

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

March 9, 2004

No. 1 CAPITOL DISTRICT BUILDING ROOM 410

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

MEMBERS PRESENT:

- David Rietow
- Edward MacDowell
- Brian Zinn
- Dorvin Leis
- Robert Speers, Ph.D.
- Al Inoue
- Jeanette Chang
- Denise Walker
- Phyllis Shea
- Joyce Edwards

ABSENT MEMBERS:

- Lynne Woods

STAFF:

DBEDT:

Thomas Smyth
Dori Palcovich
Shawn Pelley

Office of the Attorney General

John Chang

GUESTS: Dan Davidson, Deputy Director, Department of Land and Natural Resources (DLNR)
Mary Lou Kobayoshi, Administrator, Office of Planning, Department of Business, Economic Development and Tourism (DBEDT)
Susan E. Miller, Planning & Policy, Office of Planning, DBEDT
Ed Tschupp, Manager and Chief Engineer, Kauai Department of Water
Bev Harbin, Small Business Advocate, Small Business Advocacy Center
John Lovstedt, Motor Vehicle Safety Office, Department of Transportation (DOT)
Tom Hester, M.D., Chief, Adult Mental Health Division, Department of Health (DOH)
John Jansen, Service Record Evaluation & Reports Division, DOH

WORKING LUNCH AS THE MEETING PROGRESSED

II. APPROVAL OF MINUTES: Minutes of the February 9, 2004 meeting were approved.

III. PUBLIC COMMENTARY: Ms. Bev Harbin, Business Advocate of the Hawaii Chamber of Commerce, indicated that she was speaking as a "small business owner," as she has owned several gas stations for many years. Ms. Harbin was on the original Task Force that established the Small Business Regulatory Review Board and has strong convictions about the rule-making process and the Board's role in that process. She is concerned with a number of existing DOT rules; in particular, Chapters 19-132, "Approval and Revocation of Approval for the Display, Sale, and Use of Vehicle Equipment," 19-133.2, "Periodic Inspection of Vehicles," and 19-133.5, "Suspension or Revocation of an Official Inspection Station or Inspectors Certification." She indicated that the mandated requirements are "micro-managed," and should be reviewed in their entirety to understand the true impact on small business. She suggested that the rules be revisited and modified to ease the requirement burden on small business owners.

IV. OLD BUSINESS:

- A.** Review and discussion of post public hearing statement on HAR Chapter 16-36, "Practice and Procedure of the Business Registration Division" (DCCA) – It was reported that prior to public hearing, Chair Woods had recommended supporting these rules due to the positive impact on

small business. Since public hearing, no further changes have been made to the rules. It was recommended that the rules be supported for adoption. The Board unanimously agreed.

- B. Re-review and discussion of post public hearing statement on HAR Chapter 13-232-43, "Construction or Improvements of Structures" (DLNR) – Mr. Davidson, Deputy Director, DLNR, provided a summary of the rule requirements and changes. Mr. Zinn reported that the rules and respective small business impact statement were extremely clear as compared to when they were previously reviewed, and recommended that the Board support those changes; the Board concurred.
- C. Review and discussion of post public hearing statement on Kauai Department of Water's Proposed Rule Changes regarding "Pass Through of Private Charges" – Mr. MacDowell explained that the rules were positive for the Island of Kauai and recommended that the Board support the post public hearing rules for adoption. The Board unanimously agreed.
- D. Review and discussion of post public hearing statement on HAR Chapter 16-77, "Contractors" (DCCA) – Vice Chair Rietow indicated that these post public hearing rules do not negatively impact small business and recommended supporting the rules for adoption. The Board unanimously agreed.
- E. Review and discussion of HAR Chapter 19-133.2, "Periodic Inspection of Vehicles" (DOT) – Mr. John Lovstedt from DOT's Motor Vehicle Safety Office discussed the positive impact of the rule modifications and answered several questions posed by the members. Ms. Walker indicated that the rule changes, which are administrative in nature, have little or no effect on small business and recommended that the Board support the changes. The Board unanimously agreed.
- F. Update and follow-up on Wai'Opae Tidepools Marine Life Conservation Districts" (DLNR) – Board members were given a copy of a study entitled, "Guidance for Best Management Practices for Caribbean Coastal Tourism." Ms. Walker explained that DLNR would serve itself well if it produced a similar study for Hawaii. Mr. Zinn updated the Board on Wai'Opae Tidepools, indicating that Planet Ocean Watersports recently shut down, and that the Governor's Office was provided with a memorandum from Director Liu outlining the facts relating to discrepancies in internal processes as well as DLNR's lack of compliance and due process for Planet Ocean Watersports.
- G. Update of Legislative Items – Including "Small Business Bill of Rights," and Correspondence, dated January 5, 2004, from Congressman Ed Case – Mr. Smyth updated the Board on the status of several Administrative Bills including those relating to the disaster loan fund, health care, video conferencing, and administrative procedure. Also discussed was the status of the "Small Business Bill of Rights;" three bills were introduced with only Senator Baker's version of the bill being heard. Mr. Smyth recommended several alternatives to improve the bill. He further indicated that because it is such a broad bill with so many different chapters, it would be difficult to reach the necessary objectives without statutory changes. Dr. Speers acknowledged Mr. Smyth's comments and indicated that he wasn't quite sure what direction the Board should take since the bill was given an effective date of July 1, 2020. Vice Chair Rietow expressed that the change in the effective date of the bill was a strong statement by the Senate Committee that heard it.

Correspondence from Congressman Ed Case was deferred until April's board meeting.

- H. Discussion of Board Member Agency Assignments/Voting of New Board Members – The Board voted to submit the following names to Governor Lingle for consideration as nominees to the Board – Messrs. James O'Keefe, Warren Kunimoto, D. J. Halcro, and Brad Coles. The Board also voted to recommend Dorvin Leis for reappointment.
- I. Update of presentations to Small Business Groups – Nothing was reported.

V. NEW BUSINESS:

- A.** Review and discussion of Kauai Department of Water proposed rule changes regarding “Facilities Reserve Charge” – Mr. Tschupp, Manager and Chief Engineer, Kauai Department of Water, presented a summary of the Kauai Department of Water’s revisions for its Facilities Reserve Charge, and discussed its effects and reasoning for the increased proposal. He reviewed and discussed the credit components that are involved, the elements of the source and distribution fee, and gave examples of pipeline costs. The effective date for the increase is July 1, 2004. Mr. MacDowell noted that the proposed increases are needed, and recommended supporting the rules. The Board unanimously agreed.
- B.** Review and discussion of Kauai Department of Water “Proposed Deferment of Water Rate Increase from July 1, 2004 to July 1, 2005, Charged to Department Consumers” – Mr. MacDowell indicated that the Kauai Department of Water’s request to defer the water rate increase one year will not impact small business. He recommended supporting the proposal and the Board unanimously agreed.
- C.** Review and discussion of HAR Chapter 11-172, “Certification and Reimbursement of Mental Health Rehabilitation Services Providers,” (DOH) – Dr. Hestor, Chief of DOH’s Adult Mental Health Division, indicated that the purpose of the rules is to establish a certification process for a new Medicaid option for Hawaii mental health providers. He explained that the program would help manage the Medicare waiver and the certification process which will allow for additional funds coming to Hawaii. He informed the Board that a meeting is scheduled on Friday, March 12, 2004, with Department of Human Services (DHS) in order to discuss DHS’s involvement and concerns with the program. Dr. Hestor meets with approximately 20 mental health providers each month to discuss and obtain input. Notification of the public hearing for these proposed rules will be sent to the providers and will also be in DOH’s newsletter. He stated that the goal of the program is to expand services and obtain federal monies. Dr. Speers recommended that the Board support that the proposed rules with reservations. He further recommended that notice of public hearing be provided to all those small businesses affected by the rules and that prior to public hearing, the Board would submit a list of specific concerns and proposed recommendations to Dr. Hestor.

VI. REPORTS FROM COMMITTEES – Nothing was reported.

VII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES

1. HAR Chapter 13-40, “Rules Governing the Public Use of the Land Survey Division Maps, Descriptions, and Records, and Schedule of Fees for Services, Maps, and other Record Data” (DAGS) – Mr. Inoue recommended a full review of the rules as they are currently cumbersome and the information does not flow well.
2. HAR Chapter 12-5, “Hawaii Employment Security” (DLIR) – Mr. MacDowell supported the rules indicating they were not burdensome to small business.
3. HAR Chapter 19-132, “Approval and Revocation of Approval for the Display, Sale, and Use of Vehicle Equipment” (DOT) – Ms. Walker recommended a full review of the rules as they are outdated and do not serve the public well.
4. HAR Chapter 19-133.2, “Periodic Inspection of Vehicles” (DOT) – Ms. Harbin, small business owner, noted that these rules are administered by DOT, but handled by the Department of Finance, City and County of Honolulu. Ms. Harbin outlined the mandated safety test procedures, indicating that they were extremely micro-managed. She suggested that the rule allow the business owner, who is ultimately liable, to be in charge of the safety check processes within the stations. Ms. Walker recommended a full review of the rules as they are outdated and do not serve the public well.

5. Chapter 19-133.5, "Suspension or Revocation of an Official Inspection Station or Inspectors Certification" (DOT) – Ms. Walker recommended a full review of the rules as they are outdated and do not serve the public well.

VIII. REPORTS FROM THE CHAIR – Nothing was reported.

IX. REPORTS AND UPDATES FROM BOARD MEMBERS - Nothing was reported.

X. POLICIES AND PROCEDURES: Nothing was reported.

XI. ANNOUNCEMENTS: Nothing was reported.

XII. NEXT MEETING: Tuesday, April 13, 2004; No. 1 Capitol District Building, Room 410.

XIII. ADJOURNMENT: Vice Chair Rietow adjourned the meeting at 2:43 p.m.