

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

May 16, 2012

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

I. **CALL TO ORDER:** Chair Pang called the meeting to order at 10:40 a.m. with a quorum present.

MEMBERS PRESENT:

- Sharon L. Pang
- Charles Au
- David S. De Luz, Jr.
- Bruce Bucky
- Peter Yukimura
- Howard West
- Chu Lan Shubert-Kwock

ABSENT MEMBERS:

- Richard Schnitzler

STAFF: DBEDT
Mary Alice Evans
Dori Palcovich

Office of the Attorney General
Margaret Ahn

II. APPROVAL OF APRIL 18, 2012 MINUTES

Ms. Shubert-Kwock made a motion to accept the April 18, 2012 minutes as presented. Mr. Yukimura seconded the motion, and the Board members unanimously agreed.

III. OLD BUSINESS

- A. Review and possible ratification of Board Chair's Correspondence, dated February 24, 2012, to Department of Human Services on proposed HAR Title 17 Chapter 1445, "Recertification of Nurse Aides in State-Licensed or State-certified Health Care Settings" (Department of Human Services)

Vice Chair Au recommended that this Board ratify the submission of the February 24, 2012 memorandum to the Department of Human Services. Mr. De Luz, Jr., seconded and the Board unanimously agreed.

The discussion ensued as to whether there should be a standing vote made by this Board for routine matters resulting in standard correspondence regarding the Board's actions taken at a meeting, or letters specifically crafted on a case-by-case basis. It was determined that the Board will address items on a case-by-case basis with the Board's specific action(s) taken.

IV. NEW BUSINESS

- B. Proposed new HAR Title 13 Subtitle 14 Chapter 301, “Rules of Practice and Procedure,” HAR Title 13 Subtitle 14 Chapter 302, “Public Land Development Program,” and HAR Title 13 Subtitle 14 Chapter 303, “Project Facility Program” (Department of Land and Natural Resources)**

Executive Director, Mr. Lloyd Haraguchi, discussed the history of the Public Land Development Corporation (PLDC). PLDC was established by Act 55 in the 2011 legislative session and codified into Chapter 171C, Hawaii Revised Statutes. PLDC was created to establish a vehicle and to make optimal use of under-utilized public land for the economic, environmental and social benefit of the people of Hawaii. In essence, PLDC is tasked to administer an appropriate and culturally-sensitive public land development program. In January 2012, the initial draft rules were presented to the PLDC Board for review, and in April 2012, the PLDC Board approved the draft rules to proceed.

In regards to small business impact, Mr. Haraguchi indicated that Chapters 301 and 302 have minimal, if any, business impact. Chapter 301 establishes PLDC’s operating procedures and Chapter 302 sets forth a procedure to initiate and enter into cooperative agreements with qualified persons for the development and/or financing of projects that make optimal use of public land. Chapter 303, however, which establishes a procedure for undertaking and financing any project facility as part of a project has the most potential for impacting small business. This is because businesses within the assessment area may be assessed for their share of infrastructure improvements when a project has facility costs.

Mr. West recommended that the proposed new rules proceed to public hearing and that after public hearing a small business statement is provided to this Board but that Mr. Haraguchi is not required to physically return to this Board. Vice Chair Au seconded and the Board unanimously agreed.

V. LEGISLATIVE MATTERS

- A. Status on Senate Bill 2739 SD2 HD1 CD1, “Relating to the Small Business Regulatory Review Board”**

Ms. Shubert-Kwock stated that because the initial bill came out in January 2012, it should have been on the Board’s agenda for review in order for the Board to testify at every junction of the bill. She discussed some of the changes of the bill throughout the session, and noted that with the most recent changes to the bill, which included the make-up of the board members. She spoke with Representative McKelvey and noted that there was an understanding that the DBEDT board member would serve for quorum but not as a voting member; however, in the final version, the bill provided that the Board’s DBEDT representative would be a voting member. She believes that allowing the DBEDT representative to vote will dilute and compromise the integrity of this Board. Deputy Director Evans explained that DBEDT’s CD version of the bill included both a DBEDT and DCCA ex officio member; however, DCCA was not interested in sitting on the Board. It was stated that next year the statute would be readdressed, and if needed, another bill would be drafted to amend the statute.

The issue of providing a budget for this Board was discussed. Ms. Shubert-Kwock believed that an initial budget of \$250,000 to include two employees to run this Board would be sufficient. Mr. Bucky noted that in researching various State-appointed boards, there are only a few boards that derive income, with most of the boards posting losses. However, some of the boards receive up to \$800,000 a year to operate their boards. Deputy Director Evans indicated that the Administration considers annual budget requests for inclusion of the Governor's budget in August; then it goes to Budget and Finance. Budget and Finance makes recommendations to the Governor in November which then goes to the State legislature in December. She stated that currently DBEDT is utilizing funds from DBEDT's business development and support division. Deputy Attorney General Ahn indicated that if this Board wanted specific funds, it would need to be set up statutorily. It was suggested that at the next month's meeting, an agenda item be included for the Board to set up a taskforce to discuss the issue of requesting a budget, statutorily. Chair Pang noted that some of the legislators have specifically stated that they will take it upon themselves to help this Board with a budget.

Deputy Attorney General Ahn stated that she was advised that if this bill becomes law, the present make-up of the Board is repealed. Mr. De Luz, Jr., interjected that he believed because the State legislature is currently not in session the current Board members would be carried into the next legislative session. In response, Deputy Attorney General Ahn explained that she initially believed that given the amount of time that it takes to make Board appointments, until that happens, as a practical matter, the Board would remain status quo until the Governor would appoint members in accordance with the new statute. However, this is not the case, and she reiterated that the make-up of the Board will be repealed if and when the bill becomes law. Deputy Director Evans indicated that as soon as the bill takes effect and a list is received from the Senate and the House, the Governor can make interim appointments, with all the appointments subject to Senate confirmation in the following legislative session.

Mr. West stated that he is unhappy with the bill in its final version and he cannot support it because it is not within the original intent of this Board. He believes that the Board's original intent was to be an impartial, convening body to address small business concerns, and that it will end up with the Board losing its credibility with the small business community because the members are all now political appointees.

Mr. De Luz, Jr., recommended that a memorandum be sent to the Governor supporting the bill with reservations, due to an apparent conflict of interest with the original intent of the statute and because it reduces the credibility of the Board within the small business community; that due to the deputy attorney general's opinion that the effective date of the statute would repeal the current make-up of all the existing members, it is requested that one-third of the board members remain for continuity purposes in order to not interfere with the Board's work; that the Board is concerned with the sections of the bill that reduces the size from eleven to nine members, changes the make-up of the Board members, and requires at least one representative from each county; that the draft of this memorandum is reviewed by the chair and her designee in order to articulate the Board's sentiments; and to expeditiously forward the memorandum to the Governor. Ms. Shubert-Kwock seconded and the Board unanimously agreed.

In addition, Mr. De Luz, Jr., recommended that copies of the correspondence be sent to the chair and co-chairs of the two committees that reviewed the bill in Conference. Ms. Shubert-Kwock seconded and the Board unanimously agreed.

It was further discussed that Mr. West and Chair Pang will craft the correspondence; Deputy Attorney General Ahn may review the correspondence for content. While the correspondence may be sent to the other members, those members would be unable to participate in the communication due to Sunshine Law.

VI. BOARD ADMINISTRATIVE MATTERS

A. Election of Small Business Regulatory Review Board Second Vice Chair

Chair Pang distributed the resignation letter of Board member, Mr. Schnitzler; it was also submitted to the Governor's office.

Mr. Yukimura recommended that Mr. David S. De Luz, Jr., be nominated as the Second Vice Chair. Ms. Shubert-Kwock seconded the motion, and the Board members unanimously agreed; the vote is effective today.

B. Update of discussion leader's outreach with State agencies, and discussion leader's role in reviewing proposed rules

Deferred.

C. Improving upon communication efforts with State agencies

Deferred.

VII. CHAIR'S REPORT

A. Status on Governor's Message No. 521, "Submitting for consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Howard West"

Mr. West was confirmed by the Senate for a term to expire June 30, 2016.

B. Status on Governor's Message No. 520, "Submitting for consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Chu Lan Shubert-Kwock"

Ms. Shubert-Kwock was confirmed by the Senate for a term to expire June 30, 2016.

C. Review of Correspondence from Board of Accountancy, dated May 4, 2012, regarding "Proposed Administrative Rules Implementing Peer Review, as mandated by Act 66, Sessions Law of Hawaii 2010"

Chair Pang indicated that this Board received a letter from the Board of Accountancy regarding the proposed administrative rules that implement peer review. Upon completion of the draft rules, they will be provided to this Board for review.

D. Update of House Bill 2078, HD2, SD2, CD1, "Relating to Taxation"

Chair Pang stated that Mr. Mike Marion at Waikiki-Getaway indicated that he and some of the other vacation rental companies were very pleased with this Board's efforts regarding this bill, and the outcome relating to transient accommodations. They understand that if the bill goes through, it will be effective July 1, 2012, to be repealed December 31, 2015.

VIII. ANNOUNCEMENTS

IX. NEXT MEETING – Wednesday, June 20, 2012, 250 South Hotel Street, Honolulu, HI, Room 410.

X. ADJOURNMENT – The meeting adjourned at 1:25 p.m.