

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

November 9, 2004

No. 1 Capitol Building

250 South Hotel Street ROOM 410

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:31 a.m., with a quorum present.

MEMBERS PRESENT:

- Lynne Woods
- Brian Zinn
- Joyce Edwards
- Jeanette Chang
- Edward MacDowell
- Phyllis Shea
- Donald Dymond
- Michael Yee
- Noelani Whittington
- George Handgis

ABSENT MEMBERS:

- Dorvin Leis

STAFF:

DBEDT

Dori Palcovich

Tom Smyth

Sonda Mullen

Office of the Attorney General

Margaret Ahn

GUESTS: Stacy Thorlakson, Vice President, Maui Chamber of Commerce
Dennis Kamimura, Licensing Administrator, Division of Motor Vehicle, City and County of Honolulu
Patrick Felling, MS, MPA, Environmental Ombudsman, Department of Health (DOH)
Harold Yee, Program Manager, Waste Water Branch, DOH
Charlene Tamanaha, Executive Officer, Pest Control Board, Department of Commerce and Consumer (DCCA)
James Hardway, Assistant to Director, Department of Labor & Industrial Relations (DLIR)
Bev Harbin, President, Employer Chamber of Commerce
Mary Lou Kobayashi, Administrator, Office of Planning, Department of Business, Economic Development & Tourism (DBEDT)
Mary Alice Evans, Planner, Office of Planning, DBEDT

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the October 12, 2004 meeting were approved as presented.

III. **INTRODUCTION OF NEW BOARD MEMBERS:** Chair Woods welcomed the newest Board members, Ms. Noelani Whittington and Mr. George Handgis, who discussed their backgrounds. Both members are from the Big Island and bring welcomed expertise to the Board.

IV. **COMMENTARY** – Public commentary is included with each agenda topic discussed.

V. OLD BUSINESS

- A. Re-review and discussion of proposed HAR 11-62, "Wastewater Systems" (DOH) – Mr. Yee referred to the October 16, 2004 memorandum to the Board from Ms. Linda L. Smith, Governor's Senior Policy Advisor, requesting that the Board re-examine these administrative rules. Mr. Yee explained that he spoke with Ms. Smith who was unaware that the Board had sent a final memorandum to DOH supporting the rules for adoption. Mr. Yee indicated that these rules are being brought in line with the Federal rules, and concurs with the Board's initial recommendation. Vice Chair Zinn mentioned that re-reviewing the rules were unusual and not the most efficient use of the Board's time. Chair Woods will speak with Ms. Smith regarding this unusual process. Mr. Patrick Felling, Environmental Ombudsman and Mr. Harold Yee, Program Manager of the Wastewater Branch, DOH, were surprised that the Governor's Office was requesting a second

review of the rules. Chair Woods recommended that the Board re-communicate with the Governor's Office of the Board's approval of the rule changes, and to address in the correspondence that the six specific concerns outlined in Ms. Smith's memorandum are necessary. The Board unanimously agreed.

- B. Discussion and follow-up of taxi transportation issues** – Chair Woods discussed the history of the many issues presented to the Board by Ms. Dale Evans, President of Charley's Taxi. Mr. Dennis Kamimura, Licensing Administrator, Division of Motor Vehicle, City and County of Honolulu, explained that most of Ms. Evans' concerns revolve around City and County ordinances, which will be addressed in a new bill, Bill 77, 2004 "Relating to Taxicabs," and will be presented to the County's Transportation Committee on Wednesday, November 10th. The bill includes airport service charges, rate increases, duplicative license fees, terms of licenses (two years versus one-year terms), and housekeeping measures. Also discussed were Ms. Evan's requests for a "flat rate," and removal of the taxi dome light. After much discussion to clarify the issues, Chair Woods presented the Board with several options to address Ms. Evans' issues. Ms. Shea recommended that the Board send letters to both the City and County of Honolulu and the PUC acknowledging that they have received specific requests from Ms. Evans and to take appropriate action on those requests; the Board unanimously concurred.
- C. Discussion of Legislative items; i.e., Regulatory Flexibility Act bill and Small Business Bill of Rights bill, etc.** – Chair Woods discussed the history of the Small Business Bill of Rights for the benefit of the new members. Mr. Smyth explained that this bill is part of the "Administration's bill package," and that DBEDT Director Ted Liu briefed the Governor on all of the Agency's proposed bills, of which the Governor preliminarily concurred. He also explained that this bill might become a Sessions Law rather than a Hawaii Revised Statute. He further explained that the "Bill of Rights" is structured as a "government to business" relationship. Vice Chair Zinn recommended that the Small Business Bill of Rights bill be included in DBEDT's Administration package, and the Board unanimously agreed.

Mr. Smyth also reviewed the draft Regulatory Flexibility Act (RFA) bill and explained the rationale for each proposed change. Much discussion ensued and some additional changes were made. Chair Woods recommended that the Board approve the RFA bill with suggested changes; the Board unanimously approved. Mr. Smyth additionally discussed other bills that are expected to be in the Administration bill package.

VI. NEW BUSINESS

- A. Review and discussion of proposed HAR 16-94, "Pest Control Operators" (DCCA)** – Ms. Charlene Tamanaha, Executive Officer, Pest Control Board, explained that the major rule changes relate to licensing, insurance and related processes, and training qualifications for the certification of field representatives. Ms. Chang recommended that the Board support the rules as presented, that the rules proceed to public hearing, and that the Pest Control Board report back to the Board with any commentary reported by the constituents at the public hearing. It was further recommended by Vice Chair Zinn that the Agency send out notice of the public hearing to all the Hawaii licensed pest control operators; the Board unanimously approved both recommendations.
- B. Review and discussion of proposed HAR 12-10, "Workers' Compensation Law" (DLIR)** - Mr. James Hardway, Assistant to Director, DLIR, presented the Board with a discussion of the specific changes to the rules. Questions and answers ensued to clarify the proposed rules. In order to come up with specific recommendations, the Board voted to establish an investigative task force, consisting of Chair Woods and Ms. Chang. The rules will be deferred until the December Board meeting when recommendations will be presented.
- C. Review and discussion of proposed HAR 12-14, "Workers' Compensation Rehabilitation" (DLIR)** – Mr. James Hardway, Assistant to Director, DLIR, presented the Board members with a discussion of the specific changes to the rules. See Section VI. B., for outcome of discussion.

- D. Review and discussion of proposed HAR 12-15, "Workers' Compensation Medical Fee Schedule" (DLIR) – Mr. James Hardway, Assistant to Director, DLIR, presented the Board members with a discussion of the specific changes to the rules. See Section VI. B., for outcome of discussion.
- E. Review and discussion of proposed new rules "Governing the Brownfield's Clean-up Revolving Loan Fund" (DBEDT) – Ms. Mary Lou Kobayashi, Administrator, and Ms. Mary Alice Evans, Planner with the Office of Planning, explained that the rules reflect how the Office of Planning will establish and administer the Brownfields Clean-up Revolving Loan Fund. This is a \$1.8 million loan fund, provided by the Environmental Protection Agency (EPA); the program's participation is strictly voluntary and the small business impact is expected to be positive. Borrowers are required to show that they are able to repay as agreed and each loan is customized to each borrower. The program is for relatively low risk properties and sites that may have contamination. Chair Woods recommended that the Board support the proposed rules to proceed to public hearing and that the Agency notify as many of the appropriate parties as possible that will be impacted by these rules of the public hearing. Further, it was recommended that after public hearing the Board be provided with a list of those parties that were contacted of the hearing as well as the written testimony from the public hearing.
- F. Discussion of voting of new Board Member(s) / Discussion Leader Assignments – Ms. Shea discussed her personal experience and background with Mr. Isaac Choy and highly recommended that Mr. Isaac Choy's name be submitted to the Governor as a new Board nominee; the Board unanimously agreed.

The following "discussion leader" assignments were approved – Ms. Whittington – Department of Agriculture; Mr. Handgis – Department of the Attorney General, Department of Commerce & Consumer Affairs, Department of Human Resources Development, and back-up for the Division of Boating and Ocean Recreation, Department of Land and Natural Resources; Ms. Chang – Department of Labor and Industrial Relations, and back-up for Department of Commerce & Consumer Affairs; and Ms. Edwards will be removed from Department of Education.

VII. REPORTS FROM COMMITTEES – Nothing reported.

VIII. REVIEW OF THE FOLLOWING EXISTING ADMINISTRATIVE RULES – Review and discussion of "existing rules" not yet reviewed by the Board - Chair Woods recommended that pursuant to Section 201M-7, the Board indicate to the Governor that all the rules within the PUC and DLIR's Hawaii Occupational Safety and Health Division have a full review performed and forwarded back to the Board with specific impact.

A. HAR Chapter 8-101, "Licensing of Private Trade, vocation, and Technical Schools" (DOE) - These rules have been deferred until the next Board meeting.

- IX. **REPORT FROM THE CHAIR** – Chair Woods and Mr. Smyth discussed information submitted to the Board by Ms. Linda L. Smith, Senior Policy Advisor, from the Small Business Administration – Office of Advocacy, entitled "Department of Justice Seeks Common on Applying New ADA Accessibility Requirements to Existing Buildings." No action by the Board will be taken at the present time.
- X. **REPORT AND UPDATE FROM BOARD MEMBERS** – Nothing was reported.
- XI. **POLICES AND PROCEDURES** – Ms. Chang recommended that Mr. Handgis replace Ms. Edwards as the Board's Second Vice Chairperson; the Board unanimously agreed. Chair Woods indicated that she and Ms. Palcovich are in the process of establishing policies and procedures for the Board.
- XII. **ANNOUNCEMENTS** – Nothing reported.
- XIII. **NEXT MEETING:** Tuesday, December 7, 2004 at 10:30 a.m.; No. 1 Capitol District Building, Room 410.
- XIV. **ADJOURNMENT:** Chair Woods adjourned the meeting at 2:00 p.m.