

## Small Business Regulatory Review Board

---

### MINUTES OF REGULAR MEETING

November 12, 2003

No. 1 CAPITOL DISTRICT BUILDING ROOM 436

**CALL TO ORDER:** Vice Chair Rietow called the meeting to order at 11:07 a.m., with a quorum present.

#### MEMBERS PRESENT:

- David Rietow
- Dorvin Leis
- Al Inoue
- Phyllis Shea
- Brian Zinn
- Edward MacDowell
- Robert Speers, Ph.D.

#### ABSENT MEMBERS:

- Lynne Woods
- Denise Walker

#### STAFF:

DBEDT:

Thomas Smyth  
Dori Palcovich  
Shawn Pelley

Office of the Attorney General

Junie Hayashi

**GUESTS:** Holly McEldowney, Acting Administrator, Historic Preservation Division, Department of Land and Natural Resources (DLNR)  
Dierdre Mamiya, Administrator, Land Division, DLNR

#### WORKING LUNCH AS THE MEETING PROGRESSED

**II. APPROVAL OF MINUTES:** Minutes of the October 14, 2003 meeting were approved as amended.

**III. PUBLIC COMMENTARY:** Ms. Holly McEldowney, Acting Administrator, Historic Preservation Division of DLNR, answered questions, and discussed proposed changes to HAR Chapters 13-275 to 284, "Historic Preservation Program." See discussion in IV. Old Business.

Ms. Dierdre Mamiya, Administrator, Land Division of DLNR, discussed the administrative rule changes to HAR Chapter 13-221, "Unencumbered Public Lands." See discussion in IV. Old Business.

#### IV. OLD BUSINESS:

- A.** Update and discussion of the Petition under Section 201M-6, Hawaii Revised Statutes, regarding DLNR rules, "Wai'Opae Tidepools Marine Life Conservation District" – A response memo was sent to DLNR and another has been drafted to be sent to the Governor. Vice Chair Rietow indicated that the no further action would be taken by the Board.
- B.** Review and discussion of post public hearing statements on HAR Chapter 13-275 to 13-284, "Historic Preservation Program" (DLNR) – Ms. McEldowney explained that the rules are lengthy and complex, as they have not been changed in 17 years. Vice Chair Rietow had concerns related to how the rules "dovetail" into other permitting processes. Mr. Zinn conveyed that the small business impact statement indicated that the rules would not cause a direct economic burden on small business, but in the memorandum to the Governor, it is stated that the rules would, in fact, impact small business in a significant manner. Within the discussion, it was determined that the impact would not have a significant burden, and that the conflicting comments were due to different administrations reviewing the rules. Messrs. Inoue and McDowell discussed concerns with timeline issues. In response, Mr. Smyth discussed Act 164/1998 that mandates that an "automatic request approval" be established, and land use issues. The Board unanimously re-approved and supported the post public hearing rules.

- C. Review and discussion of HAR Chapter 13-221, "Unencumbered Public Lands" (DLNR) – Ms. Mamiya clarified that several small businesses were approached regarding the rule changes, with only two responding back to DLNR. Mr. Zinn indicated that it appeared from the information provided by DLNR that the number of new permits that would be used is unknown, and so the exact impact and specific businesses affected are also unknown. Mr. Mamiya responded that DLNR anecdotally knows what businesses may be impacted, but is unsure of the total numbers involved. The Board felt that the rule changes were important and justified, however, the limitation of the identification, administration, and enforcement of the permitting process was a concern. Vice Chair Rietow also discussed his concerns over the enforcement of the permitting process and questioned DLNR's requirement for general comprehensive liability insurance. DLNR is well aware of the insurance difficulties and is "open" to accepted limitations. The appeal process and Chapter 91 were also discussed. After much discussion, the Board supported the proposed rule changes, with reservations, due to the inability to specifically identify all the businesses that will be impacted by the rules. Other areas of concern are the permitting process itself and the ability to accurately enforce that process.
- D. Update of Legislative Items – Mr. Smyth reminded the Board of the Workers' Compensation bill that is in the Governor's Administration Package. The newest version of the Regulatory Flexibility Act (RFA) bill, dated October 27, 2003, which is in draft stage, may not be included in the Administration Package. It was pointed out that another version of the RFA bill, proposed last year, is still in the legislature.
- E. DBEDT Review of Administrative Rules in fiscal year 2004 – The Board reviewed the rules that have been analyzed by DBEDT so far this year, and were satisfied with the changes made to the form.
- F. Update and discussion on compliance with Chapter 201M-7 HRS, "Periodic Review, Evaluation" – Vice Chair Rietow discussed the proposed content of the Administrative Rule Review Report. He mentioned that Ms. Palcovich began drafting the Board's Annual Report, which will incorporate the Administrative Rule Review Report. There was much discussion about the best way to tackle this task, and comply with 201M-7. Vice Chair Rietow suggested that members' review the rules submitted by their respective agencies, analyze the rules in general, and disregard any rules that are federal mandates or serve a good purpose, which may simplify the analysis. In each member's area of oversight, it was suggested that at least one to three rules, identified as important, should be focused on, with remaining rules to be analyzed and submitted in next year's annual report. In order for each member to be consistent in their approach, an evaluation form will be drafted by Ms. Palcovich and Chair Woods, and emailed to the members to use when reviewing the rules.
- G. Update on Presentations to Small Business Groups – Ms. Palcovich explained that this line item would be on the agenda each month so that members can provide the Board with an update on the small business organizations that were approached, in order to keep an ongoing tally. The information will then be included in the annual report. This month, there are no presentations to report.

**V. NEW BUSINESS:**

- A. Review and discussion of HAR Chapter 11-113, "Substance Abuse Testing by Laboratories" (DOH) – Dr. Speers indicated that the rule changes are mainly technical, relating to urinalyses and other types of drug testing, and are primarily to ensure the reliability of the testing and to put safeguards in place. A list of qualified laboratories that would be impacted by the rules was compiled. The list included two Hawaii organizations, but they do not fit the RFA's definition of small business. Dr. Speers indicated that the rules do not appear to have any significant small business impact, and recommended support of the rules as presented, to which the Board concurred.
- B. Review and discussion of HAR Chapter 12-58.2, "Safety and Health Professional" (DLIR) – Mr. MacDowell indicated that the proposed rules will update reporting requirements and are mostly housekeeping measures, which are as good or better than the Federal mandates. The rules update the State language to be in line with the Federal language. He recommended supporting the rule changes and the Board unanimously concurred.

- C. Review and discussion of HAR Chapter 12-52.1-2, "Occupational Injury and Illness Recording and Reporting Requirements" (DLIR) – Mr. MacDowell indicated that the proposed rule changes are housekeeping measures that will bring the State in line with Federal guidelines. The rules are intended to promote and make it easier for employers to fulfill injury, reporting requirements. He recommended supporting the rule changes, and the Board unanimously concurred.
- D. Review and discussion of HAR Chapter 12-50, etc., "General, Legal, and Administrative Provisions" (DLIR) – Mr. MacDowell indicated that the rule changes are primarily housekeeping that deal with language and occupational safety and health standards, mostly on reporting requirements, but also signage, exit routes, emergency action plans, and fire prevention plans. Most of the updates are identical to Occupational Safety and Health Act program standards, and it is not expected to alter or change the internal or external relationships in the Department of Labor. There is no negative impact on business. Mr. MacDowell recommended supporting the rule changes and the Board unanimously concurred.
- E. Review and discussion of HAR Chapter 16-89, "Nurses" (DCCA) – Ms. Palcovich indicated that Chair Woods reviewed the rules and found no apparent business impact. Vice Chair Rietow found the rules to be related to educational qualifications. Dr. Speers recommended support of the rules and the Board unanimously concurred.

## **VI. REPORTS FROM COMMITTEES**

- A. Update from the Legislative Subcommittee regarding the "Small Business Bill of Rights" – Senator Rosalyn Baker is reviewing draft bills concerning the "Small Business Bill of Rights," presented at the last Board meeting. Dr. Speers commented that he did not think it was a good concept to dismantle the "Bill of Rights" into several different concepts, and while he could understand the advantage of doing it this way, he felt that it would be best to maintain the "Bill of Rights" as one entity. He further commented that there would most likely be significant opposition to the Bill, and because of this, felt that the Board needed to market and sell the Bill's concept. Additionally, he felt the Bill might lose most of the "idea" if it was broken into individual bills, and that it would be more successful if maintained as one vehicle that the Board can lobby for, and perhaps add to, in the future. Mr. Zinn indicated that it may take several years to pass this concept, and suggested that the Board submit a package in multiple forms.

It was also discussed that fundamentally there is a constitutional issue limiting the number of items in one bill or under one title. Vice Chair Rietow suggested that Dr. Speers and Chair Woods work together on the "Bill of Rights," have Ms. Hayashi review it as it relates to the context of the law, and present it at the next board meeting. Mr. Smyth mentioned that the third week of January 2004 is the latest that the State legislators can introduce bills. He suggested that a short form bill for "Small Business Bill of Rights" be introduced initially, and used as a "shell."

- B. Update from the Subcommittee on the Revision of the Administrative Directive on Draft Rule Processing – Nothing was reported at this time.

## **VII. REPORTS FROM THE CHAIR** - Nothing was reported at this time.

## **VIII. REPORTS AND UPDATES FROM THE BOARD MEMBERS**

Mr. Zinn mentioned that he met with Peter Young, Chair of the Board of Land and Natural Resources, and explained to him concerns with the small business impact statements prepared by DLNR; he recommended that Mr. Young research this within the agency. He also suggested that the board members meet with their respective agencies and explain how an impact statement should be prepared. Dr. Speers questioned whether the people preparing the small business impact statements are the right people doing them, suggesting that the small business owners should prepare the impact statements; this would reflect exactly how the rules might impact the businesses. He further suggested that as part of the rule drafting stage, each discussion leader should identify and contact the affected small business organizations.

## **IX. POLICIES AND PROCEDURES**

Nothing was reported at this time.

- X. ANNOUNCEMENTS** – Mr. Smyth announced that the Board was referred to in an article written by Mark Coleman, entitled “First Sunday,” in the November 2, 2003, *Star Bulletin* regarding an interview with Dale Evans about taxicab and limousine issues. Ms. Evans indicated that she was working with the Small Business Regulatory Review Board to help straighten out some of those issues.
- XI. NEXT BOARD MEETING** – Tuesday, January 13, 2003, at 11:00 a.m. – No. 1 Capitol District Building, 250 South Hotel Street, 4<sup>th</sup> Floor, Conference Room 410.
- XII. ADJOURNMENT:** Vice Chair Rietow adjourned the meeting at 1:25 p.m.