

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

January 11, 2005

No. 1 Capitol Building 250 South Hotel Street ROOM 410

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

MEMBERS PRESENT:

- Brian Zinn
- George Handgis
- Jeanette Chang
- Phyllis Shea
- Ed MacDowell
- Donald Dymond
- Michael Yee
- Noelani Whittington

ABSENT MEMBERS:

- Lynne Woods
- Dorvin Leis

STAFF:

DBEDT

Dori Palcovich
Tom Smyth
Sonda Mullen

Office of the Attorney General

Margaret Ahn

GUESTS:

Thomas Brandt, Economic Development Specialist, Department of Business, Economic Development & Tourism (DBEDT)
Jo Ann Uchida, Complaints and Enforcement Officer, Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs (DCCA)
Bobbi Lum-Mew, Administrator, Regulated Industries Complaints Office, DCCA
Paul Yuen, Supervising Attorney, Insurance Division, DCCA
Laurence Lau, Deputy Director, Environmental Health Administration, Department of Health (DOH)
Thomas Arizumi, Chief, Environmental Management Division, DOH
Lane Otsu, Planner, Solid & Hazardous Waste Branch, DOH
Jennifer Tosaki, Recycling Coordinator, Solid & Hazardous Waste Branch, DOH
Bette Tatum, Hawaii State Director, NFIB
Beverly Harbin, President, Employers Chamber of Commerce
James Hardway, Assistant to the Director, Department of Labor & Industrial Relations (DLIR)
Tim Lyons, Executive Vice President, Hawaii Business League

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the December 8, 2004 meeting were approved and amended as presented.

III. **PUBIC COMMENTARY** – Tom Brandt – presentation on DBEDT's Enterprise Zones – Mr. Brandt, Economic Development Specialist, DBEDT, discussed the State Enterprise Zone Program and distributed several handouts outlining eligible businesses, benefits to eligible businesses, participation guidelines, and applications. Mr. Brandt requested feedback from the members on the distributed material.

IV. OLD BUSINESS

- A. Discussion of Legislative items, including "Small Business Bill of Rights," and "Regulatory Flexibility Act" bills – and legislative advocating strategy – Ms. Bette Tatum, Hawaii State Director, NFIB, complimented the Board on the hard work that was put forth into composing the "Small Business Bill of Rights," and although the proposal offers nothing new in terms of new rules, NFIB will support it. She suggested that the Board approach Senator Will Esparo, the new Economic Development Chair as well as Senator Carol Fukunaga. Vice Chair Zinn recommended that the changes to the "Small Business Bill of Rights" and "Regulatory Flexibility Act" bills be approved as presented; the Board unanimously agreed. Legislative advocating strategy will be deferred until next month.

- B. Review and discussion of post public hearing statement HAR Chapter 16-171, "Miscellaneous Insurance Rules" (DCCA) – Mr. Paul Yuen, Supervising Attorney, Insurance Division, DCCA, indicated that testimony for and against the rules were presented at the public hearing; however, no changes have been made to the rules since they were first presented to the Board. It is noted that the rules have been submitted to the Governor for adoption, which took effect on January 1, 2005.
- C. Review and discussion of HAR Chapter 12-10, "Workers' Compensation Law" (DLIR) – Mr. James Hardway, Assistant to the Director, DLIR, indicated that after discussions with Ms. Chang, modifications to the rules were made and are reflected on the agency's website. He explained the proposed changes are intended to streamline and clarify the current processes. Ms. Chang indicated that the modifications include clarifying the hearings, mediation and arbitration processes as well as the timing as to when a hearing may be cancelled. Ms. Chang recommended that the Board accept the changes and amendments to the "Workers' Compensation Package" as amended, and that the rules proceed to public hearing with adequate public notice. The Board unanimously agreed. The public hearing is scheduled for February 7th.
- D. Review and discussion of HAR Chapter 12-14, "Workers' Compensation Rehabilitation" (DLIR) – Mr. James Hardway explained that these rules encompass what is required and what is needed to be followed by the law. Ms. Chang recommended that the Board accept the changes and amendments to the "Workers' Compensation Package" as amended, and that the rules proceed to public hearing with adequate public notice. The Board unanimously agreed. The public hearing is scheduled for February 7th.
- E. Review and discussion of HAR chapter 12-15, "Workers' Compensation Medical Fee Schedule" (DLIR) – Mr. Hardway explained that these changes relate to the medical treatment guidelines and includes emergency medical services, which is exempt from the medical fee schedule. Ms. Chang discussed specific concerns and comments regarding the rules. Ms. Chang recommended that the Board accept the changes and amendments to the "Workers' Compensation Package" as amended, and that the rules proceed to public hearing with adequate public notice. The Board unanimously agreed. The public hearing is scheduled for February 7th.
- F. Administrative rules reviewed by DBEDT – Ms. Shea explained that changes to the Department of Human Services rule, HAR Chapter 17-656.1 and 17-656.2, "Other Family Assistance Programs," relate to a Federal grant program where companies hire people back into the workforce that were previously on the welfare program; other changes to the rules are housekeeping measures. She indicated that this is a good program that benefits businesses. As the rules have already been reviewed by DBEDT, her comments were advisory only.

V. NEW BUSINESS

- A. Review and discussion of HAR Chapter 11-282, "Deposit Beverage Container Recycling Program" - (DOH) – Mr. Laurence Lau, Deputy Director, Environmental Health Administration, DOH, explained that the previous proposal to these rules were approved by the Board in April 2004. Those rules, which were not given a formal public hearing, were put into State statute by the legislature, and will be expiring at the end of March 2005. The current proposed changes to these rules provide for the following: inspecting of the facilities' records, clarifying that the label identifying the Hawaii refund value should not be on a removable cap, codifying that the department is imposing conditions on certified redemption centers, and requiring the modification as well as the revocation of a certificate. Other changes relate to the definitions of "mixed spirits" and "mixed wine." A series of questions and answers ensued.

Mr. Tim Lyons, local representative for Anheuser Busch and also Executive Vice President, Hawaii Business League, requested that the Board keep close reins on these rules for "clarification purposes," and reiterated that the rules were never subject to a formal public hearing. Mr. Dymond recommended that the rules be supported to go to public hearing, and that the Board be notified of the date, time and outcome of the public hearing, with Ms. Chang adding that all those businesses impacted by the rule changes be notified of the public hearing in order to give them an opportunity to voice their opinions. The Board unanimously agreed.

- B. Review and discussion of HAR Chapter 16-181, "Relating to Motor Vehicle Express Enforcement (Lemon Law)" (DCCA) – Ms. Jo Ann Uchida, Complaints and Enforcement Officer, Regulated

Industries Complaint Office, DCCA, discussed the proposed revisions to the rules. Mr. Handgis indicated that he did not see any small business impact and recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.

- C. Review and discussion of HAR Chapter 18-235, "Certification Rules" (DoTax) – Ms. Shea explained that the rule changes are for the high-technology businesses, and include a comfort ruling and a secondary certification procedure. She noted that the rules were necessary, and any small business impact would be minimal, if at all. To Ms. Shea's knowledge, these rules became effective January 1, 2005. Ms. Chang indicated that if the Board is going to be an effective body, it should voice its concern and explain to the respective agencies the appropriate rule review procedure; and further, if agencies have any concerns, they should let the Board know. Mr. Handgis recommended that the minutes reflect that the Board was not given the opportunity to review the rules in the proper sequence, that the rules have already been adopted, that the proper procedure regarding this rule was not followed, and that the Board was unable to make any recommendations. A representative from DoTax will be extended an invitation to attend the next Board meeting to discuss these rules.

- VI. **REPORT FROM THE CHAIR** – Vice Chair Zinn updated the Board on the issues presented by Ms. Dale Evans, President, Charley's Taxi, indicating that the Public Utilities Commission responded to the Board, but has not yet heard back from the City and County of Honolulu. It was agreed that it is within the City's domain to review the related rules.

Vice Chair Zinn indicated that DBEDT staff worked very hard to complete the two annual reports on time, "Final Review of Agency Submitted Administrative Rules in Compliance with Section 201M-7 HRS," and "Annual Summary and Review of Administrative Rules requested by Small Business." Mr. Handgis recommended that the Board approve the two reports with amended changes; the Board unanimously agreed.

- VII. **REPORT FROM COMMITTEES** – Nothing was reported.

- VIII. **REPORT AND UPDATE FROM BOARD MEMBERS** – Ms. Whittington indicated that the increase proposed in the Department of Agriculture's HAR Chapter 4-157, "Rules governing irrigation water service to consumers of Hawaii State Department of agriculture irrigation systems," will be postponed for another year.

Mr. Handgis attended a public hearing at the West Hawaii Fisheries in Kona regarding the Department of Land and Natural Resources HAR Chapter 13-37, "Old Kona Airport Marine Life Conservation District, Hawaii," HAR Chapter 13-58, "Kona Coast, Hawaii," and HAR Chapter 13-60.3, "West Hawaii Regional Fisheries Management Area, Hawaii." Everyone in attendance was in support of the rules with the exception of one tropical fish collector.

Mr. Dymond requested that Ms. Palcovich attend the January 25, 2005 public hearing on the City and County of Honolulu Liquor Commissions' rule changes as he will be out of town. He questioned the legality of the requirement for the personal guarantee of the licensee insuring that the fines will be paid.

- X. **POLICES AND PROCEDURES** – Review and update on Policies and Procedures Manual – Vice Chair Zinn indicated that Chair Woods and Ms. Palcovich worked very hard at getting the Board's policy and procedures outline prepared. No changes, comments or suggestions were made. He indicated that this will help the members with understanding when an item can go on the agenda. Mr. Handgis recommended that the Board approve the proposed standard operating guidelines and procedures; the Board unanimously agreed.
- XI. **ANNOUNCEMENTS** – Nothing reported.
- XII. **NEXT MEETING:** Tuesday, February 8, 2005 at 10:30 a.m.; No. 1 Capitol District Building, Room 410.
- XIII. **ADJOURNMENT:** Vice Chair Zinn adjourned the meeting at 1:20 p.m.