

Small Business Regulatory Review Board

MINUTES OF MEETING

December 10, 2012

Conference Room 436 - No. 1 Capitol District Building, Honolulu, Hawaii

- I. **CALL TO ORDER:** Ms. Shubert-Kwock called the meeting to order at 9:30 a.m., with a quorum present.

MEMBERS PRESENT:

- Chu Lan Shubert-Kwock
- Leslie Mullens
- Howard Lum
- Barbara Bennett
- Kyoko Kimura
- Anthony Borge
- Mary Alice Evans

ABSENT MEMBERS:

- None

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Margaret Ahn

II. INTRODUCTION OF MEMBERS AND STAFF

Each member provided a brief introduction of themselves. Ms. Chu Lan Shubert-Kwock is the owner of Chu Lan Properties and ABC Mortgage, and has been doing business in Hawaii for 34 years. She is also heavily involved in the community, including the Chinatown Business Association, and has worked for nine years on the City and County of Honolulu Liquor Commission. Mr. Tony Borge is with RMA Sales in Honolulu, Mr. Howard Lum is CEO of Aloha Gourmet Products, a food distributor, and Ms. Kyoko Kimura currently works at the Hotel Wailea in Maui.

Ms. Mary Alice Evans is the deputy director of DBEDT. Ms. Leslie Mullens is the president of Playbook Consulting Group, which is based on Maui, where she does strategic planning and organizational development for non-profits, small- and medium-sized businesses and government agencies across the state. Ms. Barbara Bennett is the owner and publisher of the monthly Kauai community magazine, *For Kauai*, and has been doing business on the Island of Kauai for sixteen years in print media; she also served on the Board of the Kauai Business Bureau. Ms. Dori Palcovich is an economic development specialist for DBEDT and her role is to review administrative rules within the State; a large part of her workload also involves working with the Chair of this Board.

Ms. Barbara Bennett made a motion for Ms. Shubert-Kwock to act as the Chair Pro Tem for today's board meetings. Mr. Lum seconded the motion and the Board members unanimously agreed.

III. DISCUSSION OF THE FOLLOWING BOARD ADMINISTRATIVE MATTERS

A. Board's attorney to advise board members of its powers and duties regarding reviewing administrative rules pursuant to Chapter 201M, Hawaii Revised Statutes (HRS); Administrative Directive 09-01; Sunshine Law; Chapter 92, HRS; Code of Ethics, Chapter 84, HRS

Chair Pro Tem Shubert-Kwock introduced Deputy Attorney General Margaret Ahn, who thanked all the members for volunteering on this board. She stated that this board's powers and responsibilities are governed by Chapter 201M, Hawaii Revised Statutes, where board members review administrative rules for small business impact. She explained the difference between a statute and a rule. Statutes are broader laws and more generalized statements of the law; agencies have the authority to adopt administrative rules based on the statutes to provide more detail. In addition to preparing administrative rules, agencies take the rules to public hearing and then adopt the rules; both require the Governor's approval. Before the agencies' request approval from the Governor to go to public hearing, they determine whether there is small business impact; if there is, they must submit a small business impact statement to this board. After public hearing, they submit a small business statement to this board outlining the testimony received at the public hearing; this statement may discuss any small business concerns about the rules that were raised at the hearing.

Under the statute, small business is defined as a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees; therefore, the board does not review rules that impact non-profits or big businesses. Governor's Administrative Directive 09-01 provides instructions to the agencies as to what information the Governor wants to see when administrative rules are submitted for his approval. Specifically, the Directive asks if the rules affect small business, and if so, were the statements submitted to this board. The board does not review federally-mandated or emergency rules.

In regards to the Sunshine Law, its purpose is to protect the people's right to know about what is going on in their government. It requires that all discussions, deliberations and decisions on official board business have to be done at a public meeting. Minutes are taken and an agenda is posted at least six days in advance. The board has to allow the public to testify, but only on agenda items; the testimony may be limited to a specific time allowance, as long as it is consistent with each testifier. It was noted that there are times that individual members may receive emails from the public; if it looks as if it is intended to be testimony, members should send it to staff, who will distribute it accordingly.

When board members take breaks during board meetings, it is important to cease the discussion of board business. Additionally, there should be no telephone discussions, or email communications sent to the members outside of a public meeting. A common mistake is when staff sends an email to the members, and a member replies to all; it is important not to reply to all when the information has to do with official board business. Official board business is defined as matters over which the board has supervision, control, jurisdiction or advisory power that are before the board or reasonably anticipated to come before the board in the foreseeable future. Exceptions to this rule would include purely administrative matters where board members may talk amongst themselves. Also, two members of this board can discuss official board business amongst yourselves as long as they make no commitment to vote. On the Office of Information Practices' website, there is

a link where one can do an online video training. It was noted that willful violations of the Sunshine Law are a misdemeanor; this is something we want to avoid.

Under the Ethics Code, board members are considered State employees. The conflict of interest section pops up most of the time; this section states that no employee shall take any official action directly affecting a business or other undertaking in which they have a substantial financial interest. Official action is not just voting on an item but discussing and voicing one's opinion, and recommending for or against an agenda item. Financial interest is defined as ownership, directorship, officer-ship in a business, a creditor interest, debtor interest, an interest in real or personal property or employment; this also relates to interests of a spouse and dependent children. She noted that when a rule is being reviewed and a member may have a financial interest in the rule, it is incumbent to raise this before a meeting, if possible. This is so that in the event the members need to recuse themselves from deliberating, the board will know whether or not quorum may be lost. A board member may directly contact the Ethics Commission if there is any doubt about a potential conflict. However, if it turns out that a member voted on an item and it was found out later that a conflict existed with that member, the action may be voided.

Deputy Attorney General Ahn also added that during this past legislative session, a bill was passed that allowed participation by board members at board meetings via telephone. However, members of the public must be allowed to attend where those members are located.

B. Approval of draft 2012 Annual Report Summary to the Legislature, pursuant to Section 201M-5(f), HRS

Chair Pro Tem Shubert-Kwock stated that it is this board's statutory requirement that an annual report be submitted to the State Legislature. Ms. Palcovich explained the report consists of a compilation of the rules reviewed, and any board activities; the information was extracted from the board meeting minutes from February through June 2012. Chair Pro Tem Shubert-Kwock stated that it is quite impressive that this Board has reviewed a total of 545 administrative rules since its inception, which is a lot of work for a volunteer group.

Ms. Mullens made a motion to accept the 2012 Annual Report Summary as presented, and Ms. Kimura seconded the motion. Ms. Mullens, Ms. Kimura, Ms. Bennett, and Chair Pro Tem Shubert-Kwock voted in favor of the motion, Ms. Evans abstained, and Mr. Lum and Mr. Borge opposed the motion; as a result, the motion failed. The 2012 Annual Report Summary will include a disclaimer that the members declined to approve the report due to their personal unfamiliarity with a majority of the reports' contents.

C. Approval of draft Periodic Review; Evaluation Report to the Legislature, pursuant to Section 201M-7, HRS

Ms. Palcovich indicated that this is a report that is required to be submitted to the Legislature every other year. The report outlines a list of existing administrative rules, received from the State agencies, that impact small business with a justification for the rules' continuation. The information in the report consists only of a compilation of the information received from the State agencies.

Mr. Borge made a motion not to approve the 2012 Period Review: Evaluation Report, but to pass it along to Legislature. Ms. Mullens seconded the motion, and the Board members unanimously agreed.

D. Schedule of upcoming Board meetings for 2013

After the board members discussed various times and days of the month that will work with their schedules, it was decided that ongoing board meetings will occur on the third Wednesday of each month, beginning at 9:30 a.m. Staff will schedule the meetings in conference room 436, in the Capitol District Building.

E. Proposed Budget Request for fiscal years 2014 and 2015

Ms. Evans stated that this board does not have a budget. She explained that during the economic difficulties experienced in 2009, it caused DBEDT to lose a number of positions as well as a portion of funding. Currently, there is an economic development specialist to handle this board's administrative work and enough funding to cover board member travel expenses, which include airfare, parking at the airports, taxi, and car rental; the funding comes from one of DBEDT's appropriated programs. Any further or additional budget requests to the Governor are now closed.

Although it was stated that this board is not responsible for a budget, Ms. Mullens explained that, as a strategic planner, in order to continue with this discussion she would need to know exactly what the board's budget is and what the board programs are in order to be specific on what it wants to do and what results are expected. She believes that if the members agree that there may be other work this board would like to do, and it can handle that work, then it would make sense to continue with a discussion on the budget. Chair Pro Tem Shubert-Kwock believed that DBEDT is providing the minimum amount of funds to cover this board, and that the outreach of this board may suffer due to the lack of sufficient funding.

F. Board Assignments for the State Departments and Counties' Administrative Rule Review

Chair Pro Tem Shubert-Kwock discussed the internal process of receiving proposed new and amended rules by the agencies. Ms. Evans noted that there are eighteen State departments with attached agencies that adopt rules; sixteen fall under the Governor. The members reviewed the distributed list of agencies to determine which agencies they would like to be the discussion leader for. Board member who is assigned specific agencies would share in a discussion of the rules at the board meetings. Upon review, the following assignments were made:

- Chu Lan Shubert-Kwock – Office of the Governor; Office of the Lieutenant Governor; Department of the Attorney General; Back-up for Department of Commerce and Consumer Affairs
- Leslie Mullens - Department of Labor & Industrial Relations; Department of Land and Natural Resources; University of Hawaii

- Barbara Bennett – Department of Agriculture; Department of Defense; Department of Hawaiian Home Lands
- Kyoko Kimura – Department of Commerce & Consumer Affairs; Department of Transportation
- Howard Lum – Department of Business, Economic Development & Tourism
- Tony Borge – Department of Budget & Finance; Public Utility Commission; Department of Education; Department of Health (Environmental)
- Mary Alice Evans – Department of Accounting & General Services; Back-up for Department of Business, Economic Development & Tourism; Department of Human Services

G. Board's outreach to business organizations including Hawaii chambers of commerce to discuss Board's role and mission under Chapter 201M, HRS

Ms. Bennett suggested that staff send the Hawaii chambers of commerce an announcement about this Board. Mr. Borge suggested that a public service announcement be made in the *Pacific Business News*, with a paragraph outlining what this Board does, and how it can be reached. Ms. Mullens added that the announcement should point out specifically what information should be sent, such as testimonies, and what information should not be sent.

Ms. Bennett brought to the meeting a previous brochure of this board that she received several years ago at a business meeting in Kauai. It was noted that brochures can be updated in-house, at no cost, in order to sent them to the various chambers for outreach purposes. An updated brochure in draft form will be provided to the members at the next board meeting.

Chair Pro Tem Shubert-Kwock suggested that a committee or task force be created to assist staff with public relations. Deputy Attorney General Ahn noted that if the committee is for either a specific purpose or for one time, an investigative task force can be formed. However, if it is a standing committee to review and make on-going suggestions, that committee will be subject to the Sunshine Law where, among other requirements, agendas would need to be posted.

IV. DISCUSSION OF THE FOLLOWING LEGISLATIVE MATTERS

A. Proposal of a bill for the upcoming 2013 Legislative session for a clerical assistant for the Small Business Regulatory Review Board

It was explained that a clerical assistant position for this Board was included in the Governor's budget proposal for fiscal years 2014 and 2015, but it did not make the final budget proposal.

B. Proposed amendment to Section 201M-5(b) (4), HRS, to replace "voting" member with "non-voting" member with respect to the director of the Department Business, Economic Development and Tourism or the director's designated representative

Deputy Attorney General Ahn explained that in 2012 the Legislature changed how the members of this board will be appointed in its statute. The Board is required to follow that

appointment process, which is why the prior board members were repealed. Chair Pro Tem Shubert-Kwock stated that when the bill was being heard during the legislative session, there was some discussion as to whether or not the DBEDT board member should be a voting member; the concern was that it would potentially dilute the intended independence and spirit of the Board. She also explained that at times there was some difficulty in filling vacancies on this Board, and a few of the members did not get along with some of the agencies.

Deputy Attorney General Ahn explained that although previously the board members were nominated by the existing members, it is very common for State boards to have various department directors as ex officio voting members. Ms. Evans believes that it is a benefit to have a DBEDT ex officio as a board member as another voice and perspective to matters such as the budget and administrative matters; in turn the Board can inform DBEDT as to how certain rules impact small businesses. Pro Chair Tem Shubert-Kwock noted that Ms. Evans already functions to serve this Board, so that she can still provide perspectives to various DBEDT matters whether a board member or not. Ms. Mullens suggested that the members may want to think about having a DBEDT ex officio as a voting member on this board, and if they have any questions, they should provide them to staff.

V. Election of a Board Chair, pursuant to Section 201M-5(d), HRS, and Election of Vice Chair and Second Vice Chair

Ms. Evans made a motion that Ms. Mullens become Chair, and Ms. Kimura seconded; Ms. Bennett made a motion that Ms. Shubert-Kwock become Chair, and Mr. Borge seconded. Ms. Bennett, Mr. Lum, Mr. Borge and Chair Pro Tem Shubert-Kwock voted for Ms. Shubert-Kwock, and Ms. Evans, Ms. Kyoko and Ms. Mullens voted for Ms. Mullens. As a result, the motion did not pass.

Ms. Evans made a motion that the election of officers be deferred until the next board meeting, and Ms. Mullens seconded the motion. Ms. Evans, Ms. Mullens, and Ms. Kimura voted in favor, and Chair Pro Tem Shubert-Kwock, Ms. Bennett, Mr. Lum and Mr. Borge voted against. As a result, the motion did not pass.

This item will be placed on the next month's agenda.

VI. ADJOURNMENT – Chair Pro Tem Shubert-Kwock made a motion to adjourn the meeting at 12:08 p.m. Ms. Bennett seconded, and the Board members unanimously agreed.

VII. NEXT MEETING – Scheduled for Monday, December 10, 2012, at 1:00 p.m., at No. 1 Capitol District Building, 250 South Hotel Street, Conference Room 436, Honolulu, HI