

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

June 8, 2004

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

**CALL TO ORDER:** Chair Woods called the meeting to order at 10:30 a.m., with a quorum present.

#### MEMBERS PRESENT:

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

#### ABSENT MEMBERS:

Edward MacDowell

#### STAFF:

##### DBEDT:

Dori Palcovich  
Shawn Pelley

##### Office of the Attorney General

John Chang

**GUESTS:** Lawrence Lau, Deputy Director, Environmental Health Administration, Department of Health (DOH)  
Tom Rack, Hearing Officer, DOH  
Valerie Yin, Planner, DOH  
Peggy Umetsu, Motor Vehicle Safety Office, Department of Transportation (DOT)  
Sean Hao, Business Reporter, *The Honolulu Advertiser*

#### WORKING LUNCH AS THE MEETING PROGRESSED

**II. APPROVAL OF MINUTES:** Minutes of the May 11, 2004 meeting were approved as presented.

**III. PUBLIC COMMENTARY:** Public commentary is included with each agenda topic discussed.

#### IV. OLD BUSINESS:

- A. Review and discussion of post public hearing statement HAR Chapter 11-219, "Parking for Persons with Disabilities" (DOH)** – Dr. Speers indicated that the Board reviewed this rule a few months ago; at that time, there were no major concerns as it was determined that the level of the business impact was minimal. He recommended that the Board not object to these post public hearing rules; the Board unanimously agreed.

Mr. Zinn noted that based on the attendance level of the public hearing for these rules, it appears that, in general, the departments are not getting the word out that public hearings are being scheduled for rules. He suggested that the Board require that a list of affected businesses be included with the small business checklist when submitted to the Board prior to public hearing. Further, if the submitting agency does not comply with this requirement, the rules will be held up for forwarding to public hearing. Chair Woods questioned the legal requirements for public hearings regarding administrative rules. Deputy Attorney Chang will research this and report back to the Board at the next meeting.

Ms. Chang and Dr. Speers recommended that prior to approving any Hawaii administrative rules for public hearing, that the Board require confirmation that all effective parties have been notified and informed of the rule changes and that the Board be sent a list of those businesses. Further, Dr. Speers recommended that the Board's operating policy should reflect this procedure; i.e., that

the Board will refuse to review any rules for public hearing until the agency provides evidence that it made an effort to identify all those affected parties. The Board unanimously agreed. .

- B. Update, review and discussion of post public hearing statement of Kauai Department of Water proposed rules regarding "Facilities Reserve Charges" – Ms. Chang stated that these rules would help the Department of Water receive funds for plant construction. She recommended that the rules be supported for adoption; the Board unanimously agreed.
- C. Review and discussion of post public hearing statement of Kauai Department of Water's "Administrative Rule Amendment to Defer Various Departmental Water Rate Increases from July 1, 2004 to July 1, 2005" – In Mr. MacDowell's absence, Chair Woods reported that these post public hearing rules did not impact small business. Ms. Chang concurred and also reported that the Department of Water was only postponing the water rate increases for one year; after that, the rate increase will be readdressed. She asked to be placed on the mailing list for upcoming Kauai Department of Water board meetings. Ms. Chang recommended that the rules be supported as presented; the Board unanimously agreed.
- D. Review and discussion of proposed HAR Chapter 11-1, "Rules of Practice and Procedure" (DOH) – Mr. Tom Rack, Hearing Officer, DOH, indicated there had been some confusion regarding the purpose of the rules based on conversations at the past two board meetings. He stated that the rules are designed specifically for "the practice and procedure for contested case hearings." It is the agency's responsibility to provide a mechanism for people to challenge the action of the department by requesting a contested case hearing. Thus, the rules are needed to update the procedures in today's setting. He stated that the agency held several focus groups comprised of small business members to discuss the rules. Vice Chair Rietow voiced concern with the "field citation" section and questioned its relativity to the rules. DOH Deputy Director Larry Lau addressed questions regarding field citations, waiver penalty violations and warnings, the "Small Business Bill of Rights," and the enforcement of the rules. He also stated that the agency will follow the minimum legal requirements for the public hearing announcement process and will try to reach as many small businesses and groups as possible regarding the hearing. Mr. Rack will inform the agency's communication division to assist in the publication of the rules. Dr. Speers recommended that that rules proceed to public hearing as presented; Mr. Zinn further recommended that all those affected parties be notified of the public hearing via mail. The Board unanimously agreed.
- E. Update and discussion of business responses to proposed HAR Chapter 11-98.1, "Special Treatment Facilities" (DOH) – Dr. Speers explained that he and Ms. Palcovich coordinated and recently met with a "focus group" comprised of a number of small businesses impacted by these rules. The group discussed the proposed rules and the heavy regulations enforced by the agency. The individuals agreed to put together an economic impact summary analysis to determine the costs involved with the newly proposed rules. This analysis would entail the increased capital improvement costs, increased annual operating expenses and potential lost revenue, if any. To date, the Board received one response. Upon receipt of more forms, the information will be compiled and presented to the Board with recommendations. Dr. Speers, whose term as a board member will expire June 30, 2004, will continue to attend board meetings as an effective business owner. He will give public testimony to the Board while interfacing with the board's discussion group leaders, and will, in particular, follow these rules and related issues. These rules will be deferred until next month, at which time, Dr. Speers will be invited to provide comments and recommendations.
- F. Review and discussion of proposed HAR Chapter 19-139, "Driver Education Program Requirements" (DOT) – Ms. Peggy Umetsu from DOT's Motor Vehicle Safety Office, stated that these rules were extracted from the existing driver's licensing rule chapter, and represent no other changes. Mr. Zinn recommended that the rules proceed to public hearing as they have no adverse affect on small business. The Board unanimously agreed.
- G. Review and discussion of proposed HAR Chapter 19-122, "Rules Relating to the Examination of Applicants for Issuance and Renewal of Motor Vehicle Driver's Licenses and Instruction Permits" (DOT) – Ms. Umetsu indicated that in addition to formatting changes, six material changes were made to the rules. These include allowing a person without a social security number to qualify for

a driver's license, allowing diabetic drivers on insulin to qualify for an intra-state medical waiver for a commercial driver's license, allowing that anyone requiring a commercial driver's license to prove that they are a Hawaii resident, and allowing commercial drivers to haul or transport hazardous materials in compliance with the new Patriot Act. Mr. Zinn indicated that the rules have no adverse affect on small business and recommended that the rules proceed to public hearing. The Board unanimously agreed.

- H. Update and review of proposed HAR Chapter 11-100.1, "Adult Residential Care Homes" (DOH) – Chair Woods indicated that since the last Board meeting, a memorandum was submitted to the Governor with a list of specific changes to the rules, prior to the adoption of the rules. Mr. Sean Hao, Business Reporter, *The Honolulu Advertiser*, requested a copy of the memorandum. Deputy Attorney General Chang stated that because it is considered a "public record," the Board would be required to provide Mr. Hao a copy if the Board receives a formal request, and also, that the Governor's office will be notified. Dr. Speers indicated that the Governor should be informed that this rule is just one issue from DOH that the Board is very concerned with; thus, it can be viewed as a "test case" as to whether the Board's recommendations are viewed as meaningful.
- I. Update and discussion of "stack inspection exemptions" by the Clean Air Branch, DOH – Vice Chair Rietow reported that a number of businesses were cited and given hefty fines by DOH's Clean Air Branch; however, DOH and many of the business owners negotiated reduced fines to a more affordable level. Ms. Walker indicated that the Board reviewed the Clean Air Branch rules a few years ago, when at that time, DOH stated that the agency would not be instituting any fees because they were, at that time, over-funded, and waived the fees for a period of two years. Vice Chair Rietow recommended that the Board review and discuss these rules, "Ambient Air Quality Standards" and "Air Pollution Control" at the next Board meeting.
- J. Follow-up of "Conflicts of Interest" – The Hawaii Ethics Commission is going to be providing Chair Woods with a writing on Conflicts of Interest associated with the Board, and expects to have it at the July Board meeting.
- K. Review of Administrative Rules by DBEDT in fiscal year 2004, to date – Members reviewed the listing of rules reviewed; no action was taken.

## V. NEW BUSINESS:

- A. Discussion of administrative assistance for Board – Chair Woods reported that the Board will be without a DBEDT assistant and requested suggestions from the members on how to streamline its processes. Suggestions were made, including sending the agenda packet via "PDF" folder, and emailing a draft agenda to the members after Chair Woods' approval.
- B. Review and discussion of proposed HAR Chapter 17-1737, Subtitle 12, Med-QUEST, "Scope and Contents of the Fee for Service Medical Assistance Program" (DHS) – Dr. Speers indicated that the Board would need time to work on these rules as it is unclear why and for what purposes some of the definitions were changed; i.e., the "social worker." He suggested that the State Social Workers Association be contacted to alert them of the changes. Ms. Walker stated that adding a section for nurse midwives was very positive, but she recommended that the licensing of existing social workers be grandfathered into the rules. The rules will be deferred until July, at which time, a representative from DHS will be invited to attend the meeting to discuss the rule changes.

Chair Woods recommended that for every new rule submitted to the Board, the respective agency would be invited to attend a board meeting to discuss the rule changes and to respond to questions. The Board unanimously agreed.

- C. Review and discussion of HB 2136 HD1 SD 1 CD 1 "Relating to Procurement" – Much discussion ensued regarding this Bill and how certain attached agencies would be statutorily exempt from the procurement code process. Chair Woods recommended that

the Board relay to the Governor that it is not in favor of the Bill and advise her not to sign it. The Board unanimously agreed.

- D. Review and discussion of proposed rules and regulations of the Liquor Control Commission of the County of Kauai – Ms. Chang recommended that a representative from the Kauai Liquor Control Commission be invited to the next board meeting to discuss these rules with the Board. Deferred until the July board meeting.

**VI. REPORTS FROM COMMITTEES** – Nothing was reported.

**VII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES:**

1. HAR Chapter 4-60, “Milk Control Rules” (DOA) – Mr. Zinn stated that, according to the rules, if someone starts up a new dairy, that it would be nearly impossible to break through the requirements as one can only start a dairy by buying someone else’s dairy. Vice Chair Rietow indicated that these rules were quite complex and recommended that they be sent to some of the major milk producers for review. The Board unanimously agreed.
2. HAR Chapter 8-27, “Transportation of Students” (DOE) – Ms. Walker stated that school buses offer no safety precautions. Ms. Edwards recommended that the Governor be informed that safety precautions; i.e., safety belts, be included in these rules. She further recommended that there be a sliding scale regarding the amount that is reimbursed per mile; for example, for people transporting students back and forth to foster homes. The Board unanimously concurred.
3. HAR Chapter 8-39, “Use of School Building, Facilities, and Grounds” (DOE) – Ms. Edwards found no negative impact on small business and recommended that the Board support these rules. The Board unanimously concurred.
4. HAR Chapter 8-101, “Licensing of Private Trade, Vocational, and Technical Schools” (DOE) – Chair Woods recommended that commentary on these rules be postponed as there is substantial business impact, and that there are several people in the “industry” that she would like to discuss the rules with. Chair Woods and Ms. Edwards will work together on these rules. A DOE representative will be invited to attend the next Board meeting.

**VIII. REPORTS FROM THE CHAIR** –

1. Update of Potential Workshops for State Agencies regarding Chapter 201M, Administrative Rule Review, Small Business Impact Statement, etc. – Chair Woods reiterated from the last meeting that she and Ms. Palcovich are currently working together to schedule a workshop on administrative rule review processes for both County and State agencies, and will present a draft to the Board for input and approval.
2. Update of Administrative Directive 99-02 – Chair Woods requested that the Board members review the Administrative Directive (AD) 99-02 since it is one of the Board’s governing documents. Members were asked to bring recommendations for modifications to the AD to the next board meeting so they can be submitted to the Governor’s focus group.

**IX. REPORT AND UPDATE FROM BOARD MEMBERS** – Mr. Zinn announced that Attorney Richard Peterson, who represents Mr. Mark Willman, owner of Planet Ocean Watersports, indicated that Mr. Willman was attempting to get back into business. They believe that zoning issues will not present obstacles in preventing them from operating because of “public access.”

**X. POLICIES AND PROCEDURES:** Exit Interviews - Three of the members who are leaving the Board effective June 30, 2004, presented their personal reflections on being part of the Board. Dr. Speers distributed an outline of his own personal “existential issues,” and voiced his opinion as to the overall lack of authority the Board has. Vice Chair Rietow stated that the implementation of the rules is an important factor, but not necessarily the rule itself. Ms. Walker indicated that she has been a member since the inception of the Small Business Regulatory Task Force, and that the volunteer work of the Board is very important.

**XI. ANNOUNCEMENTS:** Chair Woods announced that member Al Inoue has resigned. Next month the Board will vote for the Chair and Vice Chair seats; Chair Woods encouraged members to send Ms. Palcovich potential nominations via email.

The Board unanimously agreed to set up an “investigative planning subcommittee” to plan and review upcoming meetings and discuss ongoing rule review. The subcommittee consists of Chair Lynne Woods, Brian Zinn, Phyllis Shea, Joyce Edwards, and Dorvin Leis.

**XII. NEXT MEETING:** Tuesday, July 13, 2004 at 10:30 a.m.; No. 1 Capitol District Building, Room 410.

**XIII. ADJOURNMENT:** Chair Woods adjourned the meeting at 1:35 p.m.