

Appendix B – Meeting Minutes October 26, 2022

Commission to Improve Standards of Conduct

Members:

Judge Daniel R. Foley (Ret.), Chair;

Robert D. Harris, Executive Director and General Counsel of the State Ethics Commission, Vice Chair;

Kristin E. Izumi-Nitao, Executive Director of the Campaign Spending Commission;

Nikos Leverenz, Common Cause Hawaii Advisory Board Member;

Barbara C. Marumoto, Former State Representative;

Janet Mason, Legislative Committee Member, League of Women Voters of Hawaii; and

Florence T. Nakakuni, Former U.S. Attorney for the District of Hawaii.

Note: Ms. Sandy Ma, Executive Director of Common Cause Hawaii, resigned from the Commission effective June 17, 2022, and Mr. Nikos Leverenz was appointed by Speaker of the House of Representatives Scott Saiki to fill that vacancy via [memorandum](#) on the same day.

Resources:

The Commission's website, which includes related materials and information such as House Resolution No. 9 (Regular Session of 2022), the Commission's Interim Report, and meeting notices and minutes, can be found here: [Committees \(hawaii.gov\)](#)

Recordings of the Commission's public meetings may be viewed on the House of Representatives' YouTube channel found here: [Hawaii House of Representatives - YouTube](#)

The Commission may be contacted via email at standardsofconduct@capitol.hawaii.gov.

I. Call to order/Roll call

Commissioner Mason convened the meeting at 2:00 p.m. All Commissioners were present for the meeting, except for Chair Foley and Commissioner Izumi-Nitao who were excused.

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II. Approval of minutes

Commissioner Harris moved, and Commissioner Leverenz seconded, to approve the [minutes of the October 19, 2022, meeting](#) of the Commission. The motion carried.

III. Public testimony

The Commission received written public testimony from the Department of Land and Natural Resources, Pono Advocacy LLC, and three individuals.

The Commission heard oral public testimony from the Department of Land and Natural Resources and three individuals. Two individuals expounded on their written testimonies, of which one individual suggested amending the House and Senate Rules to:

- Include the establishment of a commission, body, or neutral party to address and investigate potential violations by legislators;
- Strengthen the attendance of conference committee members at conference meetings; and
- Establish a form of identification for lobbyists, such as the wearing of identification.

An individual provided oral testimony on the need for bold changes to improve legislative effectiveness that include disclosure of consultancy-type lobbying or income, appropriation of funds for public financing, banning of donations during session and two weeks before and two weeks after session, and greater advocacy for applying the Sunshine Law to the legislative process.

The Commission members commented on and had discussion on the oral testimonies.

In its oral testimony, the Department of Land and Natural Resources referred to its comments and positions on transparency measures in its written testimony.

IV. Consideration of Draft Bills, Resolutions, and Legislative Rules Related to Ethics and the Legislative Process

Commissioner Harris facilitated the discussion of the draft bills, resolutions, and legislative rules related to ethics and the legislative process, and set forth the following draft measures for discussion and decision-making by the Commission:

- A. Prohibiting the hiring or supervising of relatives or household members

The draft bill can be found here: [10-26-22 Draft Nepotism Bill](#).

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Commissioner Harris proposed an amendment on page 4, line 14 (subsection (d) of the bill) to amend the language in the draft bill to read: "... from taking official action and is legally required to take action that directly impacts a relative or household member"

Commissioner Mason moved, and Commissioner Leverenz seconded, to adopt the amendment to the draft bill. The motion carried.

The Commission, by vote, adopted the draft bill, as amended.

B. Funding grant-in-aid for county ethic boards or commissions

The draft bill can be found here: [10-26-22 Draft County Ethics Funding Bill](#).

Commissioner Harris stated that there is a State Ethics Commission and county ethics commissions with constitutionally-delegated responsibilities to these entities. He indicated that some of the commissions do not have full-time staff and rely on volunteers. Commissioner Harris proposed amending the draft bill to include the City and County of Honolulu to enable it also to apply for the grant-in-aid in the draft bill.

Commissioner Leverenz inquired whether the counties have an obligation to have ethics commissions by the State Constitution. Commissioner Harris responded that under the State Constitution, the counties have this obligation and there is delegation to the both Legislature and county councils to identify the scope.

Commission discussion included the following comments:

- Concern that the grant-in-aid to the counties would provide resources to something the counties should already be doing; and
- Suggestion that the provisions in the draft bill be a pilot.

Commissioner Leverenz stated he would abstain on the funding aspect of the draft bill but would support the draft resolution on today's agenda.

Commissioner Harris proposed deferring the draft bill to the next Commission meeting and including language that this measure is intended as a pilot to incentivize the counties to fulfill their duties.

The Commission, by vote, deferred this draft bill to the next meeting. Commissioner Marumoto abstained.

C. Resolution requesting county governments to review existing programs and develop systematic improvements to prevent future corruption and ethical violations

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The draft resolution can be found here: [10-26-22 Draft County Government Structure Review Resolution](#).

Commissioner Leverenz moved, and it was seconded, to adopt the draft resolution. The Commission, by vote, adopted the draft resolution.

D. Publishing reports of legislative allowance expenditures online

The draft bill can be found here: [10-26-22 Draft Legislative Allowance Disclosure Bill](#).

Commissioner Harris stated that each legislator is allocated a percentage of their legislative allowance, and that while this information is currently public, it is not easily accessible. He elaborated that this draft bill would require that legislative allowance expenditures for legislative members be posted online.

Commissioner Leverenz moved, and Commissioner Marumoto seconded, to adopt the draft bill. The Commission, by vote, adopted the draft bill.

E. Requiring legislators to disclose financial relationships with lobbyists or lobbying organizations

The draft bill can be found here: [10-26-22 Draft Legislator Financial Disclosures Bill](#).

Commissioner Harris stated that this draft bill is an attempt to require legislative members to disclose relationships with lobbyists or lobbying organizations specific to business or financial interests. He added that there may be challenges to this measure both politically and legally.

Commissioner Leverenz moved, and Commissioner Marumoto seconded, to adopt the draft bill. The Commission, by vote, adopted the draft bill.

F. Compelling lobbyists to disclose matters lobbied on with greater specificity

The draft bill can be found here: [10-26-22 Draft Lobbyist Disclosure Bill](#).

Commissioner Leverenz requested a friendly amendment to insert information concerning budget items on page 4, line 10, of the draft bill.

Commission discussion centered on disclosing the drafters of legislation and including legislative drafts and other legislative documents as part of the legislative history submitted to the State Archives. Commissioner Harris suggested that the draft Bill of Rights Bill could include that any proposed drafts of legislation be part of the legislative record.

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Commissioner Leverenz moved, and it was seconded, to amend the draft bill to include information concerning budget items on page 4, line 10, of the draft bill. The motion carried.

Commissioner Leverenz moved, and Commissioner Marumoto seconded, to adopt the draft bill, as amended. The Commission, by vote, adopted the draft bill, as amended.

G. Establishing a mandatory lobbyist training program

The draft bill can be found here: [10-26-22 Draft Mandatory Lobbyist Training Bill](#).

Commissioner Harris stated that lobbyist training is already offered with relatively high participation; however, the intent is to capture those who currently are not attending training. He indicated that the State Ethics Commission would keep records of those who have gone through the training program; however, individuals would also be asked to retain their certificates of completion of training as proof of completion. Commissioner Harris also stated that the State Ethics Commission currently has self-directed, online lobbyist training courses that take about 30 minutes and has live Zoom training courses.

Commissioner Leverenz moved, and Commissioner Marumoto seconded, to adopt the draft bill. The Commission, by vote, adopted the draft bill.

H. Preventing lobbyists from giving prohibited gifts to legislators or state employees

The draft bill can be found here: [10-26-22 Draft Unlawful Lobbyist Gifts Bill](#).

Commissioner Harris stated that currently there is a gift restriction in the State Code of Ethics that applies to legislators, state employees, and board and commission members; however, there is currently no restriction on lobbyists for giving gifts. This measure creates a reciprocal obligation for legislators, state employees, and lobbyists.

Commissioner Mason proposed an amendment to the draft bill to increase the proposed administrative fine to up to \$10,000. Commissioner Harris indicated that he would abstain on the proposed amendment as there are mirroring provisions in the State Ethics Code and the fines in the draft bill are per violation. Given the feedback, Commissioner Leverenz did not think the proposed amendment was necessary.

Commissioner Harris elaborated that the gifts of aloha term was created by the State Ethics Commission, and the intent was to recognize reciprocal gifts that are common everyday gifts and not gifts beyond reproach or concern. He stated that the idea is to try to create a legislative environment where the expectation is that gifts cannot be given or should not be given to put all on the same footing.

Commissioner Marumoto inquired about the types of gifts that were allowable, such as lunches. In response to Commissioner Marumoto, Commissioner Harris indicated that lunch would not be allowable. He stated that the restriction from lobbyist to legislator has

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clear, defined exceptions and that current rules have a three-part test: Who is giving the gift, what is the value of the gift, and what is the state purpose.

Commissioner Leverenz moved, and Commissioner Harris seconded, to adopt the draft bill. The Commission, by vote, adopted the draft bill. Commissioner Marumoto abstained.

I. Proposing legislative rules to govern conflicts of interest

The draft proposed rules can be found here: [10-26-22 Draft Proposed House Rules](#) and [10-26-22 Draft Proposed Senates Rules](#).

Commissioner Harris stated the attempt is to make recusal the default position and take a broader definition of conflict of interest. Commissioner Harris clarified that these draft proposed House Rules and Senate Rules would be put in the form of a resolution for legislative introduction.

Commissioner Leverenz moved, and Commissioner Mason seconded, to adopt the draft proposed rules. The Commission, by vote, adopted the draft proposed rules. Commissioner Marumoto abstained.

J. Establishing rights for members of the public with respect to the conduct and operation of the legislature and its members

The draft bill can be found here: [10-26-22 Draft Bill of Rights Bill](#).

Commissioner Harris recognized Jim Shon for the original proposal related to this draft bill, which works off of the proposal. Commissioner Harris stated that the Office of the Public Advocate contained in the draft bill would be the entity to address concerns or challenges about how the Legislature is operating.

Commission discussion centered on where to administratively place the Office of the Public Advocate, such as placing the office within the Office of the Ombudsman, Department of the Attorney General, State Ethics Commission, or other existing office.

Commissioner Harris consulted with the Office of the Ombudsman and, in doing so, two concerns were raised if the Office of the Public Advocate were to be placed in the Office of the Ombudsman: (1) The need for additional staffing, space, and other resources for the Office of the Ombudsman; and (2) The matter that the Office of the Ombudsman is a legislative agency is that is tasked with investigating complaints about actions of executive branch agencies, which is different from the focus and responsibilities of the Office of the Public Advocate.

Commissioner Harris proposed that the CISC report acknowledge creation of the Office of the Public Advocate as a placeholder and state that further discussion is needed on whether the Office of the Public Advocate can be incorporated into an existing office with

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existing administrative capacity. He acknowledged that he is not sure whether creating a new office is the best approach, but this is a means to continue discussion.

Commissioner Harris elaborated on the various rights of the public relating to the Legislature that are contained in the Draft Bill of Rights Bill.

Commissioner Harris suggested deferring this draft bill to the next Commission meeting to consider including other provisions suggested by Commission members in discussion. The provisions concern:

- The Sunshine Law;
- The expectation that any legislative decision-making be made in public and articulates the need for decision making discussion;
- The request that substantive bill drafts be made public;
- The elimination of the legislative practice of defecting the effective date in bills; and
- Recognition of Article III, Section 12 of the Hawaii State Constitution regarding the following provision: "Every meeting of a committee in either house or of a committee comprised of a member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public."

Commissioner Harris requested that this draft bill be deferred to the next Commission meeting. By consensus, the Commission members agreed to defer the measure to the next Commission meeting.

V. Consideration of CISC Draft Bills Deferred from Prior Meetings

A. Recordings of Public Meetings (deferred from the October 5, 2022, meeting)

The working draft of this agenda item is still being prepared. The Commission deferred this item to the next Commission meeting.

VI. Other Matters

Commissioner Mason recalled that Commissioner Izumi-Nitao will present a bill on publicly financed elections at the November 9, 2022, meeting.

VII. Next Meetings

The Commission's next meetings are scheduled for November 2, 2022, and November 9, 2022.

The November 2, 2022, agenda will include:

- The three deferred agenda items from today's meeting:

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- Item IV, B: Draft bill on funding grant-in-aid for county ethic boards or commissions;
- Item IV, J: Draft bill on establishing rights for members of the public with respect to the conduct and operation of the legislature and its members (Draft Bill of Rights Bill); and
- Item V, A: Recordings of Public Meetings;
- A resolution or bill on Super PACS; and
- Any additional rule changes.

The November 9, 2022, agenda will include:

- Presentation by Commissioner Nakakuni on a legislative of bills that address public corruption; and
- Presentation by Commissioner Izumi-Nitao on a bill on partial public funding of elections.

Commissioner Harris indicated that he will be drafting the upcoming Commission meeting agenda and will try to get the draft bills online as soon as feasible.

The meeting adjourned at 3:58 p.m.