

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

November 8, 2005

No. 1 Capitol Building 250 South Hotel Street Room 410

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:40 a.m., with a quorum present.

#### MEMBERS PRESENT:

- Lynne Woods
- Michael Yee
- Jeanette C. Otsuka
- Dorvin Leis
- Donald Dymond
- Sharon Pang

#### ABSENT MEMBERS:

- Ed MacDowell
- George Handgis

**STAFF:** DBEDT Office of the Attorney General  
Dori Palcovich Margaret Ahn  
Thomas Smyth  
Carol Reeves

**GUESTS:** Jeri Kahana, Manager, Commodities Branch, Department of Agriculture (DOA)  
Randolph Teruya, Manager, Agricultural Resource Management Division, DOA  
Glenn Okamoto, Civil Engineer, Agricultural Resource Management Division, DOA  
Robert Boesch, Program Manager, Pesticides Branch, DOA  
John Lovstedt, Manager, Motor Vehicle Safety Office, Department of Transportation (DOT)  
Denis Lau, Chief Program Manager, Department of Health (DOH)  
Patrick Felling, Environmental Ombudsman, Compliance Assistance Office, DOH  
Craig Gima, Reporter, Honolulu Star Bulletin  
Alan Matsunami, Program Specialist, Department of Human Services (DHS)  
Pankaj Bhanot, Employment Child Care Administrator, Benefit, Employment and Support Services Division, DHS  
Julie Morita, Program Specialist, Benefit, Employment and Support Services Division, DHS  
Brandon Masuoka, Reporter, The Honolulu Advertiser  
Tim Lyons, President, The Legislative Center

#### WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the October 4, 2005 regular and strategic planning session meeting were approved as presented.

III. **PUBLIC TESTIMONY** - Public commentary is included with each agenda topic discussed.

#### IV. OLD BUSINESS

- A. Review and discussion of post public hearing statement of "Proposed Amendments to Part 4 of the Administrative Rules of the Kauai County Department of Water, to modify Ten (10) Categories of Fees Charged to the Water Department's Consumers" – Ms. Chang reiterated that the Board approved the variegated fee schedule over a 5-year period. She recommended that the rules proceed for adoption; the Board unanimously agreed.
- B. Review and discussion of post public hearing statement of HAR Chapter 16-181, "Relating to Motor Vehicle Express Warranty Enforcement (Lemon Law)" (DCCA) – Deferred until the December meeting.
- C. Review and discussion of post public hearing statement of HAR Chapter 19-132, "Approval and Revocation of Approval for the Display, Sale, and Use of Vehicle Equipment," and HAR Chapter 19-133.2, "Periodic Inspection of Vehicles" (DOT) – Mr. John Lovstedt, Manager, Motor Vehicle Safety Office, indicated that HAR Chapter 19-132 received no input at the public hearing and so the Governor signed off on these rules and have since been adopted. For HAR Chapter 19-

133.2, one testifier, a station owner, made several suggestions, and Mr. Lovstedt conveyed those changes that were incorporated into the rules. He indicated that this program is virtually self-supporting. Mr. Dymond recommended that the State re-consider its position on vehicle safety inspections by presenting how the program is beneficial to the small business community and justification as to why or why not this program should continue; the Board unanimously agreed.

In a second motion, Chair Woods recommended that the Board support these rules to proceed to the Governor for adoption; two members opposed. She stated that the memorandum to the Governor will convey that the rules, which have both positive and negative impact, are recommended for approval on a temporary basis until such time that legislation may be introduced to repeal the law that governs the rules, as there is concern by the Board that this safety program should cease to continue. It was further stated that the Board would testify to the legislature to repeal the law. Mr. Smyth offered to provide the members with statistics on the various states that have similar safety inspections programs.

Review and discussion of post public hearing statement of HAR Chapter 17-1705, "Medical Assistance Recovery," HAR Chapter 17-1721, "Medical Assistance to Aged, Blind, or Disabled Individuals," HAR Chapter 17-1722, "Special Medical Assistance Coverages and Programs," HAR Chapter 17-1737, "Scope and Contents of the Fee for Service Medical Assistance Program," and HAR Chapter 17-1744, "Coverage of Medicare Premiums" (DHS) – Mr. Alan Matsunami, Program Specialist, Med-QUEST Division, explained that the proposed rules reflect the Medicare Modernization Act. At the recent public hearing, there were no testifiers and no comments submitted, largely because the changes reflect federal regulation. Ms. Pang stated that the overall industry, particularly those people near the end of life, is confused about the proposed premium drug plan. Mr. Matsunami mentioned that private entities, such as Long's, would be holding public forums to educate the public about these rules, though no public forums are currently planned by DHS. After much discussion, Ms. Pang recommended that the rules be accepted for adoption as Medicare will no longer be carrying the drug program; the Board unanimously agreed.

Chair Woods indicated that this is a hugely confusing issue and there is concern with regard to those independent entities that will be impacted by the changes. She requested that the State's Board of Pharmacy be sent communication encouraging their continued support regarding the rule amendments.

- D. Review and discussion of post public hearing statements of the adoption of HAR Chapter 4-157, "Rules Governing Irrigation Water Service to Consumers of Hawaii State Department of Agriculture Irrigation Systems," and repeal of HAR Chapters 4-150, 4-151, 4-152, and 4-156 (DOA) – Mr. Randolph Teruya, Manager at the Agricultural Resource Management Division, explained that the rule changes will consolidate all five existing irrigation systems, and allow the department to address temporary and new irrigation. The changes will add language that provides for some flexibility in the future to assist individual systems where the DOA will be allowed to accept grants from third parties for specific purposes and specific irrigation systems. These grants will be applied directly to the main irrigation system, which will help in reducing and minimizing any rate increases scheduled for that system. Changes will also allow DOA to address temporary or new irrigation systems under construction; whereas in the past, based on statute, the DOA could not work on these systems if they were in an interim stage. In addition, the DOA is not allowed to manage and operate irrigation systems unless irrigation districts and rules are established. Mr. Lies recommended that these rules proceed for adoption; the Board unanimously agreed. Mr. Smyth indicated that the post public hearing statement was an example of a "good" statement and would be a good example for other agencies.
- E. Review and discussion of post public hearing statement of HAR Chapter 4-41, "Minimum Export Grades" (DOA) – Ms. Jeri Kahana, Manager at the Commodities Branch, indicated that there was no formal written or oral testimony at the recent public hearings. and stated that the rules reflect longstanding changes that were needed. Chair Woods recommended that the rules proceed for adoption; the Board unanimously agreed. Chair Woods noted that she was concerned that there was no public hearing on Maui.

- F. Review of October 5, 2005 Memorandum from Lieutenant Governor James R. Aiona, Jr., regarding "Posting of Proposed Rule Changes on Office of Lieutenant Governor's Website" – The memorandum was reviewed by the members; no action was taken. Mr. Smyth indicated that agencies are currently updating their websites and each agency will have a page for "proposed rules."
- G. Review and discussion of September 26, 2005 memorandum from Chiyome Fukino, M.D., Department of Health, regarding "Revisions to the Department of Health (DOH) to Public Hearing Comments on HAR Chapter 11-55, "Water Pollution Control" – Members reviewed the memorandum and several comments and questions were addressed by Mr. Yee, to Mr. Patrick Felling, Environmental Ombudsman, Compliance Assistance Office, and Denis Lau, Chief Program Manager, including issues of the Farm Bureau. No action was taken nor required as these rules have recently been adopted.
- H. Voting of Board Officer – Chair Woods thanked the members for attending today's meeting and noted that because the Board is short three members, the issue of quorum is heightened each month. The Board reviewed the personal history sheet of Mr. Richard Schnitzler, president and owner of Hamakua Macadamia Nut Company, located on the Big Island. Mr. Schnitzler was highly recommended by past board member, Ms. Noelani Whittington. Members voted unanimously to recommend that Mr. Schnitzler be submitted to Governor Lingle as a nomination to this Board. Chair Woods requested that Ms. Palcovich put a "rush" on this nomination.

Chair Woods indicated that she would stay on as a member until major issues within the Board have been resolved, and until then, she will leave her nomination open for Chairperson. As no other nominations were submitted, Ms. Chang recommended that Chair Woods be re-nominated as the Board Chair; the Board unanimously agreed.

## V. **NEW BUSINESS**

- A. Review and discussion of HAR Chapter 3-70, "Rule of the Stadium Authority" (DAGS) – Mr. Leis indicated that the rule amendments were in line with what should occur, as alcohol should not be permitted in the parking lot because it can create potential problems. Ms. Chang indicated that the rule changes do not have an impact on small businesses because the alcohol is already bought and brought into the Aloha Stadium parking lot before the sporting event begins. Mr. Smyth indicated that the company that controls the stadium vendors is very large in size and non-profit companies generally do the vending inside the stadium. As it was determined that, as presented, there appeared to be no direct small business impact, Chair Woods recommended that the rules proceed for public hearing; the Board unanimously agreed.
- B. Review and discussion of HAR Chapter 4-66, "Pesticides" (DOA) – Mr. Robert Boesch, Program Manager of the Pesticides Branch, summarized the proposed rule changes, explaining that the department governs the use and distribution of pesticides in Hawaii to minimize any unreasonable, adverse effects to the environment and to enable important pesticide uses. This is done through the licensing of pesticide products, including the monitoring of restrictive uses. Pesticides are defined as any substances that control pests; so virtually everyone uses pesticides, which ranges from insect and bear repellants to hospital disinfectants. The amendments include increasing the licensing fees, reducing the list of restricted pesticides, and revising the coloration of pesticides.

Mr. Tim Lyons, President, of the Legislative Center, stated that the association has participated in working on these amendments during the past four years. The biggest concern in developing the rules was to mitigate the fees, which everyone involved currently appears to be comfortable with. He further stated that the pest control industry has two scopes of licensing, licensing through Department of Commerce and Consumer Affairs as pest control operators and individuals, and licensing through DOA, which is related to the restrictive uses of pesticides, and must be obtained through certification. The Hawaii Pest Control Association represents 96% of every pest control operator in the State; this is the highest penetration of any single association in America. Overall, Mr. Lyons strongly recommends the final draft of these rules. Mr. Yee indicated that two individuals from the Farm Bureau sat on the Pest Control Advisory Committee and that they joined the consensus and concurred with the proposed rule package. Chair Woods recommended that the Board support the rules to proceed to public

hearing; the Board unanimously agreed. Chair Woods requested that DOA send out notification of the public hearing to any business or association that has anything to do pest control, including the State's Farm Bureau as well as any other farm bureau; the Board unanimously agreed.

- C. Review and discussion of HAR Chapter 17-798.1 "Child Care Services" (DHS) – Mr. Pankaj Bhanot, Employment Child Care Administrator of the Benefit, Employment and Support Services Division, indicated that the proposed amendments include a new rate structure for child care subsidy payments, as there is a need to bring the rates in line with the overall increased cost of childcare; the established rates were determined to adequately serve the large populations being served. The program focuses on pre-school age children to largely low-income families in need of child care subsidies, but also focuses on after and before school care. The program creates incentives for the childcare community in early childcare services and education for implementing and improving standards of the licensed facilities and professional development of the childcare services staff.

Ms. Julie Morita, Program Specialist of the Benefit, Employment and Support Services Division, indicated that although there was a childcare licensing program that focused on the safety and health aspects of the childcare facilities, there was no interest in the program's curriculum. So, through the incentives, DHS is not only improving upon the safety and health issues, but will also move to make an impact on the curriculum that the programs provide. Overall, the Board members were very pleased to see that the standards of childcare are being improved upon. After much discussion, Ms. Chang recommended that the proposed rules proceed to public hearing; the Board unanimously agreed.

**VI. UP-DATE OF OCTOBER 4, 2005 STRATEGIC PLANNING SESSION:**

**A. Review of Strategic Planning Session Report**

Members reviewed the strategic planning session report. Chair Woods would like to keep the communication open among the members and to have monthly updates and conversations in order to monitor the Board's goals in keeping line with their final strategic product.

**B. Review of Board's Power Point Presentation**

Chair Woods indicated that the power point presentation was developed two years ago; in reviewing the presentation, much discussion and many changes were suggested. Ms. Chang mentioned that she has already begun setting up appointments with small business organizations; Ms. Chang will assist DBEDT staff in the final product of the presentation.

**C. Update of "Small Business Bill of Rights"**

During the planning session, it was decided that the Board would turn the Small Business Bill of Rights into a brochure rather than a legislature bill. In order to create this document, Ms. Ahn suggested that an investigative task force be established. Chair Woods recommended that a task force be created to produce a Small Business Bill of Rights brochure that will be generated from the proposed Bill of Rights with members including Donald Dymond, Dorvin Leis, Sharon Pang, and Lynne Woods; the Board unanimously approved.

**D. Discussion of publicity – Howard Dicus' Television Show**

Chair Woods mentioned that she was extended an invitation to be on Howard Dicus' television show, "PBN Friday," to discuss the Small Business Regulatory Review Board. Taping is scheduled for November 23<sup>rd</sup> with the actual show airing on cable channel 10 on November 25<sup>th</sup>.

- VII. REPORT FROM THE CHAIR** – Chair Woods discussed the contents of a letter to Dr. Chiyome Fukino, Director of DOH, regarding the proposed administrative rules for Adult Residential Care Homes. Chair Woods was very pleased that the recommendations made were those submitted by the Board. She mentioned that Ms. Pang has concerns over the licensing provisions and will make sure that those concerns will be passed on as well. Chair Woods requested that Ms. Palcovich send a memorandum to former Board member, Dr. Robert Speers, who assisted in bringing the changes to these rules, to let him know that his efforts have turned into a positive outcome.

Mr. Lyons also conveyed his pleasure with the recommendations made by the Governor's office and indicated that a representative from DOH suggested that a meeting be held to discuss these

proposed rules; Chair Woods requested that Mr. Lyons keep the Board informed of those discussions.

- VIII. REPORT FROM COMMITTEES** – Nothing was reported.
- IX. REPORT AND UPDATE FROM BOARD MEMBERS** – Nothing was reported.
- X. ANNOUNCEMENTS** – Mr. Smyth discussed and distributed information from the Economic Momentum Commission, announcing that there is a public hearing scheduled for November 16<sup>th</sup> at 6:00 p.m.; Chair Woods requested that Mr. Smyth report back to the Board next month with a follow-up on the hearing.
- XI. NEXT MEETING** - Tuesday, December 6, 2005, No. 1 Capitol Building, Room 410.
- XII. ADJOURNMENT** - Chair Woods adjourned the meeting at 2:05 p.m.