

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

October 13, 2010

Conference Room 410 - No. 1 Capitol District Building, Honolulu, Hawaii

I. **CALL TO ORDER:** Chair Pang called the meeting to order at 10:02 a.m. with a quorum present.

MEMBERS PRESENT:

- Charles Au
- Bruce Bucky
- David De Luz Jr.
- Dorvin Leis
- Sharon Pang
- Richard Schnitzler
- Peter Yukimura

ABSENT MEMBER: None

STAFF:

DBEDT
Milton Kwock

Office of the Attorney General
Margaret Ahn

II. **APPROVAL OF AUGUST 18, 2010 MINUTES**

Mr. Au made a motion to accept the August 18, 2010 minutes as circulated. Mr. Leis seconded the motion and the Board members unanimously affirmed the motion.

III. **OLD BUSINESS**

A. Applications to fill Board vacancies.

The Board reviewed and discussed the application submitted by Hans Chun.

Mr. Au offered a motion to defer action on Oahu candidates since three well qualified nominees have already been submitted to the Governor's Office for her consideration. In the same motion Mr. Au also asked the Board to defer action on Roland Sagum III since Mr. Sagum was still a member of the State House and was running for re-election.

B. Amended Comptroller's Memorandum on "Apprenticeship Program" as it relates to the implementation and administration of the 5% bid adjustment for bidders that are parties to apprenticeship agreements. Rules apply to public works contracts having an estimated value of \$250,000 or more. (DAGS)

The Board reviewed the Comptroller's Memorandum and heard testimony from the Eric Nishimoto, State Department of Accounting & General Services and Elaine Young, State Department of Labor & Industrial Relations Workforce Development Division Administrator. Both DAGS and DLIR feel the program, as amended, is a proactive step to address future shortages of apprentices working in the construction industry

Mr. DeLuz offered a motion in support of DAGS request to move the proposed amendments to public hearing. Mr. Yukimura seconded the motion and the Board voted unanimously in favor of the motion.

C. Post public hearing statement of proposed amendments to Chapter 13-231.26, HAR, "Use of a Vessel as a Principal Habitation", as it clarifies who may legally live aboard a vessel moored in a State harbor. (DLNR)

The Board reviewed DLNR's proposed amendments to Chapter 13-231.26, HAR and heard testimony from Ed Underwood, DLNR Boating and Ocean Recreation Division Administrator. Mr. Underwood pointed out that commercial activity is not allowed on vessels moored in the two small boat harbors covered by the proposed amendments.

Mr. Bucky offered a motion to not render any opinion on DLNR's request for adoption of the proposed amendments since there was no perceivable small business impact. Mr. Schnitzler seconded the motion and the Board voted unanimously in favor of the motion.

- D. Post public hearing statement of proposed amendments to Chapter 16-53, HAR, "Fees Relating to Boards and Commissions", establishing a fee structure for CPA firm permits. (DCCA)
The Board reviewed the proposed amendments to Chapter 16-53, HAR.

Mr. Au offered a motion in support of DCCA's request to adopt the proposed amendments. Mr. Bucky seconded the motion and the Board voted unanimously in favor of the motion.

- E. Post public hearing statement of proposed amendments to Chapter 17-1709.2, HAR, "State Funded Hawaii Premium Plus" and adoption of new Chapter 17-1709.3, HAR, "State with Federal Match Funded Hawaii Premium Plus." (DHS)

The Board reviewed the proposed amendments Mr. Au offered a motion in support of DHS' request to adopt the proposed amendments. Mr. DeLuz seconded the motion and the Board voted unanimously in favor of the motion.

- F. Follow up to proposed amendments to Chapter 11-177.1, HAR, "Certification Standards for Substance Abuse Counselors and Program Administrators" prior to going to public hearing. (DOH)

As a follow up to review and discussion of Chapter 11-177.1, HAR, at the August 18, 2010 SBRRB meeting, Keith Yamamoto, DOH Division Chief, asked the Board to forward contacts that may be interested in attending one of the public hearings.

- G. Post public hearing statement of proposed amendments to Chapter 13-74, HAR, "License and Permit Provisions and Fees for Fishing, Fish, and Fish Products" and Chapter 13-94, HAR, "Bottomfish Management." (DLNR)

The Board reviewed and discussed the proposed amendments. Alton Miyasaki, DLNR Division of Aquatic Resources/Recreational Fisheries Program staff, reported that opposition to the proposed amendments centered on commercial fishermen opposed to the change in filing fishing activity reports because they felt the increased frequency in reporting was unnecessary. DLNR's position was that the trip reports would give State and Federal monitors a more accurate estimation when annual quotas would be met. This would benefit commercial fishermen by avoiding premature closures and closures after quotas were exceeded. DLNR extended the deadline to file reports from 3 days to 5 days to give fishermen more time to comply with filing requirements. Commercial fishermen also opposed the bottomfish restricted area designation, preferring a quota system over area closure.

Mr. DeLuz offered a motion to oppose DLNR's request to move the proposed amendments to public hearing based on the Board's view that the Department did not adequately address the concerns posed by small business stakeholders and did not clearly explain how the proposed changes would be consistently applied and enforced. Mr. Schnitzler seconded the motion and the Board voted unanimously in favor of the motion. (Note: Worked with David & Charles on wording of memo to DLNR prior to sending it to DLNR)

- H. Post public hearing statement of proposed amendments to Chapter 18-231, HAR, "Tax Administration", as it relates to tax penalties. (DoTAX)

The Board reviewed and discussed the proposed amendments. According to DoTAX, the proposed amendments to Chapter 18-231, HAR, will bring State rules in line with Federal laws.

Mr. Au offered a motion in support of DoTAX's request to adopt the proposed amendments. Mr. Yukimura seconded the motion and the Board voted unanimously in favor of the motion.

IV. NEW BUSINESS

- A. Proposed amendments to Chapter 16-88, HAR, "Relating to Naturopaths." (DCCA)

Ms. Candace Ito, Executive Officer of the Board of Naturopaths, gave a brief overview of the proposed amendments.

Mr. DeLuz offered a motion in support of sending the proposed amendments to public hearings. Mr. Leis seconded the motion and the Board voted unanimously in favor of the motion.

- B. Proposed new Chapter 19-47, HAR, "Ignition Interlock Devices." (DOT)

Mr. Ed Asato, DOT, summarized the proposed new rules. Hawaii has the second highest incidence of alcohol-related traffic fatalities in the nation. The proposed rules call for the ignition interlock device to be installed in the vehicles of drivers faced with license revocation due to alcohol-related traffic offenses. The device will not be installed in business vehicles if the offenders are required to drive a company vehicle as part of his/her job.

Mr. Au offered a motion in support of sending the proposed rules to public hearing and also recommended that the Department need not return to the Board after the public hearings if no revisions were made to the proposed rules. Mr. Yukimura seconded the motion and the Board voted unanimously in favor of the motion.

C. Proposed amendments to Title 3, Subtitle II, HAR, "Ocean Recreation and Coastal Areas, Parts I, II, and III," as set forth in the attached index. (DLNR)

Mr. Ed Underwood, DLNR Boating and Ocean Recreation Division Administrator, gave a brief overview of the proposed amendments and reported that over 54 public meetings were held over the course of two years. Over 50 people provided written testimony on the proposed amendments with the vast majority in opposition to the amendments.

Mr. Schnitzler offered a motion to oppose sending the proposed amendments to public hearing because there were many elements within the amendments that had a negative small business impact and did not encourage small business growth. Mr. Bucky seconded the motion and the Board voted unanimously in favor of the motion.

D. Proposed amendments to Chapter 11-175-2, 175-14, 175-25 and 175-31, HAR, "Mental Health and Substance Abuse Systems," as it relates to establishing clinical and administrative standards for eligibility, revising the schedule of services offered by the State, permitting the Director of Health to adjust service scope in response to need and aligning confidentiality standards for substance abuse with Federal law. (DOH)

Dr. William Sheehan, DOH Adult Mental Health Division Chief and Medical Director, and Mr. Lorrin Kim, DOH Chief of Planning, Policy & Program Development, gave a brief overview of the proposed amendments. As the proposed amendments will impact the services rendered to approximately 5,100 outpatients with severe mental illness, 3,000 handled by the State and 2,000 by private vendors. To balance the program's reduced budget, the proposed amendments will reduce the number of patients serviced by private vendors. The amended rules would not impact on the 5,100 existing patients.

Mr. Au offered a motion in support of sending the proposed amendments to public hearing and also recommended that the Department need not return to the Board after the public hearings if no revisions were made to the proposed rules. Mr. Bucky seconded the motion and the Board voted unanimously in favor of the motion.

E. Proposed amendments to Chapter 12-12-60, 12-61 and 12-63, HAR, "Prepaid Health Care Act," which eliminates the requirement for employers and health care contractors to submit reports and forms to the DLIR on an annual basis. (DLIR)

Mr. Walter Kawamura, DLIR Disability Compensation Division Administrator, gave a brief overview of the proposed amendments. The elimination of the filing requirement will have a positive impact on DLIR and small business.

Mr. Yukimura offered a motion in support of sending the proposed amendments to public hearing and also recommended that the Department need not return to the Board after the public hearings if no revisions were made to the proposed rules. Mr. Leis seconded the motion and the Board voted unanimously in favor of the motion.

F. Proposed amendments to Chapter 12-10, HAR, "Workers Compensation Law," 12-14-36, HAR, "Vocational Rehabilitation Rules," in response to a Hawaii Supreme Court decision which held that the Director exceeded the bounds of rule-making authority, and 12-15, "Workers Compensation Medical Fee Schedule," which requires the Director to update the schedules every three years or annually, as required. (DLIR)

Mr. Walter Kawamura, DLIR Disability Compensation Division Director, gave a brief overview of the proposed amendments.

Mr. Schnitzler offered a motion in support of sending the proposed amendments to public hearing and also recommended that the Department need not return to the Board after the public hearings if no revisions were made to the proposed rules. Mr. DeLuz seconded the motion and the Board voted unanimously in favor of the motion.

G. Proposed amendments to Chapter 15-32, HAR, "Hawaii Small Business Innovation Research Grant Program," which proposes to make it easier for small businesses to apply for and broaden eligibility for the SBIR Grant Program. (DBEDT/HRDC)

Ms. Yuka Nagashima, Executive Director of the Hawaii High Technology Development Corporation, gave a brief overview of the proposed amendments.

Mr. Au offered a motion in support of sending the proposed amendments to public hearing and also recommended that the Department need not return to the Board after the public hearings if no revisions were made to the proposed rules. Mr. DeLuz seconded the motion and the Board voted unanimously in favor of the motion.

V. REPORT FROM CHAIR

Chair Pang reported to the Board that the following proposed amendments to rules and new rules had no perceivable small business impact and were not subject to Board discussion and review:

- A.** Proposed amendments to Chapter 15-306, HAR, "General Excise Tax Exemptions," as it relates to tightening program requirements and providing program staff additional data to monitor projects for compliance and certification requirements; and repeal and replacement of Chapter 15-162, HAR, with proposed new Chapter 15-315, HAR, "Mortgage Credit Certificate Program," which replaces references to HCDCH with HHFDC and requires HHFDC to trade in Mortgage Revenue Bond authority for Mortgage Credit Certificate authority. (DBEDT/HHFDC)
- B.** Repeal and replacement of Chapter 15-174, HAR, with proposed new Chapter 15-307, HAR, "State Assisted Land and Housing Development Program," which replaces references to HCDCH with HHFDC and implements program fee increases. (DBEDT/HHFDC)

VI. REPORT FROM BOARD MEMBERS

VII. ANNOUNCEMENTS

VIII. NEXT MEETING – Wednesday November 17, 2010, 250 South Hotel Street, Honolulu, HI, Room 410.

IX. ADJOURNMENT – The meeting adjourned at 2:05 p.m.