

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

November 22, 2006

No. 1 Capitol District Building 250 South Hotel Street – Conference 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
- Sharon L. Pang
- Donald Dymond
- Charles Au
- Richard Schnitzler
- Bruce Bucky
- Peter Yukimura

ABSENT MEMBERS:

- George Handgis
- Dorvin Leis
- Michael Yee

STAFF:

DBEDT

Dori Palcovich
Mike Norris

GUESTS:

Francis Oishi, Program Manager, Aquatic Resources Division, Department of Land and Natural Resources
Paul Yuen, Supervisor Attorney, Insurance Division, Department of Commerce and Consumer Affairs
Tim Lyons, President, Hawaii Business League
Kurt Kawafuchi, Director, Department of Taxation (DoTax)
Johnnel Nakamura, Rules Officer, DoTax
Hayley Callahan, Rules Specialist, DoTax
Robert Boesch, Program Manager, Plant Pest Control Branch, Department of Agriculture
Alan Matsunami, Program Specialist, Department of Human Resources
Lauren Willson, Environmental Health Specialist, Solid and Hazardous Waste Branch, Department of Health (DOH)
Karl Motoyama, Coordinator, Solid and Hazardous Waste Branch, DOH

WORKING LUNCH AS THE MEETING PROGRESSED

II. **INTRODUCTION OF NEW BOARD MEMBER(S) AND ASSIGNMENT OF AGENCIES** – Chair Woods welcomed the Board's newest members, Messrs. Bruce Bucky, representing Oahu, and Mr. Peter Yukimura, representing Kauai. Mr. Bucky owns Hildgund Jewelers, located on Oahu, Maui and the Big Island, and also builds shopping centers around the United States; he likes water skiing, tennis and softball. Mr. Yukimura is a food distributor in Kauai, mainly supplying hotels, restaurants and schools; he also owns other related companies. Chair Woods explained that each member is assigned as a discussion leader for particular agencies and that if either gentlemen have an expertise or specific interest in being assigned to a particular agency to please let the Board know. She further explained that, at times, a member may need to recuse themselves from voting on a particular issue due to a potential conflict of interest.

III. **APPROVAL OF MINUTES:** Minutes of the October 18, 2006 Board meeting were approved as presented.

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

V. OLD BUSINESS

- A. Review and discussion of post public hearing statement for HAR Chapter 18-237, "General Excise Tax Law" (DoTax) – Mr. Kurt Kawafuchi, Director of DoTax, distributed information regarding the outcome of the recent public hearing. The information included a list of organizations that attended the public hearing, and comments DoTax received at the hearings. He stated that DoTax performed extensive vetting of the proposal to the neighbor islands as well as Oahu. It was explained that the term "nexus" is a concept under State tax law that refers to when the state can tax an out-of-state or international business. If a firm does not have enough nexus or presence in the state, the state, under federal law, cannot tax that business. A buyer, however, will pay a "use" tax when a purchase is made. Because

DoTax did not want to impose the tax burden on the neighbor island businesses, in order to minimize the impact, DoTax mirrored the multi-state rules; thus, if there is enough presence on Oahu, the business will be required to pay the 4.5% tax. Mr. Kawafuchi further explained that the purpose of the rules is to address when transactions will be subject to the new county surcharge tax. There is a transitional concept in the law stating that when a contract is signed before June 30th of this year, it doesn't allow the business to be taxed the new rate, only the current 4.0% rate. Overall, he expressed explaining the new tax law to the business community has been a very ambitious project that was conducted within a very short period of time. After much discussion and explanation, Mr. Au recommended that the proposed post public hearing statements proceed to the Governor for adoption; the Board unanimously agreed.

- B. Review and discussion of post public hearing statement for HAR Chapter 13-64, "Kokee Public Fishing Area, Kauai" (DLNR) – Mr. Francis Oishi, Program Manager of the Aquatic Resources Division, explained that testimony in support of the rules was provided at the public hearing held in July in Kauai. In order to offer a prospective on the proposed rule, Mr. Oishi distributed a copy of the cover the magazine, *Hawaii Fishing News*, which pictures one of the opening days of the Kokee Public Fishing Area in Kauai. He explained that approximately 30% of the individuals that come to this fishing area are from other islands. Mr. Yukimura stated that he attended one of the opening days and found it to be a very good program and a great experience. Mr. Dymond recommended that the post public hearing statements proceed to the Governor for adoption; the Board unanimously agreed.
- C. Review and discussion of post public hearing statement for HAR Chapter 12-5, "Rules Relating to the Hawaii Employment Security Law" (DLIR) – Chair Woods explained that this rule was previously presented to this Board and went to public hearing; however, the rules then proceeded directly to the Governor's office for adoption before they came back for review after public hearing. Mr. Schnitzler stated that as volunteers on this Board, it doesn't bode well when we are bypassed. Chair Woods recommended that a letter of protest for this action be submitted to the Governor's office.
- D. Review and discussion of post public hearing statement for HAR Chapter 12-15, "Workers' Compensation Supplemental Medical Fee Schedule" (DLIR) – Chair Woods explained that this rule was previously presented to this Board and went to public hearing; however, the rules then proceeded directly to the Governor's office for adoption before they came back for review after public hearing. Mr. Schnitzler stated that as volunteers on this Board, it doesn't bode well when we are bypassed. Chair Woods recommended that a letter of protest for this action be submitted to the Governor's office.
- E. Review and discussion of post public hearing statement for HAR Chapter 16-171, "Miscellaneous Insurance Rules" (DCCA) – Mr. Paul Yuen, Supervisor Attorney of DCCA's Insurance Division, explained that the public hearing took place; three written testimonies were received, two in support and one in opposition. State Farm Insurance Companies was against the proposal because of the expense of the mailing and copying costs of the notification requirement for insurers when payments are made to legal representatives. He further explained, however, that although DCCA is also concerned with the cost of this requirement, sending out an additional letter would not be hugely expensive. Mr. Au recommended that the proposed post public hearing statements proceed to the Governor for adoption; the Board unanimously agreed.
- F. Review and discussion of post public hearing statement for HAR Chapter 4-66, "Pesticides" (DOA) – Mr. Robert Boesch, Program Manager at the Plant Pest Control Branch, explained that public hearings were held on October 10th, 11th, and 12th, on the islands of Oahu, Kauai, Maui, and the Big Island. A total of eight individuals testified and there were four main areas of concern. Those areas include certifying pesticide applicators for certain chemicals, restricted use status for chlorine gas and simazine, conditions on the use of restricted use pesticides, and annual use permits. After much discussion, Mr. Schnitzler recommended that the proposed post public hearing statements proceed to the Governor for adoption; the Board unanimously agreed.
- G. Review and discussion of post public hearing statement for HAR Chapter 17-1737, "Scope and Contents of the Fee for Service Medical Assistance Program" (DHS) - Mr. Alan Matsunami, Program Specialist at DHS, explained that public hearing was held for the proposed rule amendments regarding dental services for individuals under the age of twenty-one. The amendments clarify the dental service provided which expands on the benefits as well as including those dental services that are not provided. Six individuals attended the public hearing with one oral testimony and two written testimonies; testimony sought clarification on the reimbursement determination, covered procedures, determination of medical necessity

and billing process. Another issue that was raised involved the area of possible fraud and fraud prevention. As changes to these rules are positive, Vice Chair Pang recommended that the rules proceed to the Governor for adoption; the Board unanimously agreed.

VI. NEW BUSINESS

- A. Review and discussion of amendments to HAR Chapter 17-1722, State Pharmacy Assistance Program (DHS) – Mr. Alan Matsunami, Program Specialist at DHS, explained that the rule amendments pertain to an existing program where the only change is the eligibility in the program. The changes will be made to the State Pharmacy Assistance Program, which are adjunct to the new Medicare prescription drug program. The proposed modifications reflect increases, which will mirror the existing Medicare program to the eligible income limit for the program participants from one hundred percent of the federal poverty level to one hundred fifty percent. In addition, all or some of the required co-payments or co-insurance actually paid for eligible prescriptions covered under the Medicare Part D program will be covered by the State for persons with up to one-hundred fifty percent of the federal poverty level. Mr. Dymond recommended that the rules proceed to public hearing; the Board unanimously concurred.
- B. Review and discussion of changes to HAR Chapter 17-1728.1, “QUEST-Adult Coverage Expansion (ACE)” (DHS) - Mr. Alan Matsunami, Program Specialist at DHS, indicated that this proposal represents additions to the QUEST-ACE program, which has been in existence since 1994. The amendments allow the department to cover those individuals who meet all of the Medicaid and QUEST criteria; except that they are childless adults which would not make them automatically eligible to enroll in this program to come into the program. The program mandates a \$12,000 maximum cap after three years per individual. Overall it was noted that there should be a benefit to the hospitals as this program will mitigate an increase in health care premiums by medical insurers due to a reduction in uncompensation care costs. Therefore, insurers will not have to pass on as much of a loss attributed to uncompensated care to businesses. Mr. Au recommended that the proposed rule amendments proceed to public hearing; the Board unanimously agreed.

Review and discussion of amendments to HAR Chapter 11-282, “Deposit Beverage Container Program” (DOH) – Mr. Karl Motoyama, Coordinator, and Ms. Lauren Willson, Environmental Health Specialist of DOH's Solid and Hazardous Waste Branch, explained how the proposed rules will directly benefit businesses that redeem loads of less than 200 beverage containers; those businesses include restaurants, hotels, golf courses, day care centers and tour guide companies. Specifically, the proposed rules require redemption centers to count deposit beverage container loads up to 200 containers when a consumer requests that their redemption be computed by container rather than by weight. While this may require redemption centers to change their redemption procedures and potentially hire additional staff, it is not believed that this will be overly burdensome since some redemption centers are already counting loads larger than 50. It was also indicated that some businesses have developed innovative redemption methods, such as using two different lines for counting and weighing. Overall, it is believed that the proposed rules will increase consumer confidence in the program as a whole, resulting in increased redemption and thus economically benefiting businesses that operate redemption and recycling services. Mr. Au recommended approval that the rules proceed to public hearing; the Board unanimously agreed.

VII. 201M-7 Rule Review

- A. Discussion and status on the 201M-7 and Annual Summary Reports – The members reviewed the two draft reports, one represents the work that the Board has completed over the past year, and the other is a two-year administrative rule review. Chair Woods recommended that the reports be approved in their draft form in order to allow DBEDT staff to refine and finalize the reports to proceed to the legislature and to the Governor as required by law; the Board unanimously agreed. Prior to their finalization, Ms. Palcovich will provide the members with a second draft for final review.

REPORT FROM THE CHAIR AND UPDATE FROM BOARD MEMBERS – Vice Chair Pang suggested that another strategic planning retreat be held, particularly for the new members, in order to bring everyone together both as a group and in-line strategically with the Board's goals. It was tentatively discussed that such a retreat will be held in Maui on Tuesday, March 13, 2007, or Wednesday, March 14, 2007.

Chair Woods indicated that if any of the members receive a telephone call from the “press,” to immediately refer the call to her, as it can be very easy to be misquoted.

Mr. Dymond discussed a document he received from the Attorney General's office regarding the inspection of premises for the enforcement of proper stamping of tobacco products. He indicated that the most recent legislation regarding cigarette sales, which takes effect in January 2007, requires all retailers to have a permit; without such a permit, one cannot be a reseller of tobacco. The permit allows the Attorney General's office to request any and all information. This document will be provided to Deputy Attorney Margaret Ahn for review and discussion at the next Board meeting.

Vice Chair Pang indicated that she was aware that the DLNR rules regarding gill net fishing that were presented to this Board for initial approval for public hearing may have bypassed the Board for recommendation after public hearing. Ms. Palcovich will look in this and get back to Vice Chair Pang, however, Mr. Smyth indicated that the published article addressing these rules was deceiving when in fact the rules have not yet been presented to the Governor for adoption.

VIII. REPORT FROM COMMITTEES – Marketing Investigative Taskforce – Mr. Schnitzler, a member of this taskforce, indicated that he and the other two taskforce members, Mr. Au, and Chair Woods, will be attending presentations this evening by two of the three prospective public relations firms.

Chair Woods updated the members on the Bill of Rights brochure, explaining that the last two years when the Bill of Rights was presented to the legislature as a bill, it failed. As a result, the Board established the same rights only in brochure form. Upon review of the brochure, DCCA Director Mark Recktenwald and Attorney General, Mark Bennett, suggested revisions to it. Mr. Bennett stated that small businesses have the right to expect fair treatment, but suggested the “bill of rights” perhaps be changed to the “bill of expectations.” An invitation has been extended to both gentlemen to attend the next Board meeting to discuss their concerns in order to arrive at an agreeable resolution.

IX. ANNOUNCEMENTS – Chair Woods recommended cancelling the December Board meeting due to significant time constraints that DBEDT staff would confront in order to handle the appropriate paperwork required for the meeting; the Board unanimously agreed.

X. NEXT MEETING - Wednesday, January 24, 2007, No. 1 Capitol Building, Conference Room 436.

XI. ADJOURNMENT – Chair Woods adjourned the meeting at 1:12 p.m.