

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

April 18, 2006

No. 1 Capitol Building 250 South Hotel Street Room 410

I. **CALL TO ORDER:** Chair Woods called the meeting to order at 10:38 a.m., with a quorum present.

#### MEMBERS PRESENT:

- Lynne Woods
- Sharon L. Pang
- Michael Yee
- Dorvin Leis
- Donald Dymond
- Charles Au

#### ABSENT MEMBERS:

- Jeanette O. Chang
- George Handgis

**STAFF:**      DBEDT                              Office of the Attorney General  
                   Dori Palcovich                      Margaret Ahn  
                   Mike Norris

**GUESTS:**      Janice Pakele, Director, County of Hawaii, Department of Liquor  
                   Kenneth G. Lum, Acting Stadium Manager, Aloha Stadium, Department of Accounting and General Services (DAGS)  
                   Christen Mitchell, Planner, Forestry and Wildlife Division, Department of Land and Natural Resources (DLNR)  
                   Francis Oishi, Program Manager, Aquatics Resources Divisions, DLNR  
                   Leslie Iseke, Plant Quarantine Branch, Plant Industry Division, Department of Agriculture (DOA)  
                   Keevin Minami, Plant Quarantine Branch, Plant Industry Division, DOA  
                   Domingo Cravalho, Invertebrate, Aquatic & Biotic Branch Supervisor, Plant Quarantine Branch, Plant Industry Division, DOA  
                   Darcy Oishi, Entomologist, Plant Quarantine Branch, Plant Industry Division, DOA  
                   Amy Takahashi, Inspector, Plant Quarantine Branch, Plant Industry Division, DOA  
                   Cindy Nose, Entomologist Assistant, Plant Quarantine Branch, Plant Industry Division, DOA  
                   Lawrence Nakano, Management Analyst, Harbors Division, Department of Transportation (DOT)  
                   Grant Tanimoto, Attorney, Campaign Spending Commission, DAGS  
                   Anthony Baldomero, Associate Director, Campaign Spending Commission, DAGS

### WORKING LUNCH AS THE MEETING PROGRESSED

II.      **APPROVAL OF MINUTES:** Minutes of the February 14, 2006 meeting were approved as presented.

III.     **PUBLIC TESTIMONY:** Public testimony is included with each agenda topic discussed.

#### IV.      **OLD BUSINESS**

- A.      Update on Newsflash 2005-16, Ethics CPE Requirement – Mr. Au attended a meeting of the Hawaii State Board of Accountancy, indicating that they were very receptive to this Board's concern to allow accountants to use four additional hours for ethics training. While it was determined that it was up to the CPE vendor to decide on the content of the course, it will be taken into consideration and reported back to the committee for review. Mr. Au conveyed that he was fairly satisfied with the results of the meeting; Mr. Isaac Choy, who initially approached this Board regarding the ethics CPE requirement, will be in touch with Mr. Au to attend a follow-up meeting.

#### V.       **NEW BUSINESS**

- A.      Review and discussion of HAR Chapter 3-70-19, "Rules of the Stadium Authority" (DAGS) – Mr. Kenneth Lum, Acting Stadium Manager, Aloha Stadium, explained that Aloha Stadium's swap meet entrance fee has been fifty cents per buyer for the past several years, and based on surveys from across the country, Hawaii is the only state that charges such a low amount for

these types of markets. For instance, the Rose Bowl charges seven dollars to attend a flea market/swap meet. The stadium's swap meet runs 52 weeks a year, three days a week, Wednesdays, Saturdays and Sundays; Wednesdays are considered "tourists" days and the others considered "local" days. Though the stadium is currently operating at a profit, in order to continue to financially maintain and support the stadium, the Stadium Authority is requesting that the swap meet entrance fee be increased 100%, from \$.50 to \$1.00. Vendors are charged differently depending on where they are located within the stadium, with the outer ring costing \$10.00 per parking stall. Mr. Lum noted the amendments appear to have no financial impact on small business. Mr. Leis recommended that the proposed amended rules proceed to public hearing; the members unanimously agreed.

- B.** Review and discussion of the County of Hawaii's Department of Liquor Control rule amendments – Ms. Janice Pakele, Director of the County of Hawaii's Department of Liquor Control, conveyed that the County of Hawaii has a Liquor Commission which is the licensing board and a Liquor Control Adjudication Board, which is the disciplinary board. The latter board has its own rules and is proposing the subject amendments. The major change relates to Rule 1.12 "Stipulated Penalty." This clause offers the licensee, who has been cited by the department as having violated any of the Liquor Control Adjudication board rules, to waive their rights to a hearing and appeal or admit to the charge prior to the hearing and pay a penalty, as a stipulated agreement. Mr. Dymond commended the department for this option, and also recommended that for Rule 1.7 "Voting," a reasonable timeframe be established for the Board to render a decision. Mr. Dymond recommended that the amended rules proceed to public hearing with the noted suggested change of "no more than two (2) board meetings" to be considered; the members unanimously agreed.
- C.** Review and discussion of HAR Chapter 13-209, "Rules Regulating Activities within Natural Area Reserves" (DLNR) – Ms. Christen Mitchell, Planner at the Forestry and Wildlife Division, explained that there are 19 natural area reserves in Hawaii which cover just under 110,00 acres of land, located throughout Maui, Molokai, Oahu, Kauai and the Island of Hawaii. While this is less than 3.0% of the State's total land capacity, it represents the greatest concentration in a protected area by its diversity in the whole nation. These reserves were created to protect in perpetuity specific areas that contain flora and fauna as well as unique geological sites in the State.

Ms. Mitchell explained that the proposed amendments are meant to strengthen the rules. A major rule change is to remove camping activity without a permit; this would bring the rules in line with other rules such as the forest reserves, and it would prevent situations where people are permanently living in a natural area reserve. Another major change is to limit hiking and nature study groups of ten or less without a permit. Additional changes include limiting closure to a two year period, with continued assessment as to whether such closure is necessary. There has been only one commercial permit request for an organized commercial hiking activity but it is anticipated there will be more eco-tourism type activity permit requests in the near future. It was noted that the permitting process is not a way of charging a fee but of policing the activities within the reserves. Public hearings will be scheduled on each of the major islands through the standard notice in the local newspapers as well as a press release as there is a certain amount of public interest in these rules, particularly on Maui. Mr. Yee recommended that the proposed rules proceed to public hearing; the members unanimously agreed.

- D.** Review and discussion of HAR Chapter 13-64, "Kokee Public Fishing Area, Kauai," and proposed Chapter 13-65, "Wailua Reservoir Public Fishing Area, Kauai" (DLNR) – Mr. Francis Oishi, Program Manager at the Aquatics Resources Divisions, explained that DLNR is proposing to amend Chapter 13-64 and to establish a new chapter 13-65. For Chapter 13-64, the amendments will provide the department flexibility to adjust the "open season" for rainbow trout fishing, mandate a daily bag limit based on the viability of the trout population, and adjust the fishing day period to suit the time of year in which the "open season" is declared.

For Chapter 13-65, the proposed rules will provide a new recreational freshwater public fishing reservoir area. These rules provide for the same regulations as the Kokee rules except that Kokee is a "put and take" fishery; (i.e., where the trout is cultured and stocked by the State) and Wailua is a natural environment where the game fish already exists and so restrictions on the number of fish that may be caught will apply. Mr. Oishi distributed a memorandum addressed

to DLNR Director Peter Young from the Kauai Aquatic Wildlife and Advisory Committee, which is a State appointed board that advises DLNR on fishing and hunting issues, supporting the rule amendments in Kokee. These rules would have a positive impact on services type companies such as retailers of fishing tackle and bait, car rental businesses, grocery stores and restaurants. Mr. Yee recommended that the rules proceed to public hearing; the members unanimously agreed.

- E. Review and discussion of HAR Chapter 4-71, Plant and Non-domestic Animal Quarantine Non-Domestic Animal Import Rules” (DOA) – Mr. Domingo Cravalho, Invertebrate Aquatic & Biotic Specialist and Branch Supervisor with the Plant Quarantine Branch, explained that the rules regulate the import of non-domestic animals in the State of Hawaii via permit system. There is a list of animals that is strictly prohibited, a list of animals that is restricted, and a list of approved domesticated animals. The latter list is for private individuals and commercial use, including the pet retail trade, seafood for consumption, and private individuals bringing in aquarium fish for their private aquariums. Any and all animals not listed are considered prohibited until such time that the Board of Agriculture reviews and places the animal on one of these lists.

The rule changes cover minor housekeeping measures; but the major proposal is to specifically regulate primates going into sanctuaries; these animals would not be allowed for private or commercial use or for commercial exhibition. The animals would continue to be used for special performances such as carnivals and fairs, and filming of movies, but would only be permitted on a short-term basis while they are in the State. Another major rule change includes increasing the bond amount from \$1,000 to \$2,000 for certain animals and for private entities such as carnivals or fairs; this amount may be refunded upon the conclusion of the necessity for the bond. Upon review and discussion, Mr. Dymond recommended that the proposed rule amendments proceed to public hearing; the members unanimously agreed.

- F. Review and discussion of HAR Chapter 19-41, “Commercial Harbors and Tariff” (DOT) – Mr. Lawrence Nakano, Management Analyst at Harbors Division, explained that DOT was proposing to amend the definition of “island agricultural products” to include livestock. In addition, the wharfage charge for livestock shipped in containers would be reduced from \$1.31 per foot to \$.66 per foot, resulting in a maximum savings of approximately \$55.00. Mr. Dymond recommended that the proposed amendment proceed to public hearing; the members unanimously agreed.
- G. Review and discussion of HAR Chapter 19-42, “Vessel and Harbor Controls” (DOT) – Deferred until the May meeting.
- H. Review and discussion of HAR Chapter 3-160, “Election Campaign Contributions and Expenditures,” and proposed Chapter 3-161, “Administrative Practice and Procedure before the Campaign Spending Commission” (DAGS) – Mr. Anthony Baldomero, Associate Director with the Campaign Spending Commission, indicated that the role and responsibility of the Commission is to regulate the State of Hawaii’s campaign spending contributions regarding State and County candidates as well as making sure that the parameters of the campaign spending law are followed. He explained, for example, a candidate running for Governor is limited to receiving \$6,000 from an individual contributor, thus, the Commission would make sure that the candidate does not exceed this amount. The Commission also makes sure that candidates do not use contributed funds for personal use.

Attorney Grant Tanimoto from the Campaign Spending Commission stated that these rules were last updated in 2002. In general, the rules are applicable to everyone – individuals and businesses, both large and small, with no restrictions or provisions specifically for small business. The State’s campaign spending rules are separate from the federal campaign spending rules, and encompass both procedural and substantive regulations. The procedural section of the rules, Chapter 161, is similar to those of any other board and commission within the State. Chapter 160, which represents the substantive rules, conforms to statutory changes and codifies some of the guidance of the commission’s advisory opinions. Mr. Yee recommended that the rule amendments proceed to public hearing; the members unanimously agreed.

## **VI. UPDATE AND OUTCOME OF STRATEGIC PLAN**

- A.** Review proposed SBRRB brochure – Members reviewed the draft brochure and noted several changes. Mr. Leis recommended that the brochure reflect the proposed changes; the members unanimously agreed.
- B.** Review SBRRB website pages – Members reviewed SBRRB’s new website pages; no changes were recommended.
- C.** Update from the Department of the Attorney General regarding outside injection of funds into SBRRB for marketing purposes – Ms. Ahn reported the following findings to the Board regarding Mr. Leis injecting funds for the Board’s marketing efforts. If money is funded from an outside source, it must be deposited into the “general fund.” However, departments are allowed to open trust accounts for a specific purpose and so, potentially, DBEDT may allow this. If funds were to come from Mr. Leis individually and not from his business, there would be less of an ethics issue. It was discussed that the use of the funds will be targeted for advertising and marketing campaigns and perhaps using a local celebrity as the voice for SBRRB. Ms. Ahn will look further into the logistics of these funds and Chair Woods and Ms. Palcovich will meet with Director Liu regarding setting up a trust account and devising a proposed marketing strategy for the Board.

## **VII. 201M-7 RULE REVIEW**

- A.** Department of Transportation – HAR Chapter 19-38.1, “On-Demand Taxi Service at Public Airports” (DOT) – Deferred until the May board meeting. In the meantime, Chair Woods asked that each member thoroughly review these rules.

Chair Woods explained that at the next meeting, she would like the Board to review Department of Health rules, “Certificate of Need,” which govern medical providers, hospitals, privately owned surgical centers, and private hospitals. Second Vice Chair recommended that the “Certificate of Need” rules be placed on next month’s agenda for review and discussion; the members unanimously agreed.

## **VIII. REPORT FROM THE CHAIR**

- A.** Legislative up-date – SB2248 SD1 “Relating to Solicitation of Funds for Charitable Purposes” - Chair Woods indicated that she had misread this bill when she initially presented it to the Board and recommended that members vote in opposition of it. The bill, in fact, reduces the financial impact on small businesses, not increases it. Therefore, Mr. Dymond recommended that the Board support this bill; the members unanimously agreed.

SB2864 “Making an Appropriation for Regulatory Boards and Commissions” – Second Vice Chair Pang explained that she and Ms. Palcovich met with a representative from Senator Taniguchi’s office regarding this bill and were told that the Board inadvertently bypassed the legislative process, and were too late to submit an amendment into the Governor’s budget. Chair Woods, however, spoke with Senator Tsutsui, who sits on the Ways and Means Committee with Senator Taniguchi. Though no promises were made, Senator Tsutsui would try to insert this appropriations bill into the budget. Chair Woods explained that, in hindsight, the bill should have been introduced into both the House and Senate at the same time so there would be a cross-over. That leaves the Board in its current situation, where there is only a “temporary” hire. If Senator Tsutsui is unable to assist the Board, Chair Woods will invite Director Liu to a board meeting and attempt to devise a logistical solution to this issue.

SB1380, SD2, HD1 “Relating to the Small Business Bill of Rights” – Chair Woods updated the members on this bill which was re-introduced into the legislature this year. The last status update indicated that the bill was referred to Finance but hasn’t moved since March 23<sup>rd</sup>.

- B.** Discussion of changing SBRRB monthly meetings – Chair Woods explained that she will be unable to attend the monthly meetings on Tuesdays due to a timing conflict with her business. While the consensus of the members was that Wednesdays would be the next best day to hold the board meetings, no set day had been determined. In any case, the next meeting is scheduled for Wednesday, May 17<sup>th</sup>.

- C. Update on Board member nominations – Mr. Dymond and Second Vice Chair Pang may have nominations to submit to the Board for voting. Chair Woods explained that currently there is quite a vetting process for investigating prospective Board members.

**IX. REPORT FROM COMMITTEES** – Nothing was reported.

**X. REPORT AND UPDATE FROM BOARD MEMBERS** – Second Vice Chair Pang stated that she was aware that one of this Board’s projects in the past was to review and make recommendations to DOH’s proposed Chapter 11-100.1 “Adult Residential Care Homes.” While for several years numerous amendments have been made to this proposal, the changes were not done in concert with the industry at large, but by a few people claiming to represent the industry. She explained that some of the issues that were significantly “trimmed down” might need to be re-reviewed because of the changes in the complexion of the health care industry as a whole. As a result of her concerns, Mr. Leis recommended that, given the substantive changes to these proposed rules since the Board last reviewed them (November 2004), the Board submit a memorandum to Governor Lingle requesting that prior to finalization of Chapter 11-100.1, the rules be re-presented to this Board for review; the members unanimously agreed. Copies will be sent to the Lieutenant Governor, Mr. Tim Lyons, Director Ted Liu, and each member of this Board.

**XI. ANNOUNCEMENTS** – Congratulations to the newly appointed board member, Charles Au, and the re-appointment of Chair Lynne Woods.

Chair Woods thanked Second Vice Chair Pang for her hard work and assistance in acting as the Board’s chairperson in Chair Woods’ absence. Among other tasks, Ms. Pang went before the Senate on behalf of Chair Woods’ nomination. Her efforts are very much appreciated.

It was noted that the Board’s informal petty cash account is now diminished due to various incidental expenses such as leis, greeting cards, and most recently, a goodie package given to Senator Espero’s office in appreciation of his introducing SB2864, “Making an Appropriation for Regulatory Boards and Commissions.”

**XII. NEXT MEETING** - Wednesday, May 17, 2006, Leiopapa A. Kamehameha Building, 235 S. Beretania Street, Honolulu, HI, 6<sup>th</sup> floor Conference Room.

**XIII. ADJOURNMENT** – Chair Woods adjourned the meeting at 1:20 p.m.