

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 12, 2004

No. 1 Capitol Building 250 South Hotel Street ROOM 410

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

MEMBERS PRESENT:

- Lynne Woods
- Brian Zinn
- Phyllis Shea
- Edward MacDowell
- Donald Dymond
- Michael Yee

ABSENT MEMBERS:

- Jeanette Otsuka Chang
- Joyce Edwards
- Dorvin Leis

STAFF:

DBEDT

Thomas Smyth
Dori Palcovich
Sonda Mullen

Office of the Attorney General

Margaret Ahn

GUESTS: Dan Mollway, Executive Director & General Counsel, Hawaii State Ethics Commission
 Linda Smith, Senior Policy Advisor, Governor's Office
 Paul Yuen, Supervising Attorney, Insurance Division, Department Commerce and Consumer Affairs (DCCA)
 Brooke Kane, Administrative Director, Public Utilities Commission (PUC)
 Kris Nakagawa, Chief Legal Counsel, PUC
 Paul Nakayama, Research Assistant, PUC
 Dale Evans, President, Charley's Taxi
 Darci Evans, Assistant General Manger, Charley's Taxi
 Mark Recktenwald, Director, DCCA
 Brysen Poulton, Educational Specialist, Division of Consumer Advocacy, DCCA
 Brian Kau, Administrator, Agricultural Resource Management Division, Department of Agriculture (DOA)
 Robert Lum, Engineer, Agricultural Resource Management Division (DOA)
 Randall Teruya, Branch Chief, Agricultural Asset Management Branch, DOA
 Tim Lyons, Executive Vice President, Hawaii Business League

WORKING LUNCH AS THE MEETING PROGRESSED

II. **APPROVAL OF MINUTES:** Minutes of the September 27, 2004 meeting were approved as presented.

III. PRESENTATIONS

- Mr. Dan Mollway, Executive Director & General Counsel, Hawaii State Ethics Commission distributed Chapter 84 "Standards of Conduct," and the "Hawaii State Ethics Commission Ethics Checklist" to the members. Mr. Mollway discussed conflicts of interest law and how it applied to the Board in particular, and conflicts that may relate to the individual members specifically. He explained that a member needs to recuse themselves if the Board is taking action specifically on the member's company. He further stated that if one is sitting on a Board for a particular qualification, they are generally not required to recuse themselves.
- Chair Woods, speaking on Ms. Linda Smith's behalf as she was unable to remain at the meeting, indicated that the Senior Policy Advisor provided Chair Woods with a list of administrative rules that potentially may be reviewed in 2005. In addition, Governor Lingle will be reviewing the three names submitted to her as potential Board members within the week. Chair Woods relayed that she thanked Ms. Smith for her support.

IV. OLD BUSINESS

- A. Review and discussion of taxi transportation issues – “Petition for Relief from Excessive Regulations,” from Dale Evans, President, Charley’s Taxi, dated September 16, 2004** – Ms. Dale Evans explained that her petition represents five specific issues and concerns with rules and regulations that significantly impact her taxi company. She explained that she does not want to be governed by PUC; Ms. Evans also petitioned PUC. Among other privileges, she is requesting to freely advertise, to remove the dome light from the taxi cabs, to design and create their own dome lights, to write on the sides of the taxis the services provided by the taxi company, and to offer flat rate pricing. Much discussion ensued to clarify Ms. Evans’ concerns.

Mr. Kris Nakagawa, Chief Legal Counsel, explained that PUC regulates common carriers of passengers and has a specific exemption for taxicab operators; under Chapters 46 and 271, PUC does not regulate taxicab operators. Mr. Brysen Poulton, Educational Specialist, Department of the Consumer Advocate, indicated that while he did not have any comments, he will relay the Board’s discussion to the Executive Director, and if the Director wishes, he will submit comments to the Board. Chair Woods recommended that a representative from the City and County of Honolulu be extended an invitation to attend the November Board meeting to discuss the rules that govern taxicabs; the Board unanimously agreed.

- B. Review and discussion of proposed HAR Chapter 100.1, “Adult Residential Care Homes” (DOH)** – Chair Woods discussed the history of these rules and the support given to the Board through the Governor’s Office; she explained that Mr. Tim Lyons represents a number of adult residential care home businesses and has been working closely with the Board on these rules. A memorandum was sent to the Governor a few months ago outlining the proposed rule changes and the specific concerns of each. Subsequently, the Board received a response from the Governor’s office with the changes made by DOH; Mr. Lyons proceeded through each item and presented reasons why or why not the changes should be accepted. Because the Governor’s office would like a response from the Board by the end of November, Vice Chair Zinn recommended that Ms. Palcovich draft a memorandum to Governor Lingle and Ms. Linda Smith readdressing the issues with an explanation for each; the Board unanimously agreed.
- C. Discussion of the proposed Regulatory Flexibility Act (RFA) bill** – Mr. Smyth distributed a copy of Chapter 201M and discussed at length the various proposed changes that he, on behalf of the Board, will be proposing and submitting for DBEDT’s Administration’s Bill package.
- D. Administrative Rules reviewed by DBEDT** – The Board reviewed the rules. Vice Chair Zinn questioned the number of employees per employer that are subject to the law regarding HAR Chapter 12-27, “The Administration and Enforcement of the Family Leave Law.” Ms. Palcovich will relay this information to Chair Woods and Vice Chair Zinn.

V. NEW BUSINESS:

- A. Review and discussion of proposed HAR 16-171 “Miscellaneous Insurance Rules” (DCCA)** – Mr. Paul Yuen, Supervising Attorney for the Insurance Division of DCCA provided a brief overview of the purpose of the rule changes. Chair Woods conveyed concerns of member Ms. Jeanette Chang to Mr. Yuen, of which, Mr. Yuen provided an explanation to each concern. Vice Chair Zinn questioned the agency’s public hearing process. Chair Woods relayed to the Board that Ms. Chang recommended that the rules proceed to public hearing; the Board unanimously agreed.
- B. Review and discussion of proposed HAR 4-157, “Rules Governing Irrigation Water Service of Consumers of Hawaii State Department of Agriculture Irrigation Systems: (DOA)** – Mr. Brian Kau, Administrator and Mr. Robert Lum, Engineer, of DOA, discussed the purpose and justification of the rule amendments. Approximately 500 farmers will be impacted by these rule changes. Vice Chair Zinn recommended that the proposed rules proceed to public hearing, and that all the “customers” be notified directly by letter of the upcoming public hearing so they have a chance to represent themselves in this matter as the rules will have a tremendous impact. The Board unanimously agreed.

VI. REPORTS FROM COMMITTEES – On behalf of the “Bill of Rights” investigative subcommittee, Vice Chair Zinn reported on the “Small Business Bill of Rights.” He explained that it was the committee’s intent to take existing rights under the law, number them 1 through 18, extract some of the rights that were used in the previous “Bill of Rights,” and run it by several sources to take out any controversial issues, thereby resulting in “Rights” that should be easily adaptable. Chair Woods explained that it is the intent of the committee that the “Bill of Rights” bill be part of DBEDT’s administrative package barring unforeseen issues. Mr. MacDowell recommended that the Board move the “Small Business Bill of Rights” to the November agenda for approval; the Board unanimously agreed.

VII. REPORT FROM THE CHAIR – Chair Woods indicated that the Governor’s Office is updating the Administrative Directive and requested any comments or suggestions from the members. Mr. Smyth then discussed some of the items that will be recommended for modification.

Chair Woods indicated that she was in receipt of a memorandum from Mr. George Lindsay, Chief of Staff, Office of the Lieutenant Governor, regarding “Posting of Rules and Proposed Rules” on the Lieutenant Governor’s Website. The memorandum indicated that the Lieutenant Governor’s Officer is the process of determining the realm of possible improvements to create a more business friendly atmosphere regarding its maintenance of a website link with existing and proposed rules, and public hearing notices. She congratulated Vice Chair Zinn for his “good work.”

VIII. REPORT AND UPDATE FROM BOARD MEMBERS – Nothing was reported.

IX. POLICIES AND PROCEDURES – Nothing was reported.

X. ANNOUNCEMENTS – Nothing was report.

XI. NEXT MEETING: Tuesday, November 9, 2004 at 10:30 a.m.; No. 1 Capitol District Building, Room 410.

XII. ADJOURNMENT: Chair Woods adjourned the meeting at 2:30 p.m.