

BOARD OF PRIVATE DETECTIVES AND GUARDS

Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

Date: Thursday, March 14, 2013

Time: 10:30 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, HI 96813

Present: Douglas Inouye, Public Member, Chairperson
Gary Yabuta, Chief of Police, County of Maui, Vice Chairperson
Darryl Perry, Chief of Police, County of Kauai
Jeffrey Owens, Industry Member
Ray Galas, Public Member
Edward Akiona, Industry Member
Rodney J. Tam, Deputy Attorney General
Charlene L.K. Tamanaha, Executive Officer
Christine Hironaka, Secretary

Excused: None

Guests: Albert Denis - Securitas
Kelvin Ogata – Pacific Regional Disaster Preparedness Center
("PRDPC")
Paul Schulz – PRDPC
Jessica Stratford - PRDPC

Agenda: The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by §92-7, Hawaii Revised Statutes ("HRS").

Call to Order: There being a quorum present, the meeting was called to order at 10:44 a.m. by Chairperson Inouye.

Approval of the Board Minutes: It was moved by Mr. Owens, seconded by Mr. Akiona, and unanimously carried to approve the minutes and executive session minutes of the February 14, 2013 meeting as circulated.

Additions to Or Deletions From the Agenda: It was moved by Mr. Owens, seconded by Vice Chairperson Chief Yabuta, and unanimously carried to add the following to the agenda:

4. Applications

a. Guard Instructor

- 5) William R. CHUR
- 6) Abigail L. GALUTERIA
- 7) Shawn J. MCBRIDE
- 8) Todd K. TA'A
- 9) Donald WIGGINS

6. Scope

- c. Email from Lori Ortiz about Act208 question on 4 hours OJT.
- d. Airport Law Enforcement Officer ("LEO") – Albert Denis

7. Legislation

- a. Act 208 (S.B. No. 2165) and any matters relating to the implementation of Act 208.
 - 4) David Heaukulani – update to instructor materials
 - 5) David Heaukulani – Authorized copyright licensees
 - 6) Ad Hoc Committee Report

Examination:

a. Review & Report

The Executive Officer distributed the following results of the Private Detectives' and Guards' examination:

Private Detective Exam (administered February 15, 2013)

Exams Administered	1
Successful	0
Unsuccessful	1

Chairperson Inouye announced he was taking the agenda out of order to address 6. Scope, d.

Scope:

d. Airport Law Enforcement Officer ("LEO") – Albert Denis

The Board has received inquiries from airport LEOs asking if they are exempt from Act 208. The Executive Officer requested the LEO position description and qualifications from Securitas, the agency contracted by the state Department of Transportation for airport LEO personnel under HRS section 261-17. Mr. Denis distributed the Federal Regulation 1542.215 Law enforcement support, excerpts from Section 10 of the state contract with LEO qualifications, Section 10.3 Scope of Work that defines the responsibilities of law enforcement and security at all the Hawaii airports under the contract.

Vice Chairperson Chief Yabuta stated that the Maui Department of Transportation security has two classifications—armed and unarmed and security can only perform a citizen’s arrest and must call the Maui police department to complete the arrest charges. They are not commissioned but contracted by the state Department of Transportation.

Mr. Akiona added that airport security has the power to arrest but the Sheriff’s department must handle the arrest procedures. Mr. Denis also stated that the airport LEOs are allowed to carry guns and are trained by the Transportation Security Administration (“TSA”) and Securitas would like an opinion from the Board and if the LEOs are exempt from Act 208.

The Executive Officer stated that the Board at its July 14, 2011 meeting reviewed the definitions of law enforcement officer as stated in HRS sections 710-1000 and 712 A-1 and determined which agencies are “law enforcement agencies” and not subject to HRS Chapter 463 (Act 208):

Deputy Attorney General Tam stated that HRS section 710-1000 refers to “any public servant” and Chairperson Inouye asked Deputy Attorney General Tam review the definition of “public servant”.

The Executive Officer asked what type of training do the LEO’s receive? Mr. Akiona responded that the LEO’s receive law enforcement or military police training. Mr. Denis stated that the Sensitive Security Information (“SSI”) contract was not available and that he will submit the training requirements to the Executive Officer.

After further discussion, it was the Board’s consensus to defer discussion on this matter to the next meeting.

Chairperson Inouye announced he was taking the agenda out of order to address 7. Legislation, a. 3).

- Legislation:
- a. Act 208 (S.B. No. 2165) and any matters relating to the implementation of Act 208
 - 3) Pacific Regional Disaster Preparedness Center (“PRDPC”) Curricula

Mr. Ogata, Mr. Schultz and Ms. Stratford appeared before the Board to answer any questions regarding the PRDPC Hawaii Security Guard Training curricula.

Mr. Owens stated that the curricula appeared to address some of the requirements however he had the following comments:

- The handouts should have information on how each topic will be covered. The Board needs to see a lesson plan or training manual to verify topic discussion and the content being taught.
- Page 6, Use of Force should be more comprehensive and cover other areas of the use of force such as trespass and warnings.
- Lesson 6, the fundamentals to patrolling should be more comprehensive.
- The ethics portion appears sufficient but the professionalism portion is lacking. This topic should address professional conduct. The subject should be Ethics & Professional Conduct.
- Be sure answers to exam questions are covered in the training manual.

Mr. Schulz responded that the section on professionalism is for the instructor not the student. Mr. Owens responded that there is nothing in the documentation provided that demonstrates what the instructor will cover. Chairperson Inouye added that the professionalism component is not mandated by the Legislature in the statute but the legislative intent is to train guard employees on how to implement a plan to treat the public professionally.

The Executive Officer informed Mr. Ogata and Mr. Schulz that in order for the Board to approve the curricula, PRDPC should submit a lesson plan of what will be covered and discussed.

Vice Chairperson Chief Yabuta, after reviewing PRDPC's 2/8/13 response, advised attendees that "de facto arrest" is not "implied arrest". The Board advised the attendees that "implied arrest" is when a reasonable person believes that their freedom of action has been restricted even though no formal pronouncement of arrest is made. Vice Chairperson Chief Yabuta also stated that "implied consent" refers to a reasonable suspicion for an officer to stop a vehicle. When a person obtains a driver's license they give "implied consent" to submit to searches, blood alcohol tests, etc.

After further discussion, it was moved by Mr. Owens, seconded by Vice Chairperson Chief Yabuta, and unanimously carried to defer the approval of the PRDPC

Hawaii Security Guard Training curricula until the curricula can be resubmitted addressing the points brought up by the Board.

**Chairperson Inouye announced he was taking the agenda out of order to address 6.
Scope, a.**

- Scope: a. Email requesting determination if job duties are subject to Act 208.
(Deferred from the February 14, 2013 meeting)

The Board reviewed the email from David L. Lee regarding the Harbor Operations Supervisor position and whether this position is subject to the requirements of Act 208 (SLH 2010).

The Board reviewed the following definition of a "guard" in Hawaii Revised Statute ("HRS") section 463-1 that was amended by Act 208:

"Guard"...means a registered uniformed or nonuniformed person responsible for the safekeeping of a client's properties and persons within contractually prescribed boundaries, and for observation and reporting relative to such safekeeping. "Guard" shall not include any active duty federal, state, or county law enforcement officers or personnel.

After further discussion, it was moved by Mr. Owens, seconded by Vice Chairperson Yabuta, and unanimously carried that based solely on the job description provided the duties fall within the definition of a guard and this position is therefore subject to Act 208.

- b. Email requesting determination if retired and active law enforcement officers employed as security guards or protection agents are subject to Act 208. (Deferred from the February 14, 2013 meeting)

The Board reviewed the email inquiry regarding whether retired Hawaiian police officers acting in a role of a security guard or executive protection agent are subject to the requirements of Act 208 (SLH 2010).

The Board also reviewed the following definition of a "guard" in Hawaii Revised Statute ("HRS") section 463-1 that was amended by Act 208:

"Guard"...means a registered uniformed or nonuniformed person responsible for the safekeeping of a client's properties and persons within contractually prescribed boundaries, and for observation and reporting relative to

such safekeeping. "Guard" shall not include any active duty federal, state, or county law enforcement officers or personnel.

After further discussion, based solely on the information provided in the inquiry, it was moved by Mr. Galas, seconded by Chief Perry and unanimously carried that retired police officers acting as a security guard or executive protection agent are acting in a guard capacity and are not active duty law enforcement officers or personnel and therefore are subject to the requirements of Act 208.

c. Email from Lori Ortiz about Act208 question on 4 hours OJT.

The Board reviewed the email inquiry from Ms. Ortiz asking if the OJT is conducted at the site where the Officer works or can the OJT be part of the classroom training in addition to the 8 hours of mandatory classroom training

Deputy Attorney General Tam commented that the OJT does not have to cover the same topics. Mr. Denis opined that the OJT can be in a classroom setting, in an employer orientation or occur in the field and be site specific. Many companies are also doing OJT online. Mr. Denis added that customary practice is that the site supervisor does the OJT. It was the Board's consensus that as long as the supervisory is a registered guard or Board approved instructor this practice is fine.

After further discussion is was moved by Mr. Owens, seconded by Chief Perry and unanimously carried that the 4 hours of OJT may be at a site or in a classroom setting provided it is in addition to the 8 hour mandatory training and the individual providing the OJT is an approved guard instructor, licensed principal guard, or registered guard employee who has met the requirements of HRS section 463-10.5.

Legislation:

a. Act 208 (S.B. No. 2165) and any matters relating to the implementation of Act 208.

1. Criminal Convictions (Deferred from the February 14, 2013 meeting)

This item was deferred to the April 11, 2013 meeting pending the Deputy Attorney General's review of the specific statutory cites.

2. Definitions of Guard and Acting in a Guard Capacity

Deputy Attorney General Tam submitted a proposed definition of “Act in a guard capacity” for the Board’s review.

Proposed definition of “Act in a guard capacity”

“Act in a guard capacity” or “acting in a guard capacity” means the performance of safekeeping, observation, and reporting functions by a uniformed or nonuniformed employee for the person’s employer; provided that:

- (1) An employee who performs safekeeping, observation, and reporting functions only incidentally to the employee’s primary job functions and responsibilities shall not be considered to be acting in a guard capacity; and
- (2) The following are examples of such excluded employees:
 - (A) A person stationed at the entrance or exit of a retail or commercial establishment whose function is to verify a customer’s membership with and the accuracy of purchases from the retail or commercial establishment;
 - (B) A parking lot attendant whose responsibility is limited to control the ingress and egress of the parking lot, facility, or structure;
 - (C) A person whose responsibility is limited to performing water safety and rescue services at a swimming pool, beach, or other body of water;
 - (D) A person whose responsibility is limited to taking tickets from customers at the entrance or exit of an entertainment, recreational, commercial, or sporting event; and
 - (E) A residential or commercial property manager who oversees the property owner’s agreement with a licensed guard agency for the provision of guard services to the subject property.

Proposed definition of “safekeeping”

“Safekeeping” means protecting property, assets, or persons through a physical presence to detect and deter illegal actions, inappropriate actions, or unsafe conditions; including but not limited to theft, damage, harm, or risk of injury to such persons or property, as applicable.

“Physical presence” means maintaining a post (e.g., a stationary guard, bouncer, etc.) or patrolling the premises.

Mr. Owens commented that the use of “incidentally” in (1) was too broad and argumentative and Mr. Denis and Mr. Galas suggested that “primary” be removed.

Additional comments for the proposed definition of “safekeeping” included, adding “in violation of premises rules” after “inappropriate actions”, adding “alarm responder” after “bouncer” and adding “or responding to a site condition” after “patrolling the premises”.

The Deputy Attorney General will review the definition to address the Board’s concerns.

4. David Heaukulani – update to instructor materials

The Executive Officer informed the Board that Mr. Heaukulani sent updated materials to his approved guard training curricula.

5. David Heaukulani – Authorized copyright licensees

The Executive Officer informed the Board that Mr. Heaukulani has authorized the following entities to provide his curricula and to be a third party provider. Those entities will be posted on the Board’s website.

Kiamalu Consulting & Investigations Agency, LLC –
effective 3/19/13
Jan-Guard Hawaii, Inc. – effective 3/21/13

6. Ad Hoc Committee Report

Mr. Galas, Chairperson of the Ad Hoc Committee, reported that the committee is submitting the following topics for the 4 hours Continuing Education Units (“CEU”) for June 30, 2014 renewal:

- General Liability
- Active Shooter
- Workplace Violence
- Ethics
- Fire Safety

Mr. Galas added that the committee members will now work on the things to be covered under the 5 topics.

Mr. Denis informed the Board that California’s continuing education training is done by the employer rather than through state agencies. California also posts a list of subjects, sub topics and guidelines for employers. Mr. Denis added that First Aid and CPR should be added to the CEU list.

Deputy Attorney General Tam suggested that the topics could be chosen from the 8 hour training curricula.

The Executive Officer stated that the CEUs are for 4 hours per year or 8 hours for the biennium and although the statute does not state that the courses must be approved by the Board, the Board may set forth the CE requirements in the rules.

Chairperson Inouye stated that the menu model is a good example to follow and Mr. Owens added that there should be a variety of topics that all companies could select from.

Mr. Galas stated that the Ad Hoc committee will be tasked to add details to the 5 topics.

Chairperson Inouye announced he was taking the agenda out of order to address 4. Applications.

Executive Session: It was moved by Vice Chairperson Chief Yabuta, seconded by Mr. Owens, and unanimously carried to enter into executive session pursuant to HRS §§92-4 and 92-5, to consider and evaluate personal information relating to the applicant applying for licensure and to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities and to consider sensitive matters related to public safety or security in accordance with HRS 92-5(a)(4) and (6) at 12:20 p.m.

EXECUTIVE SESSION

It was moved by Vice Chairperson Chief Yabuta, seconded by Mr. Owens, and unanimously carried to reconvene to the Board's regular order of business at 12:30 p.m.

Applications: a. Guard Instructor

It was moved by Mr. Galas, seconded by Chief Perry and unanimously carried to approve the following applications for Guard Instructor for posting to the Board's website:

William R. CHUR
Abigail L. GALUTERIA
Peter J. PADILLA
John Michael M. PEI
William SILVA
Kenneth C. STOVER III
Donald WIGGINS

It was moved by Vice Chairperson Chief Yabuta, seconded by Mr. Galas, and unanimously carried to **defer** the following Guard

Instructor application pending appropriate documentation and submission of FBI background check:

Shawn J. MCBRIDE- Pending additional information

It was moved by Vice Chairperson Chief Yabuta, seconded by Mr. Galas, and unanimously carried to **deny** the following Guard Instructor application for failure to demonstrate the requisite four (4) years of experience as a guard plus two (2) years of experience as a supervisor, trainer, instructor, or manager of guard employees set forth in the Board's July 12, 2012 minutes pursuant to the authority granted the Board by Act 208 (SLH 2010).

Todd K. TA'A

b. Guard Instructor Ratification

It was moved by Chief Perry, seconded by Mr. Owens, and unanimously carried to **ratify** the approval of the following Guard Instructors and dates of approval.

Wayne M. KAMA – 03/01/13
Fred H. OISHI – 03/08/13
Olga Ann PINERO – 03/08/13

c. Guard Employee

It was moved by Vice Chairperson Chief Yabuta, seconded by Mr. Galas and unanimously carried to approve the following guard employee applications.

Theodore FREITAS III
Nathan L. JONES
Raymond NELSON, JR.
Aaron A. SILVA
Anthony T. VITO

It was moved by Chairperson Inouye, seconded by Mr. Owens and unanimously carried to add the FBI fingerprint check through the Hawaii Criminal Justice Data Center to the requirements to be a Guard Instructor.

The Executive Officer will amend the guard instructor application to include the new requirement.

The Board discussed those guard instructors who also act in a guard capacity. Those instructors will also require registration as a guard. They determined that the guard instructor shall complete the guard employee application, pay the required fees to get them

into the system that will allow online services, renewals, notices, etc. These applicants will not however have to re-submit high school verification documents as the Board already has them.

Chairperson Inouye announced he was returning to the order of the agenda.

Legislation:

b. 2013 Legislation

1. SB506 Relating to Professional and Vocational Licensing

The Executive Officer informed the Board that these bills assist transitioning service members obtain licensure by:

- Clarifying that licensing authorities shall consider relevant education, training, or service;
- Permitting licensure by endorsement;
- Establishing procedures for service members to receive a license by endorsement;
- Permitting temporary licenses of certain requirements are met, and
- Requiring the licensing authority to expedite consideration of the application and issuance of a license or temporary license.

The language of the bill defines "service member" as an individual who is currently stationed in Hawaii or one who is honorably discharged within the previous 6 months and had been stationed in Hawaii. The bill further requires the licensing authority to expedite consideration of the application and issuance of a license by endorsement or a temporary license to the qualified service member.

The Executive Officer noted that although HRS Chapter 460J does not address licensing by endorsement or reciprocity, the Board has never precluded experience gained through military service.

It was moved by Mr. Owens, seconded by Chief Perry and unanimously carried to support the intent of SB506, however notes it is difficult to enforce.

2. SB965 Relating to Professional and Vocational Licensing

The Executive Officer informed the Board that this bill establishes qualifications for "nonresident military spouses" to be eligible for expedited licensing by endorsement or reciprocity, and to maintain licenses requires reporting of changes in status or circumstances.

It was moved by Mr. Owens, seconded by Chief Perry and unanimously carried to support the intent of SB965, however felt it is difficult to enforce.

3. HB1381 Relating to Professional and Vocational Licensing

The Executive Officer informed the Board that this bill requires the licensing authority to consider for licensure by endorsement or reciprocity military spouses or service members who have served in a combat zone after September 11, 2001 and who have been discharged within the last two years and who provide retirement, separation, or discharge documentation.

It was moved by Mr. Owens, seconded by Chief Perry and unanimously carried to support the intent with reservations of HB1381.

4. SB1232 Relating to Private Guards

The Executive officer informed the Board that this bill did not survive the session. The bill was not given a hearing. Senator Kouchi felt the definition of a guard in this bill was too broad. The senator was provided copies of the Board's minutes to show the Board's efforts in narrowing the definition.

Next Meeting: Thursday April 11, 2013
Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, First Floor
Honolulu, Hawaii 96813

Adjournment: There being no further business to discuss the meeting adjourned at 12:40 p.m.

Reviewed and approved by:

Taken by:

/s/ Charlene L.K. Tamanaha
Charlene L.K. Tamanaha
Executive Officer

/s/ Christine Hironaka
Christine Hironaka
Secretary

4/5/13

[X] Minutes approved as is.
[] Minutes approved with changes; see minutes of _____.