights.” Dr. Speers distributed a draft “Bill for an Act” that describes ten basic “Bill of Rights.” Much discussion ensued and some changes were recommended; i.e., the title to # 6., “Right to have representation paid by prevailing party,” and language in # 10., “Right to complete fairly for procurement funds,” regarding the “set aside” percentage. The definition of “small business” was also still being discussed.

Dr. Speers indicated that Representative Colleen Meyer, House Minority Floor Leader, has agreed to introduce the proposed Bill, while Senator Rosalyn Baker will introduce the Bill in the Senate. Chair Woods indicated that when she receives the separate bills from Senator Baker’s office, she would forward them on to Dr. Speers for review for additional verbiage. Ms. Walker recommended that the Board decide on what “rights” they are willing and not willing to give up, should modifications be made to the Bill. The Board was unanimously in favor of the “Bill of Rights” presented by Dr. Speers.

## **VI. NEW BUSINESS:**

- A. Review and discussion of HAR Chapter 10-3 “Native Rehabilitation Program” (DHHL) – The Board discussed the rules and supported the amendments.
- B. Review and discussion of Kauai Department of Water Proposed Rule changes regarding “Pass Through of Private Charges” – The rule will be deferred until next board meeting when Ms. Chang has had time to research the proposed changes.
- C. Review and discussion of HAR Chapter 18-236D, “Estate and Transfer Tax” (DoTax) – Ms. Shea reported no significant changes in the rules. With the exception of one vote in opposition, the Board was in support of those changes.
- D. Review and discussion of HAR Chapter 18-235-1.08, “Residence Status, Factors Considered” (DoTax) – Ms. Shea and Mr. Smyth explained the proposed rule and its effects. The Board determined that there is no small business impact as the bill deals with military personnel and their families.

- E. Review and discussion of draft rules, "Deposit Beverage Container Recycling" (DOH) – Mr. Steven Chang, gave an overview of Act 176, "Solid Waste Management; Deposit Beverage Container Law," enacted in June 2002. Mr. Chang discussed at length the proposed rule, which is intended to increase participation and recycling rates for specified deposit beverage containers, provide a connection between manufacturing decisions and recycling program management, and reduce litter. Implementation began on July 1, 2002, and is expected to be completed no later than January 1, 2005. The amount of deposit is 5 cents per container. Distributors pay a beverage container fee of 1 to 1.5 cents per deposit container into a special state fund on a monthly basis. Distributors will charge retailers the deposit on each container purchased by the retailer, and the retailer, in turn, charges the consumer the deposit fee. Mr. Chang further explained some of the unique features of the program and discussed the flow charts that were distributed in the handouts. Discussion with questions and answers ensued.

Overall, the Board was not in support of the proposed rules in their current form. The Board recommended that while it is in its present drafting stage, that DOH take into consideration the small "mom and pop" companies. It was further recommended that these companies, along with business-related associations be approached to determine the exact impact the rules will have. Specific items to be addressed in the rules should clearly include accommodations to businesses regarding collection processes, penalties, and procedures for general excise tax exemption of the deposit fee.

- F. Review and discussion of HAR Chapter 11-219, "Parking for Persons with Disabilities" (DOH) – The rule will be deferred until next board meeting when further research has been performed.
- G. Discussion and overview of The Chamber of Commerce of Hawaii's, "Creating an Invigorating Business Economy" Convention held on November 13, 2003 – Mr. Zinn indicated that besides himself, Ms. Palcovich and Messrs. MacDowell and Smyth attended the Chamber's "Convention." Mr. Smyth indicated that the major topics discussed were workers' compensation, government affairs, and health care insurance issues.
- H. Review and discussion of draft SBRRB Annual Report – including Chapter 201M-7 HRS Administrative Rule Review Report – Chair Woods asked that each member review the draft SBRRB Annual Report and notify Ms. Palcovich of any changes. It was also requested that all rules reviewed regarding RFA 201M-7 be submitted to Ms. Palcovich by December 24<sup>th</sup>.

## **VII. REPORTS FROM COMMITTEES**

- A. Update from the Legislative Subcommittee on revision of the Administrative Directive on Draft Rule Processing – Nothing was reported at this time.

**VIII. REPORTS FROM THE CHAIR** - A motion was made by Mr. Rietow, seconded by Ms. Woods, and passed unanimously to go into Executive Session under the provisions of Section 92-5, Exceptions, Subsection (a), Paragraph (4). The board went into Executive Session at 2:15 p.m. The Executive Session ended at 2:32 p.m.

**IX. REPORTS AND UPDATES FROM THE BOARD MEMBERS** – Nothing was reported at this time.

**X. POLICIES AND PROCEDURES** - Nothing was reported at this time.

**XI. ANNOUNCEMENTS** – Nothing was reported at this time.

**XII. NEXT BOARD MEETING** – Tuesday, January 13, 2004, at 11:00 a.m. – No. 1 Capitol District Building, 250 South Hotel Street, 4<sup>th</sup> Floor, Conference Room 410.

**XIII. ADJOURNMENT:** Chair Woods adjourned the meeting at 2:36 p.m.