

DEPT. COMM. NO. 417

March 31, 2022

House of Representatives
Speaker Scott K. Saiki
State Capitol Building
415 S. Beretania Street, Room 431
Honolulu, Hawaii 96813

Re: Commission to Improve Standards of Conduct

Dear Speaker Saiki:

On behalf of the members of the Commission to Improve Standards of Conduct, I am pleased to present to the House of Representatives our Interim Report as requested pursuant to H.R. No. 9, Regular Session of 2022.

After five weeks of passionate discussions concerning recommendations to improve the areas of ethics, campaign finance, open meetings, and fraud and criminal prosecution laws, our Commission has reached a consensus and prepared the enclosed Interim Report. The recommendations are short-term goals to support and improve such laws through legislative bills currently moving through the legislative process, as well as long-term areas of focus to pursue further.

Please proceed with posting this Interim Report online for public review as appropriate, as the public and other invited agencies and organizations will have a role in shaping the Commission's final work product going forward in preparation of the Commission's Final Report. The Commission will continue to work systematically and in earnest toward preparing a Final Report to be submitted to the House of Representatives by December 1, 2022.

Please join me in thanking my fellow Commission members for their diligent participation, hard work, and willingness to share their perspectives. The work they have put forward in the Interim Report will serve as a strong foundation on which to build the Final Report.

If you have any questions or need further assistance please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Daniel R. Foley". The signature is written in a cursive, flowing style with a long, sweeping tail on the letter "y".

Daniel Foley, Chair
Commission to Improve Standards of Conduct

Enc. Interim Report of the Commission to Improve Standards of Conduct

Cc: Robert D. Harris, Vice Chair, Executive Director and General Counsel of the
Hawai'i State Ethics Commission

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

Sandy Ma, Executive Director of Common Cause Hawaii

Barbara C. Marumoto, former state representative

Janet Mason, League of Women Voters of Hawaii

Florence T. Nakakuni, retired United States Attorney for the District of Hawaii

INTERIM REPORT OF THE COMMISSION TO IMPROVE STANDARDS OF CONDUCT

An Interim Report to the House of Representatives, March 31, 2022

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Introduction

On February 17, 2022, the Hawaii House of Representatives appointed a Commission to consider the purpose of the basic underpinnings of our state governance, specifically the laws surrounding lobbying, ethics, and campaign spending. As a result, the House of Representatives adopted H.R. No. 9 (House Resolution) to establish a Commission to Improve Standards of Conduct (Commission). The Speaker of the House of Representatives appointed seven Commission members representing a broad spectrum of the community, specifically members who have experience serving the public interest at either the federal or state level or representing national nonprofit organizations who have a mission of promoting good government practices and policies.

Appointing the Commission to Improve Standards of Conduct brings to mind our state motto: Ua mau ke ea o ka ‘aina i ka pono. The life of the land is perpetuated in righteousness. This Commission is firmly rooted in the meaning of this motto.

The scope of the Commission is broad and encompasses a review and assessment of existing state laws and rules relating to standards of conduct of public officers and employees, including but not limited to:

- (1) The Code of Ethics under Chapter 84, Hawaii Revised Statutes;
- (2) Lobbying laws under Chapter 97, Hawaii Revised Statutes;
- (3) Campaign finance laws under Chapter 11, Hawaii Revised Statutes; and
- (4) Any other applicable laws and rules.

In addition, the Commission is charged with ensuring that state laws and rules contain clear standards, enforcement mechanisms, and penalties. The Commission is also encouraged to consult with appropriate third parties with expertise in the areas of ethics, campaign finance, and standards of conduct.

The Commission is requested to submit to the House of Representatives an Interim Report of findings and recommendations by March 31, 2022, and a Final Report, including any proposed legislation, by December 1, 2022.

MEMBERS OF THE COMMISSION

Members of the Commission

The Speaker of the House of Representatives appointed seven members to the Commission who have experience serving the public interest at either the federal or state level or representing national nonprofit organizations who have a mission of promoting good government practices and policies. Pursuant to the House Resolution, the members of the Commission are as follows:

- Daniel R. Foley, Chair, retired state judge
- Robert D. Harris, Vice Chair, Executive Director and General Counsel of the Hawai'i State Ethics Commission
- Kristin E. Izumi-Nitao, Executive Director of the Campaign Spending Commission
- Sandy Ma, Executive Director of Common Cause Hawaii
- Barbara C. Marumoto, former State Representative
- Janet Mason, League of Women Voters of Hawaii
- Florence T. Nakakuni, retired United States Attorney for the District of Hawaii

Background

Corruption on the part of a few public officials recently reared its ugly head in Hawaii. Our citizens deserve better – honest government on the state and county level. To this end, your Commission to improve the standards of conduct on which they operate becomes essential in attempting to identify remedies. Each member of the Commission is keenly aware of the importance of public trust and confidence in public institutions, elected officials, and employees and the need for safeguards against even the appearance of impropriety in government. The Commission members are active participants at the Legislature and the findings and recommendations in this Interim Report have a heavy focus on immediate steps that the Legislature can take.

Recognizing the need for public officials and employees to act with prudence, integrity, and high ethical judgment, the Commission seeks to improve standards of conduct among elected officials and employees as safeguards against the further erosion of public trust and confidence in government, with hopes that restoration and enhancement of public trust and confidence in government will improve the legitimacy, quality, and effectiveness of government actions.

Since the adoption of the House Resolution, the Commission met weekly and engaged in robust discussions on each of the topics identified in the House Resolution. A vital part of the discussions centered on legislation proceeding through the current legislative session relating to ethics, campaign finance, the Sunshine Law, transparency, lobbying, and fraud and criminal prosecution. The Commission's recommendations in this Interim Report is based on legislation still advancing through the legislative process, recognizing the implausibility of introducing new bills this far along in the legislative session.

The goals of the Commission for this Interim Report include not only recommending legislation and improvements to legislation, but also presenting a written record of its discussions, in the hope that the discussions themselves may also serve as a resource for new and experienced public officials and employees. For reference purposes, Appendix B contains the final approved minutes for each meeting of the Commission.

BACKGROUND

The Commission members were not constrained in their pursuit of measures and legislative proposals to improve and foster public trust and confidence in public officials and employees, and recommendations of each member were raised before the Commission for discussion on the merits and possible adoption. At each meeting, members also suggested amendments to certain legislation in order to refine the Commission's recommendations.

Because the Commission had only five weeks after establishment to submit this Interim Report, members had to be judicious in the scope and depth of their considerations, as well as the process used for deliberation, in order to meet the March 31st deadline. However, the Commission expects to launch a more comprehensive action plan in preparation for its Final Report due on December 1, 2022. Specifically, the Commission plans to establish a process to allow public input on ways to improve standards of conduct for elected officials and employees and consider such feedback in formulating its recommendations in its Final Report.

The Commission will conduct outreach to agencies and organizations, particularly those agencies and organizations identified in the House Resolution, as it moves toward preparation of its Final Report. The Commission anticipates that those agencies and organizations, along with input from the public, will provide valuable insight and perspectives on how the Commission can provide timely, well-informed, and thoroughly considered legislative recommendations to the House of Representatives in preparation for the Regular Session of 2023.

In the months between this Interim Report and the Final Report to be delivered by December 1, 2022, candidates for public office will be elected by the people of Hawaii exercising their fundamental right to vote. Specifically, candidates will fill the seats for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, the Office of Hawaiian Affairs Board of Trustees, State Senator, State Representative, and various county seats. By any measure, this is a consequential election taking place in a Reapportionment year. Our hope is this Interim Report will add value to the political discussion in which Hawaii faces its public challenges, while building on the opportunities which we highlight in this Report.

FINDINGS AND RECOMMENDATIONS

Findings and Recommendations

The House Resolution tasks the Commission with submitting an interim report of findings and recommendations to the House of Representatives by March 31, 2022. To this end, the primary focus of the Commission has been to submit recommendations on legislation for action prior to Adjournment Sine Die of the Regular Session of 2022, which is currently scheduled for May 5, 2022. After much deliberation, the Commission voted to adopt this Interim Report and the findings and recommendations provided herein.

Several measures introduced during the Regular Session of 2022, if enacted, may improve existing laws and standards of conduct to enhance and reestablish the public's trust in its elected officials and employees. If these measures are not enacted during the current legislative session then they may be considered as a recommendation in our Final Report and for potential inclusion for bills to be introduced during the Regular Session of 2023. To streamline its focus and have the largest impact in the immediate short-term, the Commission's recommendations are primarily focused on legislation that appears to be moving through the Legislature in the Regular Session of 2022. Therefore, certain measures that did not meet a specific legislative filing deadline, but are nonetheless supported by the Commission, may be taken up as a recommendation in the Final Report if the Commission believes the measure could improve the conduct of public officials.

Further, in light of the fact that Adjournment Sine Die of the Regular Session of 2022 is quickly approaching, the Commission concedes it may not be feasible to adopt or implement these recommendations during this regular session, considering constitutional restrictions on bills, such as subject and title limitations and the three readings requirement in each chamber of the Legislature. The recent Hawaii Supreme Court decision in *League of Women Voters of Honolulu and Common Cause v. State of Hawaii* (SCAP-19-0000372, November 4, 2021) held, among other things, that substantive amendments to bills must be germane to the original purpose of the bill in order to meet the three readings requirement of the Hawaii State Constitution. It is under these constraints that the Commission offers its recommendations.

The recommendations are categorized as follows:

FINDINGS AND RECOMMENDATIONS

- Areas of immediate focus, covering subjects of fraud and criminal prosecution, openness and transparency, ethics oversight, and campaign reform; and
- Areas of long-term focus, consisting of topics for further consideration by the Commission for its Final Report.

For each recommendation, the Commission endorses a certain action, measure, or particular version of a measure or recommends amendments to enhance the effectiveness and timeliness of implementation of an action or measure. Please note: the following bills may have been, or will be, further amended by either the House, Senate, or Conference Committee prior to the adjournment of the Regular Session of 2022. Thus, bills and/or suggested amendments may only be relevant as of the date of this Report.

Areas of immediate focus

I. Strengthen Investigation and Prosecution of Fraud

State agencies charged with enforcing civil and criminal laws need the capability to promptly and fairly investigate complaints. Fines and other penalties for violations are necessary for accountability and deterrence. We call on the Legislature to pass several measures which support this.

SB2930 SD2: Establishes and funds two new units with the Department of the Attorney General, the Special Investigation and Prosecution Unit and the Sex and Human Trafficking Unit. Of particular interest in this bill is the Special Investigation and Prosecution Unit which is tasked to: (1) Receive, gather, and analyze information; (2) Develop tactical and strategic intelligence; (3) Assist in the control of fraud, white collar crime, and public corruption; (4) Provide technical assistance and training to county law enforcement agencies in the detection and prosecution of fraud and white collar crime, and public corruption; and (5) Provide, with the Attorney General's approval, specialized personnel and technological equipment for the use of law enforcement agencies in the State with respect to fraud, white collar crime, and public corruption.

HB1423 HD1 SD1: Increases the amount of the fine from \$1,000 to \$5,000 for each occurrence or an amount not to exceed three times the amount of an unlawful contribution or expenditure that may be assessed against a noncandidate committee that

FINDINGS AND RECOMMENDATIONS

makes only independent expenditures (i.e., Super PACs) and has received at least one contribution of more than \$10,000 from any one person or has made expenditures of more than \$10,000 in the aggregate in an election period. Authorizes the Campaign Spending Commission to order that the fine, or any portion of the fine, assessed against a noncandidate committee be paid from the personal funds of the officers of the noncandidate committee.

SB212 SD1: Increases the amount of fines that may be assessed against a noncandidate committee for violations of organizational report requirements and advertisement disclaimer requirements. Increases the fines for noncandidate committees making only independent expenditures (i.e., Super PACs) for advertisement disclaimer violations.

SB665 SD1 HD1: Strengthens campaign finance reform by allowing the Campaign Spending Commission to refer a complaint to the Attorney General or county prosecutor for criminal prosecution in addition to assessing administrative fines. Creates a class C felony for intentionally providing certain false information relating to the payor of a campaign advertisement. Amends the applicable fines related to false advertisements. Increases the disqualification period for holding elective public office from 4 years to 10 years for anyone convicted for a crime involving campaign finance law.

II. Give Openness and Transparency a Boost

Citizens have a right to know what is happening in government, to be able to "see through" what is going on when government officials conduct business. Public records must be accessible while balancing personal privacy. We endorse administrative changes and legislation described here.

Post Legislator Allowance Expenditures Online: The Commission recommends the House of Representatives and Senate consider internal administrative and policy modifications concerning legislative allowance expense reimbursements. To increase transparency and accountability, the Commission recommends each chamber of the Legislature post all legislative allowance expense reimbursements online. Making these reimbursements available for public review would further the goal of increased public trust and confidence in how taxpayer dollars are being spent on official business by legislative members.

FINDINGS AND RECOMMENDATIONS

SB2143 SD2 HD1: Defines "board packet" and requires each state board to make such packets publicly available at least 48 hours in advance of the board meeting if the board uses such packets.

SB3252 SD2 HD1: Imposes a cap on the costs charged for the reproduction of certain government records and for searching, reviewing, and segregating digital records. Waives the cost of duplication of government records provided in an electronic format. Waives fees when the public interest is served by a digital record disclosure.

Member suggested amendments:

- Vice Chair Harris and Member Izumi-Nitao express some concerns with this measure as currently drafted, specifically, concern over the potential budgetary and capacity impact to the state agency if all fees are waived. They recognize the need for transparency and agree with the general intent, but support a balanced approach that achieves the most efficient and effective solution when considering the information sought and the time, resources, and costs involved by the agency. Communication to the requestor regarding the time and cost of the response is also a practice that state agencies should adhere to. One possible solution might be to provide funding to the Office of Information Practices that can be reimbursed to a particular agency if the Office determines the information request is in the public interest.
- Member Ma also suggests reverting to the language in the SD2 version of this measure, which does the above, but also waives reproduction costs for the first 100 pages if disclosure is in the public interest.

SB3172 SD1 HD1: Requires any electronic audio or visual recordings of board meetings to be maintained as a public record, while still requiring written minutes.

Suggested amendments of the Commission:

- If the meeting is recorded, the Commission suggests requiring the board to archive the government record on an easily accessible and publicly available website with free access.
- Suggestions as to providing a time stamp or other reference, when the board has a recording of the meeting, indicating when in the recording the board began discussion of each agenda item and when motions and votes

FINDINGS AND RECOMMENDATIONS

were made by the board may also assuage concerns by various state agencies as to providing full meeting minutes.

III. Serve the Public Interest with Ethical Awareness and Oversight

Maintaining public confidence in government requires elected and appointed government officials and lobbyists who do business with them to follow rules about acceptable behavior. We believe the measures described herein advance this goal.

HB1475 HD1: Requires all state employees to complete ethics training either live or online within 90 days of the start of employment and at least once every four years thereafter. Requires existing state legislators and employees who have not received ethics training within the immediately preceding three years to complete live or online ethics training within 12 months of the Act's effective date and then again at least once every four years thereafter.

Member suggested amendments:

- Member Ma is supportive of this measure but would prefer that training be conducted for each employee annually given that the training programs are offered online and in addition, establish consequences or a penalty for individuals that do not complete the training when required.

HB2069 HD2: Creates procedures for the custody, inventory, and care of protocol gifts received by the State. Requires the creation of a publicly available written record and ongoing maintenance of the gift.

Member suggested amendments:

- Member Ma suggests that, within thirty days of receipt, protocol gifts be deposited to the Hawaii State Archives, rather than retained or displayed. Allowing a recipient of a foreign protocol gift to maintain such a gift, despite its eventual deposit into the Hawaii State archives, could create murky ethical issues.

IV. Reduce the Power of Money in Politics

We recommend that the practice of raising campaign donations during session end. We also endorse periodic review of existing limits for expenditures as described in several measures we support.

SB555 SD1: Prohibits legislators and employees or persons acting on behalf of a legislator from holding any fundraiser during a regular or special session of the Legislature.

Suggested amendments:

- Expand the prohibition to include candidates for legislative seats and also prohibit the solicitation and acceptance of contributions or donations by legislators or candidates during session.
- Member Ma further suggests prohibiting legislators, during session, regular or special, from receiving contributions or depositing or using any contribution of money that was not deposited prior to the legislative session. Such a prohibition should be applied to every statewide elected position and person seeking such office.

HB1888 HD2: Restores the threshold amount of aggregated expenditures that requires disclosures of electioneering communications from \$1,000 to \$2,000. Modifies the disclosure date of electioneering communications to coincide with the distribution of the electioneering communication. Restores the requirement that subsequent distributions of electioneering communications be reported once the \$2,000 threshold has been met. Exempts news stories or editorials published by electronic means from being considered electioneering communications. Repeals the actual expenditures exception from the definition of electioneering communications.

Member suggested amendments:

- Member Izumi-Nitao and Member Ma suggest restoring the requirement to file a Statement of Information for Electioneering Communications to include candidate committees.

FINDINGS AND RECOMMENDATIONS

[HB1426 HD1 SD1](#): Provides that a person waives the right to a contested case hearing if the person fails to request a contested case hearing within 20 days of receipt of the Commission's preliminary determination. Gives the Campaign Spending Commission the ability to have their order confirmed as an enforceable judgment of the Circuit Court in addition to contempt proceedings.

[HB1427 HD1](#): Emphasizes that candidates are not required to file preliminary general reports if they are either unsuccessful or are elected to office in the primary election because such candidates are not on the ballot. Clarifies the aggregating contribution and expenditure amounts that determine when a committee needs to only file the final election period report.

[SB2043 HD1](#): Repeals references in the campaign spending law that have been previously repealed in 2018.

Areas of Long-Term Focus

V. Other topics to be considered by the Commission for its Final Report

In contemplation of its Final Report to be submitted to the House of Representatives by December 1, 2022, the Commission is exploring long-term areas of concern to focus on for its Final Report. The following non-exhaustive list of topics are mere suggestions at the time of publishing this Interim Report and are subject to later refinement. The preliminary list of topics that the Commission intends to analyze further and seek feedback on before addressing its recommendations in its Final Report are to include, but not be limited to, the following:

- Increased Criminal Penalties and Investigative Tools for State and County Law Enforcement Agencies to Address Fraud and Public Corruption
- Public Funding of Elections
- Term Limits
- Election Reform, including Ranked Choice Voting and Top Two Primaries
- Campaign Contribution and Expenditure Restrictions
- Voter Education, including a voter pamphlet with a link to campaign spending information about candidates and candidate committees

FINDINGS AND RECOMMENDATIONS

- Lobbyist Reforms, including requiring and publishing financial and gift disclosures, documenting and publishing lobbyists' meetings with legislators, ethics training for lobbyists, creation of lobbyist visitor logs, adding a lobbyist's passport-type photo to their registration, disclosure of specific bills an individual lobbyist supported or opposed
- Senate and House Rules, including disclosure of the individual or entity that requests a legislator to introduce a bill "by request"
- Legislative Grants-In-Aid Framework and Process
- Constitutional Amendments
- Reporting and Disclosure Exemptions
- Gift Reporting Requirements
- Expansion of Conflict of Interest Provisions
- Establishment of Baseline Budget Guidelines for the following state agencies: Ethics Commission, Campaign Spending Commission, Auditor, and Ombudsman
- Legislation from the Regular Session of 2022 that did not meet the criteria for inclusion in the Interim Report

Appendices

- Appendix A – House Resolution No. 9, Regular Session of 2022

- Appendix B – Meeting Notes
 - February 22, 2022
 - March 2, 2022
 - March 10, 2022
 - March 16, 2022
 - March 24, 2022

Appendix A

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2022
STATE OF HAWAII

H.R. NO. 9

HOUSE RESOLUTION

ESTABLISHING A COMMISSION TO IMPROVE STANDARDS OF CONDUCT.

1 WHEREAS, the strength and stability of our democratic
2 government rely on the public's trust in the government's
3 institutions and officers to act with prudence, integrity, and
4 good, ethical judgment; and
5

6 WHEREAS, this body recognizes the consequences of a loss of
7 public trust in governmental institutions and their officers and
8 the resultant threats posed to an orderly, effective government;
9 and
10

11 WHEREAS, this body notes that certain safeguards, including
12 ethics, lobbying, and campaign spending laws, are in place to
13 prevent this loss of public confidence in and good reputation of
14 governmental institutions and their officers; now, therefore,
15

16 BE IT RESOLVED by the House of Representatives of the
17 Thirty-first Legislature of the State of Hawaii, Regular Session
18 of 2022, that a Commission to Improve Standards of Conduct is
19 hereby established; and
20

21 BE IT FURTHER RESOLVED that the purpose and duties of the
22 Commission shall be to:
23

24 (1) Review and assess existing state laws and rules
25 relating to standards of conduct of public officers
26 and employees, including but not limited to:
27

28 (A) The Code of Ethics under chapter 84, Hawaii
29 Revised Statutes;
30

31 (B) Lobbying laws under chapter 97, Hawaii Revised
32 Statutes;
33



H.R. NO. 9

- 1 (C) Campaign finance laws under chapter 11, Hawaii
2 Revised Statutes; and
3
- 4 (D) Any other applicable laws and rules;
5
- 6 (2) Ensure the state laws and rules reviewed and assessed
7 pursuant to paragraph (1) contain clear standards,
8 enforcement, and penalties; and
9
- 10 (3) Provide recommendations to further the goals of the
11 Code of Ethics, lobbying laws, campaign finance laws,
12 and other applicable laws and rules that will increase
13 awareness of, compliance with, and deterrent effects
14 of those laws and rules; and
15

16 BE IT FURTHER RESOLVED that the Commission consist of the
17 following seven members who shall be appointed by the Speaker of
18 the House of Representatives:
19

- 20 (1) Judge Daniel R. Foley (Ret.), who shall serve as
21 chair;
22
- 23 (2) Robert D. Harris, Executive Director of the State
24 Ethics Commission;
25
- 26 (3) Kristin E. Izumi-Nitao, Executive Director of the
27 Campaign Spending Commission;
28
- 29 (4) Sandy Ma, Executive Director of Common Cause Hawaii;
30
- 31 (5) Barbara C. Marumoto, Former State Representative;
32
- 33 (6) Janet Mason, League of Women Voters of Hawaii; and
34
- 35 (7) Florence T. Nakakuni, Former U.S. Attorney for the
36 District of Hawaii; and
37

38 BE IT FURTHER RESOLVED that the Commission is requested to
39 consult with the Department of the Attorney General and public
40 interest organizations with expertise in the areas of ethics,
41 campaign finance, and standards of conduct, such as the National
42 Conference of State Legislatures, Council of State Governments,



H.R. NO. 9

1 and Brennan Center for Justice at the New York University School
2 of Law; and

3
4 BE IT FURTHER RESOLVED that the Commission is requested to
5 submit an interim report of findings and recommendations,
6 including any proposed legislation, to the House of
7 Representatives by March 31, 2022, and a final report, including
8 any proposed legislation, to the House of Representatives by
9 December 1, 2022; and

10
11 BE IT FURTHER RESOLVED that certified copies of this
12 Resolution be transmitted to Robert D. Harris, Executive
13 Director of the Hawaii State Ethics Commission; the Chair of the
14 Hawaii State Ethics Commission; Kristin E. Izumi-Nitao,
15 Executive Director of the Campaign Spending Commission; Holly T.
16 Shikada, Acting Attorney General; the Chair of the Campaign
17 Spending Commission; Tim Storey, Executive Director of the
18 National Conference of State Legislatures; the Executive
19 Director of the Council of State Governments; the President of
20 the Brennan Center for Justice; Sandy Ma, Executive Director of
21 Common Cause Hawaii; the Board of the League of Women Voters of
22 Hawaii; Judge Daniel R. Foley (Ret.); Florence T. Nakakuni;
23 Barbara C. Marumoto; and Janet Mason.

24
25
26
OFFERED BY: _____



FEB 17 2022



Appendix B – Meeting Notes February 22, 2022

Commission to Improve Standards of Conduct

On February 17, 2022, the House of Representatives adopted House Resolution 9, to establish a Commission to Improve Standards of Conduct (Commission). The scope of the Commission is broad and encompasses a review and assessment of existing state laws and rules relating to standards of conduct of public officers and employees, including but not limited to:

- (A) The Code of Ethics under chapter 84, Hawaii Revised Statutes;
- (B) Lobbying laws under chapter 97, Hawaii Revised Statutes;
- (C) Campaign finance laws under chapter 11, Hawaii Revised Statutes; and
- (D) Any other applicable laws and rules.

In addition, the Commission is charged with the goal of ensuring that state laws and rules contain clear standards, enforcement mechanisms, and penalties. The Commission is also encouraged to consult with appropriate third parties with expertise in the areas of ethics, campaign finance, and standards of conduct.

The Commission is requested to submit an interim report of findings and recommendations to the Legislature by March 31, 2022, and a final report by December 1, 2022. These reports should include any proposed legislation of the Commission.

February 22, 2022, Meeting Agenda:

1. Commission Members.

Judge Daniel R. Foley (Ret.), who shall serve as chair;

Robert D. Harris, Executive Director of the State Ethics Commission;

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

Sandy Ma, Executive Director of Common Cause Hawaii;

Barbara C. Marumoto, Former State Representative;

Janet Mason, League of Women Voters of Hawaii; and

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

Members introduced themselves and provided a brief explanation of their professional background.

Appendix B – Meeting Notes February 22, 2022

2. Selection of Vice Chair of the Commission.

MEMBER IZUMI-NITAO and MEMBER MASON nominated member Harris to serve as Vice Chair of the Commission. The nomination was approved unanimously.

3. General thoughts of the Commissioners on H.R. No. 9 and how the Commission should proceed.

MEMBER MASON: Resolution language has a broad scope, so there is flexibility to allow the Commission to proceed as it sees fit. Interim report deadline is tight.

MEMBER HARRIS: Mandatory ethics training for all state employees is currently in the Legislature. It's an expansion to existing law. Legislative allowance records proposed to be placed online, but that doesn't really require legislative action.

MEMBER IZUMI-NITAO: More robust deterrent is needed in the area of criminal law and prosecution if public corruption is to be addressed on a state/county level per H.R. No. 9. Consider SB2930 which is currently before the Legislature. Public transparency, accountability, etc., need to be paramount considerations of the Commission as well. Review state, county resources to prosecute and compare to federal authority.

MEMBER NAKAKUNI: Federal agencies all have unique expertise to investigate such crimes, some proactive pursuits. State agencies are more reactive. No special expertise currently exists at State/County level. State agencies could develop an expertise, but would take some time and resources. Need a forensic and fraud expertise.

Obstruction of justice, bribery statutes at state level do not have enough teeth. 10 years and \$25k for state statutes. Federal statutes 20 years and \$250k.

HPD White Collar section is small and appears to have other priorities at the time.

State needs to establish stronger laws and administrative sanctions.

MEMBER MA: Common Cause looked more at revamping the legislative structure of power and concentration of power. Powers of chairs to select bills and defer bills unilaterally. What changes can be made in the Legislative Rules? We created the following list of 15 proposed changes:

List of reforms:

- Establish legislative rules so that Committee Chairs do not have discretionary power to schedule bills for hearing, kill bills, and/or amend bills without first providing amendments to the Committee and public for review and thorough discussion.
- Establish term-limits for Legislative Leaders and Committee Chairs.
- Establish a process for removal of Legislative Leaders and Committee Chairs.

Appendix B – Meeting Notes February 22, 2022

- Require every elected official to report monthly a lobbyist meeting disclosure contact log.
- Require monthly public disclosures by lobbyists.
- Prohibit legislators from working as lobbyists or for lobbying entities.
- Prohibit lobbyists from fundraising for candidates. If you are a lobbyist, you cannot fundraise for a candidate by holding fundraisers or bundling contributions, and if you fundraise, you cannot lobby. Lobbyists may still donate subject to the contribution limits.
- Prohibit lobbyists who are advising the campaign of any sitting elected official, running for re-election or higher office, from representing any entities under the jurisdiction of the committees that the elected officials are sitting on.
- Ban fundraisers during session [SB555](#).
- Ban contributions to elected officials from entities under the jurisdiction of the committees that they are sitting on.
- Publicly disclose legislators' allowance expenditures.
- Pass legislation to create small donation-matching public financing program and/or fully fund the Hawaii Election Campaign Fund for our partial public funding of elections.
- Pass legislation to strengthen disclosure of campaign contributions and dark money contributions, such as [HB1881](#) / [SB3164](#).
- Not have Hawaii Auditor's Office, Campaign Spending Commission, and Ethics Commission funding be controlled by legislature and remove political partisanship and personal rancor from legislative dealings with government oversight agencies.
- Ban pay to play

MEMBER MARUMOTO: Changing the House Rules would be beneficial but accomplishing that could be challenging.

State agencies may need more resources to enforce existing laws. Prosecuting a few could lead to a deterrent for other Legislators.

[Is the Legislature Corrupt 2-18-22.pdf](#)

CHAIR FOLEY: Civil Beat has recently published articles by former Senator Gary Hooser, former LG candidate Kim Coco Iwamoto, former legislator Charles Djou, and Neal Milner. Below are links to the articles from Djou and Milner.

<https://www.civilbeat.org/2022/02/reform-hawaii-elections-to-stop-local-corruption/>

<https://www.civilbeat.org/2022/02/neal-milner-bribery-is-shameful-but-legal-influence-peddling-is-a-bigger-problem/>

I was personally involved with researching and litigating First Amendment issues relating to political campaigns. We must be mindful of certain First Amendment issues as those raised in *Citizens United* when we make our recommendations.

Appendix B – Meeting Notes February 22, 2022

This Commission has a golden opportunity to provide some input with the Legislature to try and make a difference to improve the law.

4. Commissioners that represent organizations report on any measures that they have been proposing or supporting in the legislature that come within the scope of H.R. No. 9.

MEMBER MASON: Will provide an excel spreadsheet with 28 measures they are tracking. In addition, on February 14th an email was sent to all 76 legislators with additional suggestions regarding future legislation and rule changes. We recommended positions on current legislation, including passing the entire campaign spending package.

MEMBER NAKAKUNI: Fed wire transfer involved an electronic transmission of the annual Gift Disclosure Statement to the Hawaii Ethics Commission. Fed utilizes a cooperative informant strategy plan in order to get credible evidence to prosecute.

MEMBER HARRIS: End of March report needs to be prepared rather quickly, consider invitations to a few people to come talk to Commission. AG's office, etc.

MEMBER IZUMI-NITAO: CSC package has 5 bills this year. HB1423/SB2044, deals with increasing rate of fines for Super PACs. HB1424/SB2043, housekeeping measure. HB1425/SB2042, electioneering communications increase to \$2k and make reoccurring. HB1426/SB2041, involves about a dozen noncompliant individuals with the Campaign finance laws. Helps civil recovery of fines. HB1427/SB2040, exempts candidates who either lose or are elected into office in a primary election from filing preliminary general reports. SB555 SD1 (not a CSC bill), bans fundraisers during a legislative session.

MEMBER MA: Common Cause is supporting SB3164 regarding campaign finance and it moved out of the Senate committee. The House companion HB1881 is dead.

5. What should the Commission attempt to achieve and report on by March 31, 2022, and then afterwards by December 1, 2022.

CHAIR FOLEY: List of measures for March report from the four agency/organization members of the Commission are focusing on for this current session would be a good place to start.

Part of the report will be about educating legislators. History, then recommendations.

MEMBER NAKAKUNI to try and include a background of what Fed, state, county currently does and their differences in approaching enforcement and prosecution.

Members should start to consider who to target to talk with us. We also need to consider further how to open up discussions to the public?

Appendix B – Meeting Notes February 22, 2022

MEMBER MARUMOTO: Bill to ban fundraisers during session should be pursued and consideration for the ban to be extended a couple months before and after session should also be given some thought. Charles Djou provided an article to me about this issue.

MEMBER MA: National agencies could be a resource to pursue input, such as the Brennan Center for Justice and Campaign Legal Center. Understanding that following the Sunshine Law may be challenging to meet the interim report deadline of March 31st, for public participation we could follow for now the current House Rules for noticing meetings, e.g., issue a notice 48 hours in advance of meeting, provide a meeting notice in advance. Further thought needs to be considered for more public participation after March 31st.

MEMBER MARUMOTO: More direct input from the public should be considered at some point in our process. The issue of secrecy and unlimited donations surrounding Super PAC's is also a concern of mine, but I understand that the holding in *Citizens United* may present challenges to accomplishing that.

CHAIR FOLEY: Open public forums are probably more practical after the interim report deadline of March 31st. We should be open, transparent and invite groups. I offer to MEMBER MA and MEMBER MASON to consider public input further and bring a proposal to the Commission to consider.

MEMBER IZUMI-NITAO: Offer the public the opportunity to identify bills in play this session that the Commission should consider.

MEMBER NAKAKUNI: Resolution just calls for the Commission to provide an interim report with proposed legislation to meet the March 31 deadline. Time constraints to allow for complete dialogue and discussion will make that deadline a challenge.

CHAIR FOLEY: Identify for next meeting what we are proposing to accomplish and what is feasible before March 31st. What specific measures to support? Lists of people to target to assist the Commission.

MEMBER MA: Propose how to hold public meetings.

MEMBER NAKAKUNI: Will begin to look into background info for the report. Will take initiative now on any Commission issues to develop information and suggestions.

MEMBER IZUMI-NITAO: Will help as well.

MEMBER MASON: What topics should be considered for the March 31st report?

CHAIR FOLEY: We should consider digestible topics to group for March 31 report and then to consider for Dec. 1 report.

We will distribute draft meeting notes to entire group for input, revising, and finalization prior to making them publicly available.

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MEMBER MARUMOTO: Constitutional changes can be recommended. 1978 Con Con adopted the Constitutional 48 hour Final Reading requirement to prevent separate readings 10 minutes apart on separate days, e.g., 11:55pm day one and 12:05am on day two.

6. How to proceed in writing the two Commission reports.

CHAIR FOLEY: Any of the commission members are free to assist in the process of preparing the reports of the Commission. The reports will be made available for review prior to being made available to the public.

7. What groups, organizations, offices, agencies, persons, etc., should be targeted or solicited for input and suggestions to Commission.

CHAIR FOLEY: Resolution identifies a few entities to consider, the AG's, NCSL, CSG. and Brennan Center for Justice. However, the Commission is not confined to any particular entity or individual or organization to talk with. In addition, members are free to discuss the Commission's progress and actions freely and openly.

8. Should the Commission solicit input from the general public, and if so, how.

MEMBER MA and MEMBER MASON to consider further this opportunity and provide a recommendation for the Commission to consider.

9. Any other matters.

CHAIR FOLEY: When would the four agencies/organizations be ready to share their information with the Commission?

Consensus from MEMBERS MA, IZUMI-NITAO, HARRIS, AND MASON is that their information would be ready to share within one week.

In report, we can explain that the Commission supports the intent of a pending bill, and suggest the following amendments.

No member of this Commission should be constrained from putting forward anything that they feel is important.

MEMBER IZUMI-NITAO: SB2930 is a measure to provide greater enforcement.

10. Next steps and meeting date.

Next meeting Wednesday March 3rd at 2:30pm.

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11. Final thoughts:

MEMBER MA: Will push forward for public participation.

MEMBER NAKAKUNI: Looking forward to working with everyone.

MEMBER HARRIS: Enjoy working with all of you. Would also offer my office to assist with work flow and also listen in to the discussion and take notes.

MEMBER MARUMOTO: Impressed with this group. This is interesting work considering my background and experiences.

MEMBER MASON: I'm optimistic about the impact this Commission can have and am looking forward to participating and making a difference with this Commission.

Appendix B – Meeting Notes March 2, 2022

Commission to Improve Standards of Conduct:

March 2, 2022, Meeting:

All of the members of the Commission were in attendance:

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;

Sandy Ma, Executive Director of Common Cause Hawaii (arrived 15-20 minutes late due to a prior commitment);

Barbara C. Marumoto, Former State Representative (arrived 20-30 late due to technical issues);

Janet Mason, League of Women Voters of Hawaii; and

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

1. Review and approve prior meeting notes

Chair moved to adopt prior meeting notes. Motion was seconded and adopted.

2. Campaign Spending Commission list of measures

MEMBER IZUMI-NITAO: Campaign Spending Commission (CSC) has a 5 bill package submitted to the Legislature that it is supporting, but also support other measures outside of our package. She asked Chair Foley on how she should proceed with this presentation to the Commission.

CHAIR FOLEY: The Commission should establish and prioritize short range and long range goals for the Commission to recommend in its Reports. Commission can pursue recommending the adoption of the CSC package of bills and as well as any other bills supported by the other organizations or members of this Commission.

MEMBER IZUMI-NITAO: That would be appreciated. From CSC's list of 3 items, item 1 is a list of House bills and item 2 is a list of Senate bills that concern campaign finance and are sponsored by CSC or by others. These bills would be considered immediate short term goals. The considerations listed under item 3 (except SB555) are more long term goals. For purposes of the Interim Report due on March 31st, my suggestion would be for the

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Commission to consider recommending support or opposition for the bills contained in items 1 and 2.

If the Commission is going to address more robust efforts at criminal deterrents, the CSC also likes SB2930 ([Measure Status \(hawaii.gov\)](#)) which is a good measure.

In addition, this Commission may want to consider a future measure to prohibit legislators from buying 2 tickets to another legislator's fundraiser. This practice can lead to expansive war chests for legislators running for re-election and garner support from their colleagues for their bills or issues.

CHAIR FOLEY: We should start to collectively focus on those bills that are supported by members of the Commission in an effort to vote on these legislative proposals as soon as there seems to be agreement amongst the group to help facilitate preparing the interim report since time is very limited.

MEMBER IZUMI-NITAO: SB2291 ([Measure Status \(hawaii.gov\)](#)), is also a bill we should be aware of as it would make government entities get a search warrant to obtain certain records.

MEMBER NAKAKUNI: I can take a look at that bill.

VICE CHAIR HARRIS: Maybe we can consider opposing such a measure?

MEMBER MA: SB555 ([Measure Status \(hawaii.gov\)](#)) does not go far enough. Perhaps prohibiting legislators from taking campaign contributions during session can also be a consideration to amend SB555 to make it more impactful.

CHAIR FOLEY: Would propose to MEMBER MA to suggest amendments to the legislation and to put forth a recommended bill draft for the group to consider.

3. Ethics Commission discussion topics

VICE CHAIR HARRIS: Nancy Neuffer and Jennifer Yamanuha are Hawaii Ethics Commission (HEC) staff joining our meeting to help me facilitate my contributions to this Commission. Thank you for allowing me to invite them into our meeting and they would be available to assist in any way they can.

Near term HB1475 ([Measure Status \(hawaii.gov\)](#)) is a measure we are in support of and it is moving through House. Senate bill companion, SB2039 ([Measure Status \(hawaii.gov\)](#)) has not moved. The measure requires mandatory ethics training for all employees within 90 days of employment and continually every 4 years thereafter.

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Near term recommendation would be to require that legislative allowance records be made accessible online. That practice would promote transparency and user friendliness and go to furthering public trust on how taxpayer monies are being spent by legislators.

Also recommend opposing bills such as SB2123 ([Measure Status \(hawaii.gov\)](#)), which would reduce public financial disclosure requirements for certain volunteer members of Boards and Commissions. This bill may be deferred for the year, but it may be worthwhile to emphasize the importance of public access to this type of information.

CHAIR FOLEY: In past years at the Legislature the content from some measures that have failed to meet certain filing deadlines have had an ability for the content to be revived through other measures that were moving through the Legislative process, however, with the recent Supreme Court Ruling in *League of Women Voters* that process may not occur. Regardless of whether certain priorities of the Commission are advancing we can still provide such recommendations in our Interim Report and then for those recommendations that don't make it this session, we can reassert those recommendations in the Final Report in December and for those measures to be introduced in the 2023 Regular Session.

VICE CHAIR HARRIS: HB2500 is the funding bill for Ethics Commission. It's important because it funds a full-time investigator for the Ethics Commission. Something the office has not previously had.

4. Common Cause list of bills and proposals for outreach

CHAIR FOLEY: Focus of this Commission should be on the 3 areas addressed in House Resolution No. 9 that was adopted ([Measure Status \(hawaii.gov\)](#)), namely the existing laws pertaining to ethics, lobbying, and campaign finance.

MEMBER MA: Common Cause Hawaii (CCHI) supports the ethics training bill and several of the other agency bills of HEC and CSC. Unfortunately, as an organization we often have to spend a lot of time testifying on what may be referred to as bad bills from a point of public concern. E.g., Sunshine bill exemptions, gift bills, donation of excess money from candidate committees, etc. It takes a lot of resources to monitor when these initiatives reappear year after year.

CHAIR FOLEY: Seems like there is a concern from CCHI that there are reoccurring bills that tend to weaken ethics, campaign, sunshine, etc., something that is contrary to motivation of this Commission. Maybe we should consider including a statement in the report saying to refrain from such bills each year.

Some suggestions in the CCHI's list appear to more long-term goals such as rule changes to the respective chambers. I would encourage MEMBER MA to research or review any particular model rules from other state legislatures in this regard that could potentially be used as an example.

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MEMBER MA: I am not aware of another jurisdiction that would have legislatures that could serve as a gold standard or benchmark for Hawaii to follow in regard to ethics, lobbying, and campaign spending. I will inquire with Common Cause nationally.

CHAIR FOLEY: Some of these issues identified by CCHI can be included in both the Interim and Final reports.

5. League of Women Voters suggestions

MEMBER MASON: The League of Women Voters (LWV) measures are short-term goals. However, our agenda also includes topics for long-term consideration.

We oppose legalized gambling each year (such as HB2485, ([Measure Status \(hawaii.gov\)](#))) and they keep reappearing. So similar to MEMBER MA's point, it does take a lot of time and resources to ensure our position on such measures is submitted as testimony for the official record.

LWV is aiming to have digital copies of voter education pamphlets become required. Our testimony was that such pamphlets should include a hyperlink to the CSC website in both the paper and digital copies of the pamphlets. This would allow voters to review who candidates are receiving money contributions from and how much money they are receiving.

LWV opposes SB2417 SD1 ([Measure Status \(hawaii.gov\)](#)), Relating to Elections, which aims to increase cap the amount of campaign funds that candidates may donate to community organizations to \$6,000 for two-year offices, \$12,000 for four-year non-statewide offices, and \$18,000 to four-year statewide offices.

Clarification of germaneness on how 'transparency' bills fit into our work should occur. There are many "transparency" type bills that focus on erosion of Open Meetings laws and Uniform Information Practices Act laws that the Commission may want to consider discussing.

LWV is committed to protecting disclosure laws and we support Chapter 84, HRS, ethics enforcement bills.

CHAIR FOLEY: I would request that the lists of the four organizational members that were submitted to analyzed against one another to identify areas of common interest and position in the areas of ethics, campaign spending, and lobbying that overlap similar positions as CCHI, Ethics Commission, CSC, and LWV. This will help to potentially have something to act on this session. The Interim Report can also identify long-term topics that Commission will pursue further in its Final Report, but those would more or less just be mentioned briefly in the Interim Report. The Interim Report can serve as a basis to solicit public comment and feedback on its interim recommendations. Our goal should be to

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circulate a Draft Interim Report in about 3 weeks to give the group enough time to review and amend in order to gain a consensus of support.

6. Proposals from MEMBER MARUMOTO

MEMBER MARUMOTO: Legislators sometimes will make gifts to community organizations from excess campaign funds because they are retiring or resigning from their elected office. Increasing the capped amounts could prove beneficial to certain community organizations in those instances. When I resigned from public office, I gave my excess money to fund public education and it helped a lot.

CHAIR FOLEY: Something to consider would be if incumbent candidates give excess campaign money to community groups when they are not resigning and are potentially seeking re-election to their current office or seeking election to a higher public office.

MEMBER MARUMOTO: I believe strongly that state agencies need tools and resources to pursue fraud and abuse. State needs to provide resources and funding at the state level to establish stronger laws and enforcement agencies to prevent abuse such as a fraud. Last week MEMBER NAKAKUNI addressed the potential disparity between federal and state and county operations to criminally enforce such laws, I think SB2930 to establish a new unit in the AG's office to criminalize instances of fraud abuse and human trafficking is a measure going in the right direction.

7. Proposals from MEMBER NAKAKUNI

MEMBER NAKAKUNI: SB2930 creates a special investigative fraud and human trafficking unit in the AG's. AG's supported the bill.

HB2474 ([Measure Status \(hawaii.gov\)](#)) is a measure that allows the CSC to refer complaints to AG's and Prosecutor's office.

SB665 ([Measure Status \(hawaii.gov\)](#)) is a measure that criminalizes certain false information pertaining to the name or address of a campaign advertisement.

8. Administrative matters for report purposes

The question as to whether the information and resources submitted by the organizational members between the first and second meetings was for the purpose of preparing for today's meeting and discussion or whether it was intended to be attached to the reports was discussed by the Commission. Determination was that the information was intended for meeting discussion purposes, rather than to become an appendix to the report.

MEMBER MA: SB3164 ([Measure Status \(hawaii.gov\)](#)), SB3252 ([Measure Status \(hawaii.gov\)](#)), SB2143 ([Measure Status \(hawaii.gov\)](#)), HB2026 ([Measure Status \(hawaii.gov\)](#)) are all positive

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measures for transparency and accountability that we are following and supporting and are positioned to crossover to the opposing chamber next week.

CHAIR FOLEY: Even if bills are dead this legislative session, we can still mention in the Interim Report those bills if there is a consensus from our group that those are good bills that would have improved standards of conduct relating to ethics, lobbying, and campaign spending.

MEMBER IZUMI-NITAO: HB1423 ([Measure Status \(hawaii.gov\)](#)) is a good bill that CSC is supporting and it already passed the House and is awaiting referral to committee in the Senate.

MEMBER MA: What if there is not a unanimous agreement of the members about whether to support or recommend a bill to improve the standards of conduct pertaining to ethics, lobbying, or campaign spending?

CHAIR FOLEY: From my experience and involvement with other commissions or committees, there are several ways to approach that issue. One option is to identify in the report where a member disagrees with the majority of the Commission and the other option would be if a member does not support a measure put forward a minority report that explains the reasoning and position as to why he or she could not support the majority recommendation.

MEMBER MA: One such example of that would be SB3164 ([Measure Status \(hawaii.gov\)](#)) and its House companion ([Measure Status \(hawaii.gov\)](#)). We see those measures differently than CSC.

MEMBER MARUMOTO: We also need to keep in mind that the current language is measures can change drastically over the course of the legislative session. So, although you may not support the current language, your testimony in future hearings could result in a change in your position on the bill. In previous years when I was in office, there was a wide discretion in changing the content of bills and in at least one instance it led me to voting against a bill I authored at the start of session.

9. Preparation and objectives of Interim Report due March 31st

CHAIR FOLEY: With the pending urgency to meet our Interim Report deadline of March 31st, I would request that members come up with a list of bill recommendations that can be achieved in the short-term for purposes of inclusion in the Interim Report. Other long-term recommendations can be topics considered for the Final Report in December and prior to our Final Report we could consider seeking input from the public, others who the group feel would be good to talk with, and perhaps vote next week we can vote on a list of recommendations that the group will either support or oppose.

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MEMBER MARUMOTO: Would it be feasible for Speaker to know what bills we look favorably upon?

CHAIR FOLEY: We should probably wait until the interim Report comes out. Speaker could review that report along with any other interested parties.

Recommendations not acted upon by the Legislature this session will be recommendations included in the Final Report. The Final Report will have a lot of duplication from the Interim Report because the Interim Report will serve as the basis or template for the Final Report. We should not be discouraged from the success or lack of success of the recommendations we make in our Interim Report.

VICE CHAIR HARRIS: These recommendations should make clear that our report is focused on immediate near term measures that can make a difference in improving standards of conduct in the areas of ethics, lobbying, and campaign spending. Other concepts that may require more discussion and development should be deferred to the Final Report.

CHAIR FOLEY: Term limits are long term items that we should be considered for the Final Report.

10. Other Matters

CHAIR FOLEY: Majority Leader Belatti has invited me to appear on the Majority Caucus' *Talk Story with House Majority* livestream interview series. I will not specifically mention details of what topics or measures the Commission will be supporting or attribute any positions or commentary to any specific members of this group, but I wanted to ask the group if anyone has concerns with me doing this interview?

VICE CHAIR HARRIS: With the limitations you mentioned, I have no concerns about your participation in this interview and would support you.

CHAIR FOLEY: Seeing no objections or other concerns raised by the members, I will let Majority Leader Belatti know that I will accept her invitation for this interview.

MEMBER IZUMI-NITAO: In consideration of comments from the public and looking more broadly at the issues of addressing public corruption, there are other bills like SB2162 ([Measure Status \(hawaii.gov\)](https://www.hawaii.gov/legislation/status/)) which is a ranked choice voting bill that this Commission may consider supporting.

MEMBER MA: This is a CCHI priority bill; it only deals with special federal elections and special elections of vacant county council seats.

MEMBER IZUMI-NITAO: There is also the consideration that the state level prosecution of fraud and abuse needs to be bolstered to combat public corruption. Is there an update on this matter?

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MEMBER NAKAKUNI: Since last meeting I looked at what Federal, State, and county authorities are doing and have talked with some of those appropriate parties, but for purposes of submitting any information or recommendations to this Commission the request was for that to be completed for preparation of the Final Report. I will be pursuing that for purposes of the Final Report, which is really only eight months away.

CHAIR FOLEY: Seems like from the comments so far, there is a consensus for the need to revamp or ramp up state level enforcement and resources for fraud abuse and we can discuss that in the Interim Report.

MEMBER MASON: Are we adopting the Chatham Rule so that members can discuss the Commission's work openly, but without any attribution to whose idea or spoke of the recommendation?

VICE CHAIR HARRIS: Chatham Rule will encourage discussions by allowing some give and take without fear of being held accountable. Without the Chatham Rule, there may be a natural desire to avoid compromise and candid discussion of the issues.

CHAIR FOLEY: I will follow the Chatham Rule in the interview with Majority Leader Belatti.

MEMBER MA: If this was a live public Zoom, the Chatham Rule would not apply because the public would openly see which points are attributed to a particular speaker.

CHAIR FOLEY: For purposes of meeting minute preparations at this point in the process, we will continue with speaker attribution in the meeting notes but allow for a member to remove a statement attributed to them.

VICE CHAIR HARRIS: I understand the concern for transparency.

To the extent this Commission is considering a focus on fraud and criminal activity, members should be aware that an anonymous fraud hotline was set up by the Attorney General's office and the Ethics Commission. Our report might attempt to highlight and educate the public that there is an existing mechanism to report suspected issues of fraud and investigations are actively done.

MEMBER MASON: MEMBER MA and I prepared a proposal for public participation in our Commission work, to be organized through the House website. None of the three recent examples of the House of Representatives of the Mauna Kea Working Group, Special Investigation of the audits of the Department of Land and Natural Resources and Agribusiness Development Corporation, or Select Committee pertaining to Representative Har would work for our group.

Therefore, we have the following seven recommendations:

- Use House website to host our Commission;
- Operate pursuant to House Rule 11.5 (1) pertaining to Committee Meetings;

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- Utilize a YouTube channel to livestream our meetings and also archive each meeting;
- Propose to publish meetings minutes, notices, and testimony on the House website;
- Conduct informational briefings and allow the public to access the video;
- Most importantly publish of Interim and Final reports and release the reports to the public with an email address for public comments; and
- Hold a press conference with the media to share our recommendations and reports with the media and public and have our Commission Chair be the spokesperson and include brief statement about our report.

MEMBER NAKAKUNI: This is a major agenda item. I would recommend that this topic be taken up at future meeting and labeled as a specific agenda item, rather than an "other matters" topic of discussion.

CHAIR FOLEY: These are things to keep in mind, but for purposes of the Interim Report which is due in 4 weeks, I really don't think it is practical to accomplish these recommendations and they may serve to slow down our current progress to meeting the timeline for our Interim Report. However, I am not opposed to the group having a further discussion on these recommendations, but for purposes of the Final Report only.

MEMBER NAKAKUNI: I agree that we don't have a lot of time, certainly for our Interim Report. And that doesn't even consider that our Final Report is due in eight months.

CHAIR FOLEY: I would suggest that we continue to meet on a weekly basis through March 31st.

11. Next meeting date

Next meeting will take place on Thursday March 10, 2022, at 1:00pm, via videoconferencing.

Appendix B – Meeting Notes March 10, 2022

Commission to Improve Standards of Conduct:

March 10, 2022, Meeting:

All members of the Commission were in attendance:

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;

Sandy Ma, Executive Director of Common Cause Hawaii;

Barbara C. Marumoto, Former State Representative;

Janet Mason, League of Women Voters of Hawaii; and

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

1. Review and approve prior meeting notes

CHAIR FOLEY: Moved to adopt prior meeting notes of March 2, 2022. Motion was seconded and adopted.

2. List of measures recommended for Interim Report

CHAIR FOLEY: I want to get feedback from each member on how to proceed with determining measures for the Commission to consider recommending in the Interim Report. In other words, what measures should we discuss to consider adopt as a recommendation for the Interim Report.

MEMBER IZUMI-NITAO: Perhaps we should use the consolidated spreadsheet to determine which measures the Commission would like to recommend for approval in the Interim Report.

MEMBER MARUMOTO: We should think about what we want in the Final Report as far as curtailing corruption. Perhaps proceed by topic, rather than by bill.

For our 3/31 report the public is expecting the Commission to initially recommend some broad brush ideas to fight corruption in government.

People are expecting and deserve solutions to fight corruption such as establishing a Fraud Unit in the AG's Office, strengthening autonomy in agencies that deal with campaigning and

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ethics, providing them with sufficient staff, budgets and other tools that they may require. We must increase openness and transparency in state government. We need greater disclosure especially in dealing with PAC donations.

After explaining a few of our goals the Commission must mention bills that fulfill these goals and have a chance at passage this 2022 session. Then after 3/31 the Commission can flesh out other concepts and bills for the Final Report.

VICE CHAIR HARRIS: For purposes of the Interim Report and how to proceed with discussion today we can maybe pick a few bills, maybe top 3 to discuss in each category. For example, the Ethics Commission's top 3 bills would be mandatory ethics training which will expand well beyond the 2,000 employees who currently receive ethics training. A new measure not currently in the legislative mix which would make legislative allowance expenditures more transparent and available publicly on the internet. The fundraiser ban during session that's in SB555 would be the third measure, but the measure needs additional safeguards to also curtail donations during session as well.

Strongly suggest that we talk with the AG's office at some point for purposes of recommending long-term ideas of fraud and include those recommendations in the Final Report.

MEMBER NAKAKUNI: AG's are aware of our Commission, but discussions are still in the early stages. Dialogue with the AG's and other appropriate law enforcement agencies will continue as we proceed.

MEMBER MASON: I've been reviewing both of our long and short goals in regard to bills. My sense is that the Legislature is listening to our proposals and wants to make changes.

MEMBER MA: We should have broad categories of ethics, campaign finance, and lobbying, and then under each broad category have a detailed list of bills in each.

MEMBER MARUMOTO: Aim should be to get some bills passed this session, but the larger effort will be aimed at accomplishing our goal to recommend laws for the 2023 Regular Session.

MEMBER NAKAKUNI: Agree with broad categories and then refine with specific bills.

CHAIR FOLEY: Okay, sounds like we are in agreement to proceed with broad categories and individual bills that will be identified for purposes of the March 31st Interim Report. Other matters can be identified in the Interim Report, but designated for discussion and development for the Final Report. For today we will identify bills to recommend for the Interim Report.

MEMBER IZUMI-NITAO: After First Crossover CSC has 10 Senate Bill's, 5 House Bill's that are alive. Some of them are companion measures. For purposes of identifying the big ticket item bills for the Interim Report, CSC would recommend the following bills. SB555

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bans fundraisers during legislative session; however, we would recommend it be expanded to include all elected officials because there should not be an unfair advantage to county council members running for legislative seats who would not be subject to a legislative session. There are a series of bills that enhance fines, penalties, and remedies including criminal prosecution for campaign finance violations. They are: SB212 SD1, SB665 SD1, SB2044, and HB1423 HD1. Notably, two bills which CSC liked, HB2474 and its companion bill SB2345, authorized the CSC to refer complaints to the AG or county prosecutor in addition to any administrative determination, did not survive. CSC would recommend that its content be considered for insertion into any surviving bills involving the same subject matter.

MEMBER MA: HB2474 and SB2345 (companion measure) need a state of mind element.

MEMBER MARUMOTO: I'm focused on PACs and bills that increase penalties and fines to Super PACs.

MEMBER MASON: LWV opposed SB2417, which is the bill to increase the cap on excess campaign funds to community organizations. Bill was amended, but the SD1 version actually raised the cap amount and has progressive cap amounts depending upon the office. Though this measure (raising the cap), did not pass this session, the practice of giving certain excess campaign funds to community organizations is still permitted under existing law, and the LWV opposes such practices.

CHAIR FOLEY: We should focus on getting a list of big ticket item bills for this Interim Report, but other housekeeping amendments from CSC and Ethics can also be mentioned. For today and for the Interim Report we should focus should be on big ticket items.

MEMBER MA: HB1888, pertains to electioneering communications and is moving through the legislative process. Is that a measure we should discuss?

MEMBER IZUMI-NITAO: It's an important bill and we would like for it to be considered for inclusion in the Interim Report, but it may not be what this Commission would consider to be a big ticket bill.

MEMBER MARUMOTO: Any bills for CSC to help effectuate their operations and practices?

VICE CHAIR HARRIS: To reiterate the Ethics Commission top priority bills: HB1475 mandatory ethics training. Public disclosure of legislative allowances spent and have public access available. No current bill in the works. HB2500 Ethics Commission budget to allow for the hiring of investigators.

MEMBER MA: HB1475 suggestion to amend would be to require such ethics training every year, not just every 4 years. Build in some consequences if a legislator does not go through the mandatory training.

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VICE CHAIR HARRIS: It's a good suggestion, but I think tracking the training annually would be onerous for the staff.

CHAIR FOLEY: Okay, sounds like HB1475 is one of the bills to possibly recommend and we can suggest possible amendments and discuss further and possibly vote on at our next meeting.

SB555 we need to be cautious of First Amendment issues for private persons. No problem legislating restrictions to legislators in this regard.

MEMBER MASON: For the LWV one focus is transparency bills. HB2303 HD1, LWV strongly opposes this measure to allow for withholding certain information concerning legislative intent and internal deliberative and pre-decisional materials. SB2143 SD2 we are in support as this defines what a board packet is for public meetings and requires making the packet available 48 hours in advance.

CHAIR FOLEY: Sounds like a consensus to organize our report by broad categories, e.g. "Openness and Transparency", then list specific bills under each broad category.

MEMBER MA: Sunshine measures that the CCHI supports includes SB2143 which will bring more transparency to public meetings. HB2026 provides more clarity, transparency, and accountability to the operations of boards and commissions when conducting their business. SB3164 is a campaign finance dark money bill that tracks campaign contributions and transfers and traces – money to the original source, but its companion HB1881 HD1 died in the House. HB2416 is another campaign measure concerning dark money, but it only tracks Section 501(c)(4) organizations which would not be completely effective to stop dark money contributions.

CHAIR FOLEY: Will put down HB1118 on the list with possible amendments to consider. Any other thoughts or bills to consider?

MEMBER IZUMI-NITAO: We may need money to implement some of these laws if they pass.

MEMBER MARUMOTO: Gift law bill that touches on openness. Maybe we should consider whether or not family members should be included on annual disclosure forms.

MEMBER NAKAKUNI: I'm personally interested in strengthening the state laws for investigating and prosecuting fraud and corruption. Right now, federal agencies are doing a good job at that, in the long-term we need our State and county agencies to have a similar presence and accomplish the same. These are more likely long term laws. SB2930 is one of the few bills moving in regard to strengthening state laws. SB2345 was another potential measure but it did not receive a hearing. HB2171 HD2 is another law enforcement reorganization bill that establishes a new Department of Law Enforcement and attached training center and has passed the House and is scheduled for hearing in the Senate next week.

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MEMBER IZUMI-NITAO: Another bill is SB2291 which involves electronic eavesdropping. It passed the Senate and is scheduled for a hearing next week in the House.

CHAIR FOLEY: Any other recommended bills for the Interim Report?

MEMBER MARUMOTO: Ranked choice elections?

CHAIR FOLEY: We should put that as a potential measure for the Final Report.

MEMBER MA: Currently a ranked choice voting measure SB2162 is moving but it only pertains to federal and special elections.

CHAIR FOLEY: Our Commission will list big ticket item bills but then also include a second category for additional bills.

MEMBER IZUMI-NITAO: Other bills the CSC would like for consideration for recommended approval for the Interim Report are: HB1426 HD1, contested case hearings; HB1427 HD1, clarifies who has to file reports; HB1888 HD2, electioneering communications bill. But SB2388 SD1 may be a cleaner version; HB2416 HD2 is a dark money bill, but it requires a threshold of \$100 which the CSC feels may be too low and unconstitutional.

MEMBER MA: HB2416 really only pertains to 501(c)(4) orgs.

MEMBER IZUMI-NITAO: Other measures which will help the CSC further its operations and management are: SB166 SD1, which prohibits foreign nationals and foreign-influence corporations from making certain expenditures; SB2043, repeals something no longer in existence, so that's more of a housekeeping measure; SB2300 authorizes campaign funds for child care and vital household dependent care costs; and SB2388 SD1 passed the Senate and requires disclosure of electioneering communications when subsequent electioneering expenditures are made, but it also raises the cap threshold for these purposes from \$1,000 to \$2,000.

VICE CHAIR HARRIS: Secondary list of bills, financial disclosure and reporting of financial interests of high profile boards and commissions. The Ethics Commission opposed HB1849 and Senate companion SB2123. Both are dead this year.

MEMBER MARUMOTO: I would propose that a big ticket bill be SB2930.

3. Measures and topics to consider for Final Report

CHAIR FOLEY: Topics to put in the Interim Report that will be explored for the Final Report. Final Report will essentially include everything that did not make it into the Interim Report, but the Final Report may also include items in the Interim Report that did not get enacted this session and would be a consideration as possible recommendations for the 2023 Regular Session.

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For example, term limits for all legislators. We discuss more any topics for further examination and consideration of the Commission for purposes of its Final Report due December 1, 2022.

MEMBER IZUMI-NITAO: Consider enhanced criminal statutes, penalties, and investigative tools (more in alignment with federal laws) to permit state/counties to prosecute public corruption cases and be an effective deterrent. Consider increased public funding of elections to make it useful for more people seeking public office. Consider better reporting and accountability of cash contributions – perhaps limit such contributions to \$100. Requiring fundraiser notices to be filed regardless of monetary threshold of the fundraiser. Public disclosure of legislative allowances should be a consideration and that should apply to council members as well.

VICE CHAIR HARRIS: A more efficient way to gain compliance on legislative allowance expenditures may be to make the expenditures publicly available. It could serve as a refinement tool to guide elected officials, for example, a legislator using their allowance to take another legislator to lunch is not allowed and would be made public.

CHAIR FOLEY: The Interim Report could just include several bullet points of items or ideas that the Commission plans to address prior to making possible recommendations and amendments for inclusion into the Final Report.

VICE CHAIR HARRIS: Please see my February 25th email to the group. That email identifies some of the long term goals for the Ethics Commission. We could also consider amending the lobbyist law to promote training. Having Legislators keeping a Log of everything that comes in as a gift and submitting it to the Ethics Commission on a quarterly basis would also be helpful. Requiring legislative members with a private financial business to report business clients that also lobby at the Legislature should be considered.

MEMBER MA: Please also see my email in February to the group for CCHI's "list of reforms". At Chair's recommendation, I will bullet point these items more broadly and resend to group.

MEMBER MARUMOTO: We should review the House and Senate Rules. See also Rep Ward's recent article. It offers some good suggestions for the group to think about.

MEMBER MASON: The budgetary process at the Legislature needs better transparency.

MEMBER MARUMOTO: Another item to consider long-term would be runoff elections of the top 2 candidates in primary elections where neither receive 50% or more votes.

CHAIR FOLEY: That could be a Final Report topic to consider, something like Election Reform.

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4. Action steps and procedures to implement after the Interim Report and before the Final Report

CHAIR FOLEY: One thing we should think about is how to address public involvement going forward is the processes and procedures can we start to put in place.

MEMBER MASON: We can work on preparing procedures that the group can consider moving forward to determine feasibility.

CHAIR FOLEY: The Commission will explore the manner and procedure we will use for purposes of better public transparency.

5. Form of reports

CHAIR FOLEY: We have a basic template and idea of how the Interim Report and Final Report will be structured. The draft Interim Report can now start to be developed. Once a draft is ready, we will circulate it to the group for comment, feedback, and revision.

MEMBER MASON: One possibility is to use the same "Goal" headings for both the short- and long-term reports, classifying our near term bill recommendations and the long-term recommendations into the same headings, with headings that use impactful words.

6. Other matters

None.

7. Next meeting date

Next meeting will take place on Wednesday March 16, 2022, at 1:00pm, via videoconferencing.

Appendix B – Meeting Notes March 16, 2022

Commission to Improve Standards of Conduct:

March 16, 2022, Meeting:

The following members of the Commission were in attendance. MEMBER NAKAKUNI was excused.

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;

Sandy Ma, Executive Director of Common Cause Hawaii;

Barbara C. Marumoto, Former State Representative; and

Janet Mason, League of Women Voters of Hawaii.

1. Review and approve prior meeting notes

CHAIR FOLEY: Moved to adopt prior meeting notes of March 10, 2022. Motion was seconded and adopted.

2. List of measures recommended for Interim Report

CHAIR FOLEY: This meeting is for tentative approval of the bills this Commission is willing to include as recommendations for our Interim Report due March 31st. No recommendations will be considered final until the final draft of the Interim Report is approved and adopted by the Commission.

For today's meeting, I think it would be most efficient if we proceed with using the recommended list of measures provided to the Commission by staff to determine everyone's temperature on the particular subject matter of each bill and each member's willingness to include it in the Interim Report. Staff have provided a preliminary list of bills discussed at our previous meeting and categorized them into six sections. Section I: Openness and Transparency; Section II: Ethics Oversight; Section III: Campaign Reform; Section IV: Fraud Abuse and Criminal Prevention; Section V: Other housekeeping measures; and Section VI: Topics for consideration for the Final Report.

Does the group agree to proceed in this manner? Any questions or comments before we get started?

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MEMBER MASON: Should we modify the list to only include measures that made it through the crossover deadline?

CHAIR FOLEY: As we get to specific bills that did not make the First Crossover filing deadline, please identify those particular measures when we get to them.

Two measures relating to sunshine and openness and transparency HB2026 HD2 and SB2143 SD2 are included in Section I. Any comments or additional bills to include under Section I of the bill list?

MEMBER MA: SB3252 HD1 is a bill that waives reproduction costs for certain government records that are requested by the public and others. The measure adds to openness and transparency but CCHI prefers the SD2 version of the measure which waives reproduction of the first 100 pages of documents if disclosure is in the public interest.

MEMBER MASON: I want to propose changing the names of our section headers to language that will provide more flare and attraction of the media. For example, for Section I label the category as "Give openness and transparency a boost."

MEMBER IZUMI-NITAO: The preliminary list needs to be separated into big ticket items and not big ticket items. SB555 is a big ticket item, the dark money bill not so much.

CHAIR FOLEY: We can use this meeting to refine the draft list of bills and recategorize the list however the group wants. This is just a starting point, nothing is final.

Anyone have any constitutional concerns or issues with your bills?

MEMBER IZUMI-NITAO: Possibly yes, the \$100 contribution threshold for Section 501(c)(4) nonprofit organizations is a potential constitutional issue to CSC. Our concern differs from the advice of our Deputy Attorney General.

VICE CHAIR HARRIS: Perhaps the group can proceed by putting two different lists together, one that highlights the top 5 bills we are recommending as top priorities, then a second section that lists all other bills that the Commission is recommended, but not its top priorities.

CHAIR FOLEY: That's something we can consider because the direction in H.R. 9 that established our Commission is broad, but I think the draft list follows the details in H.R. 9 very well as it concentrates on four primary areas as discussed in the resolution for this Commission to explore.

Since MEMBER IZUMI-NITAO is flying out-of-state today I want to give her the opportunity to share her thoughts while she is with us in case she needs to leave the meeting early. So I would like to take discussion of the Section III Campaign Reforms bills out of order so that we can get her feedback.

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MEMBER IZUMI-NITAO: There are a lot of CSC bills on the list, so I would suggest reorganizing some of the CSC measures as follows: Section IV, include four bills SB212, SB665, SB2044, HB1423. For SB555, I think that could go in either Section III or Section IV.

MEMBER MARUMOTO: I think SB555 is a campaign reform bill and should stay in Section III.

MEMBER MASON: I would suggest as a new subject header to Section III, "Reduce the money and power of politics."

MEMBER IZUMI-NITAO: From the preliminary list of bills provided by staff, I would include in section III the following bills: HB1426, HB1427, HB1888, HB2416. SB166, SB2043, SB2300, SB2388, and SB3164. In section IV I would include the following bills: SB212, SB665, SB2040, and HB1423. SB555 could go in either section.

CHAIR FOLEY: Do we have tentative approval of the bills to include section III? Any objections or comments?

MEMBER MASON: Is HB2171 staying in section IV? This would be a major change in the administration of criminal justice in our State. This measure may need further clarification before becoming a recommendation.

CHAIR FOLEY: Regarding SB555 SD1, are we supporting the bill as is, or are we suggesting amendments?

MEMBER IZUMI-NITAO: CSC is in favor of suggesting amendments that would expand the fundraiser ban to all elected officials including county council members so that there is no unfair advantage.

MEMBER MA: CCHI would like amendments to expand to a prohibition for the receipt of donations and contributions.

CHAIR FOLEY: What is the impact to council member prohibitions? Would they be prohibited from fundraiser virtually year round since they are in session all year?

MEMBER IZUMI-NITAO: That's a good question, we may need to think about a fix for it.

VICE CHAIR HARRIS: I would suggest establishing a set blackout period that's applicable to every elected office. For example, have a certain period of time where no elected official can hold fundraisers or accept donations. That would hopefully level the playing field for state and county elections.

MEMBER MA: The bill should also be amended to prohibit the receipt of any donations and contributions or the holding of fundraisers during a special session as well.

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CHAIR FOLEY: Okay it sounds like we are in support of proposing amendments to SB555 in our Interim Report. Just from a process standpoint, for the Interim Report we will not be drafting or attaching any bills to the Report. That will save some time and effort for the Interim Report that is due in two weeks. For the Final Report, we can attach bills that can be considered by the Legislature for the 2023 Regular Session. However, we will note in the Interim Report that the Commission is in support of certain bills, but with further amendments and then we can detail those suggested amendments.

MEMBER IZUMI-NITAO: HB2416 HD2 is one of the Campaign Reform bills listed in Section III that had a lot of comments and suggested edits from the members as well.

MEMBER MA: HB2416 HD2 is limited to just Section 501(c)(4) organizations, so CCHI has concerns with this bill in its current form as it may drive dark money into other areas.

CHAIR FOLEY: We need to think about constitutional issues of restricting private entities from giving donations to elected officials.

MEMBER IZUMI-NITAO: I agree. Rhode Island has a threshold of \$1,000, which CSC would find more supportable.

CHAIR FOLEY: Appreciate the intent of this measure, but I think the issue of tackling dark money needs further contemplation and consultation with the CSC. So recommendation would be to take this off the list even over the objections of the CSC and MEMBER IZUMI-NITAO. However, this subject matter can be a topic for further exploration for the Final Report and bill introduction next year. So I would make the motion to remove this bill from the list. Any objections? Motion was seconded and adopted.

Also, along these same lines, SB166 SD1, is a bill that prohibits foreign nationals and foreign-influenced corporations from making certain campaign expenditures. Legally can we limit such contributions from foreign entities or out-of-state money?

MEMBER MA: Yes, it is permissible to prohibit foreign contributions, but I also think that there are differences with approach as to how to achieve and, thus it is recommended taking this bill off the list of potential recommendations. In addition, from the discussions on this measure it does not seem as if there is enough consensus of support for this bill.

CHAIR FOLEY: Any objections to removing SB166 SD1 from the potential list of recommended bills? Seeing no objections, I would like to make a motion to remove this measure from the list. Motion was seconded and adopted. Any other bills to remove from the tentative list?

MEMBER IZUMI-NITAO: HB1118 HD2, seems similar to HB2416 which was removed from our preliminary list.

CHAIR FOLEY: Any objections to taking HB1118 HD2 off the tentative list of bills to recommend in the Interim Report? Seeing none, motion was seconded and adopted.

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Thank you MEMBER IZUMI-NITAO for your feedback on the Campaign Reform list of bills. Next let's go back to section II and discuss the Ethics Oversight category.

VICE CHAIR HARRIS: Regarding mandatory ethics training, HB1475 HD1. I've looked at the suggested edits to this bill by other members and appreciate the feedback. We plainly support more trainings. However, we are concerned with administrative capacity issues and ramping up the ethics training requirements so quickly. My suggestion is to leave the bill as is for now, and come back in a couple years as our ability to handle more frequent trainings grows.

MEMBER MA: Requested training on an annual basis, rather than every four years, but understands the position of the Ethics Commission.

VICE CHAIR HARRIS: The measure does currently require new employees and elected officials to complete the training within 90 days of employment so all new employees would fall within the current requirements of the bill. More frequent re-training would be something to revisit a few years down the road.

Regarding the Ethics Commission suggestion concerning legislative allowances, we are not proposing new legislation. Rather, simply asking the House and Senate to administratively make legislative allowance expenditures publicly available online. It's our understanding that this would not be difficult to do. This would promote greater public transparency over legislative allowances.

CHAIR FOLEY: Okay, the motion would be to move the legislative allowances from section II and make this issue more of a comment in the Interim Report. Motion was seconded and adopted.

We already discussed section III measures. Moving to section IV measures. SB2930 SD2, any questions or concerns?

MEMBER IZUMI-NITAO: This is an important measure to recommend in the Interim Report and also deserves further attention to include in the Final Report.

CHAIR FOLEY: Okay, MEMBER NAKAKUNI also mentioned her support for this bill in prior meetings. Motion to include SB2930 SD2 as a recommendation in our Interim Report. Motion was seconded and adopted.

Next bill is HB2474 HD1. Any questions or comments?

MEMBER IZUMI-NITAO: HB2474 HD1 is dead so I would recommend taking it off the list of measures to recommend for the Interim Report.

CHAIR FOLEY: Okay, any objections? Motion was seconded and adopted. Just as a point of information, bills not included in the Interim Report can be put on the list for discussion purposes or topics for consideration in the Final Report.

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CHAIR FOLEY: Next bill on the list is HB2171 HD2. Any questions?

MEMBER MASON: I would recommend deleting this bill from the Interim Report and move to consider this subject matter for the Final Report list.

CHAIR FOLEY: Motion is to exclude HB2171 HD2 from the Interim Report. Motion was seconded and adopted.

Next measure is SB2044. Any comments?

MEMBER IZUMI-NITAO: SB2044 is another bill that is dead, but the House companion, HB1423 is moving.

CHAIR FOLEY: Okay HB1423 was a previous bill we have discussed and are considering as a recommendation for the Interim Report. Motion is to remove SB2044 from the list. Any objections? Motion was seconded and adopted.

Next measure is SB2417 SD1. Any questions?

MEMBER IZUMI-NITAO: This is another measure that is dead for this session. I would recommend removing this bill from the Interim Report and consider later for purposes of the Final Report.

CHAIR FOLEY: Okay, motion is to take SB2417 SD1 off the list. Any objections? Motion was seconded and adopted.

CHAIR FOLEY: Last measure for discussion in the draft section IV is SB2291. Any questions?

MEMBER IZUMI-NITAO: The bill's language concerning the process to obtain search warrants needs some clarification. This should not apply to civil proceedings. This is up for decision-making tomorrow. We should just monitor this bill for now to see what happens.

MEMBER IZUMI-NITAO: Just to reiterate my suggestions for purposes of section IV of the Interim Report. For the CSC bills, I would include in section IV HB1423, SB212, SB665, and SB2044.

MEMBER MARUMOTO: I would suggest including some mention or reference to greater autonomy in the title of section IV.

CHAIR FOLEY: Moving to section V, these are just the housekeeping measures of the commission members. Any objections to HB2500 HD1, SB2043, SB2123 SD1? We will come back to discussing SB2300.

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MEMBER MASON: SB2123 is dead for this session. We should remove it from the list for the Interim Report.

VICE CHAIR HARRIS: I would take SB2123 SD1 off the list and its dead for now.

CHAIR FOLEY: Motion is to remove SB2123, any objections? Motion was seconded and adopted.

MEMBER MARUMOTO: What about the Ethics Commission request for an investigator, HB2500 HD1?

MEMBER MASON: We also feel that funding of an investigator position for the Ethics Commission is important.

CHAIR FOLEY: Next bill is SB2300. Who is supporting this bill?

MEMBER IZUMI-NITAO: This bill is relating to campaign finance and is moving.

CHAIR FOLEY: If there are no objections, I do have some concerns about this bill and would recommend that we delete this measure from the list. Motion was seconded and adopted.

Any other bills we missed that we need to consider for the Interim Report?

MEMBER MA: SB3172 SD1 is a bill concerning mandatory recorded of audio or visual board meetings and to have the recording be considered a public record. This bill crossed to the House and is scheduled for Friday. A suggested amendment would be to place the recording of the meeting on YouTube, if the meeting is actually recorded.

CHAIR FOLEY: Motion is to include SB3172 SD1 on the list of potential bills to include in the Interim Report. Motion was seconded and adopted. Placing it under Openness and Transparency section.

3. Measures and topics to consider for Final Report

CHAIR FOLEY: This is section VI of the draft recommendation list. Any comments on this list? This seems to be a fairly comprehensive list that we can use as a starting point. We can add or delete from the list at any time.

MEMBER MASON: I would suggest that we add to the list of topics we will consider for the Final Report certain bills introduced during the 2022 Regular Session, but which did not meet the Legislature's First Crossover filing deadline. Maybe noting something like the following in the Interim Report: "Other subject matter bills introduced during the 2022

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Regular Session which did not meet the First Crossover filing deadline and were left out of the recommendations in our Interim Report."

4. Action steps and procedures to implement, including public participation, and other topics to explore after the issuance of the Interim Report and before adoption of the Final Report

CHAIR FOLEY: We need to think about how the Commission will work going forward. As far as the public participation component, which individuals or organizations that we think be helpful for us to talk with to furthering the completion of our work, and house to archive our recordings and meetings electronically.

VICE CHAIR HARRIS: Perhaps having a webpage where the public can go to and join our meetings through a Zoom link. We could periodically give the public participants an opportunity to ask questions or provide comments if there are not too many people wanting to comment. Otherwise, limiting the public input by setting time limits may be necessary.

CHAIR FOLEY: I think it is important to make a statement in the Interim Report about the planned public engagement and the willingness of the Commission to solicit critical input from certain entities as requested in H.R. 9.

5. Interim Report

CHAIR FOLEY: About two weeks away from submitting it to the Legislature. Once the Interim Report is released, we may need to start thinking about a public statement or the next steps for our Commission.

6. Other matters

None.

7. Next meeting date

Next meeting will take place on Thursday March 24, 2022, at 1:00pm, via videoconferencing.

Appendix B – Meeting Notes March 24, 2022

Commission to Improve Standards of Conduct:

March 24, 2022, Meeting:

All members of the Commission were in attendance:

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;

Sandy Ma, Executive Director of Common Cause Hawaii;

Barbara C. Marumoto, Former State Representative;

Janet Mason, League of Women Voters of Hawaii; and

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

1. Review and approve prior meeting notes

CHAIR FOLEY: Meeting notes from March 16, 2022, not yet complete, but seems like there is consensus of the draft notes. Once the meeting notes are finalized they will be circulated via email.

2. Review, discuss, and amend draft Interim Report

CHAIR FOLEY: The draft Interim Report was circulated to all the members for feedback, comments, and revisions. Members who had suggestions circulated a revised document. It seems like most members used MEMBER MASON's revised document that was also circulated to the group via email and added further revisions to it.

CHAIR FOLEY: One suggestion is to move the existing Part IV of the draft to be Part I to emphasize the importance of our Commission to make strides to address public corruption. It was also suggested to change the name of the section to read: Part I. Strengthen Investigation and Prosecution of Fraud. Motion for those changes was seconded and adopted.

CHAIR FOLEY: One measure in this section is SB665 SD1. Do we have agreement on this recommendation or do any members have suggested amendments?

MEMBER MA: My concern with this measure is the lack of a mens rea requirement. However, this bill was just heard by a House Committee who passed it with amendments.

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The amendments may have addressed my concerns. In addition this measure increases the disqualification period from 4 years to 10 years for anyone convicted for a crime involving campaign finance law. We should mention this in the bill's description.

MEMBER MARUMOTO: I think there is a need for some introduction to this Part before getting into the substantive recommendations. I did read and review MEMBER MASON's proposed language and I find it acceptable to include as an introduction.

CHAIR FOLEY: Another measure in this Part is SB212 SD1. Are there any comments or suggestions for this bill and should it be included in this Part as a recommendation of the Commission?

MEMBER IZUMI-NITAO: SB212 SD1 was not heard in the House and is dead for this session.

VICE CHAIR HARRIS: That is true that the bill appears to be dead for this session, but there is always a chance for the measure to be re-referred to be kept alive for this session. Thus, I would encourage the opportunity for more discussion and keep this bill on our preliminary list for now.

CHAIR FOLEY: The request is to keep SB212 SD1 on the list, any objections? Motion was seconded and adopted.

CHAIR FOLEY: SB2040 is another bill in this section that is in regard to certain candidates not being required to file preliminary reports to the CSC. Seems like there is a general consensus to not include this bill in our recommendations.

CHAIR FOLEY: After having some discussion, motion to delete this measure from the list was seconded and adopted.

CHAIR FOLEY: Two other bills are in this section SB2930 SD2 which establishes two new units in the Department of the Attorney General to combat fraud and human trafficking. Second measure is HB1423 HD1 SD1 was amended in the Senate to specify that if a noncandidate committee that makes only independent expenditures and has either received at least one contribution of more than \$10,000 from any one person or has made expenditures of more than \$10,000 in the aggregate in an election period violates the campaign spending laws, they may be fined an amount not to exceed \$5,000 for each occurrence or an amount not to exceed three times the amount of an unlawful contribution or expenditure.

CHAIR FOLEY: Recommendation is to keep these two measures in our recommendations. Any objections? Motion was seconded and adopted.

CHAIR FOLEY: Moving to the "Give Openness and Transparency a Boost" section, the first bill is HB2026 HD2. It appears that we do not have a consensus of support for this measure in its current form because the application of the provisions in this measure need to be

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improved upon. Thus, I am recommending that we remove it from our list of recommendations for the Interim Report. Any objections? Motion was seconded and adopted.

CHAIR FOLEY: Next measure is SB2143 SD2. We have support to include this as a recommendation. Any objections? Seeing none, the motion was seconded and adopted.

CHAIR FOLEY: SB3252 HD1 is the next bill in this section. This bill concerns information requests and reproduction costs for obtaining government records.

MEMBER MA: The SD2 version of the measure waives reproduction costs for the first 100 pages.

VICE CHAIR HARRIS: I appreciate the concerns over reproduction time and costs both from a public viewpoint of access, and from an agency's concerns about budget/capacity. One advantage to imposing some cost sharing is that it narrows requests to the key information sought by the requestor.

MEMBER IZUMI-NITAO: Depending on the nature of the request, I can see the concern from the agency side for a small office such as mine with limited resources. Some public information requests could easily detract from our office's everyday work and essentially take a couple weeks to research and respond to a request. It could effectively shut down our office for a period of time which would be difficult if we were also in the middle of an election.

VICE CHAIR HARRIS: Perhaps one area to consider in supporting greater transparency is to fund the Office of Information Practices with money that can be used to fund information disclosures in the public interest. OIP could decide that a request is in the public interest and help fund the responsible agencies' efforts.

MEMBER MA: Agencies who receive an information request should also in certain cases where there would be great time and cost involved with the request to communicate that back to the requestor prior to engaging in the request. There was one situation where a public person's information request resulted in them receiving a \$4,000 bill from the agency they submitted a request to. The person had no idea until they receive the bill in the mail.

CHAIR FOLEY: It appears that MEMBER IZUMI-NITAO and VICE CHAIR HARRIS have some concerns over the potential impacts over this bill as currently drafted.

CHAIR FOLEY: Last bill in this section is SB3172 SD1.

MEMBER MA: It is my understanding that several agencies will be offering changes to the language in this bill.

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CHAIR FOLEY: Next section is Ethics Oversight. MEMBER MASON has offered suggested language for inclusion into this section as an introduction, as well as a change to the section title name. Any comments or objections to those changes? Motion to change the title and include introduction language was seconded and adopted.

CHAIR FOLEY: The one current measure in this section is HB1475 HD1.

MEMBER MA: I would prefer that training be offered every year, especially for legislators and other certain members of boards and the Executive Branch. In addition, I would like to see consequences established against those individuals that do not do the training as required. Perhaps have them put on leave without pay or removed from their position until the training is completed.

CHAIR FOLEY: We will note those potential amendments.

VICE CHAIR HARRIS: One additional bill to potentially include in this section is HB2069 HD2. It establishes procedures for the custody, inventory, and care of protocol gifts received by members of the Legislature or state employees. We should also remove direct references to YouTube.

CHAIR FOLEY: This bill appears to be moving through the Senate and may potentially go to Conference Committee. Motion to include this bill in the recommendations of this section was seconded and adopted.

VICE CHAIR HARRIS: I would also suggest that we move the discussion about legislative allowance expenditures to the section on Openness and Transparency, or whatever that section is relabeled as.

CHAIR FOLEY: Any objections to that suggestion? Motion was seconded and adopted.

CHAIR FOLEY: The next part of the Interim Report is the section to "Reduce the Money and Power of Politics". MEMBER MASON offered language to include as an introduction to this section. Motion to include that language as an introduction was seconded and adopted.

CHAIR FOLEY: First bill is SB555 SD1 regarding a ban on fundraisers during session. The Commission had several discussions about this bill and several amendments were offered.

MEMBER MARUMOTO: The prohibition is problematic when it is extended to county council and statewide races.

MEMBER MA: The prohibition should also be expanded to have a broader application, such as to include all statewide elected officials, including the Governor and Lieutenant Governor, and those running for statewide elected office to prohibit donations and contributions.

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CHAIR FOLEY: I circulated proposed language to the group concerning an amendment to this bill that would expand application of this prohibition. Specifically, it was to expand the prohibition to include candidates for legislative seats and also prohibit the solicitation and acceptance of donations by legislators or candidates during session. I would suggest that we propose as a recommendation that expansion language and just include that as suggested amendments to this measure. Any objections? Motion was seconded and adopted.

MEMBER MA: Requesting to see the final amendment language before deciding whether to suggest further amending the language.

CHAIR FOLEY: Next measure is HB1888 HD2. From prior discussions it appears that we want to include this bill as a recommendation in the Interim Report, but offer suggested amendments.

MEMBER IZUMI-NITAO: I would suggest deleting that language in the Interim Report referencing that the companion measure SB2388 SD1 is the preferred language.

MEMBER MARUMOTO: Also I would suggest that the description in this bill more clearly articulate in plain terms what it is accomplishing, to strengthen disclosure of contributions and dark money contributions.

CHAIR FOLEY: Okay, I think we have a consensus for this bill. Any objections to including it as a recommendation in the Interim Report? Seeing none, motion is seconded and adopted.

CHAIR FOLEY: Next bill is SB3164 SD1. This bill was deferred in the House and appears to be dead this session. Any objections to deleting from our list? Seeing none, the motion was seconded and adopted.

CHAIR FOLEY: Next bill is HB1426 HD1, which concerns procedure over contested case hearings.

MEMBER MA: This measure was heard and passed by the first committee in the Senate last week and we are good with the language in the SD1 and standing committee report.

CHAIR FOLEY: Okay, recommendation is to include this as a recommendation in the Interim Report. Any objections? Motion was seconded and adopted.

CHAIR FOLEY: Next bill is HB1427 HD1. Any objections to including this in the Interim Report? Seeing none, motion was seconded and adopted.

CHAIR FOLEY: Next bill is SB2388 SD1. This was previously discussed and recommended to exclude from the Interim Report. Any objections? Seeing none, motion was seconded and adopted.

CHAIR FOLEY: Last bill is SB2043, which is essentially a housekeeping measure for CSC.

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VICE CHAIR HARRIS: I think that could just be its own section, but instead of calling it a housekeeping measure maybe change to something like "Making State Agencies More Effective".

CHAIR FOLEY: Any objections to that recommendation? Seeing none, the motion was seconded and adopted.

CHAIR FOLEY: Final part of the draft Interim Report is Part V Areas of Long-Term Focus. In this Part we identify several topics to be explored before completing our Final Report in December. This is not a comprehensive list of topics and other topics can be added or deleted from the list at any point in time.

3. Next steps to finalize and adopt Interim Report

CHAIR FOLEY: The draft Interim Report will be revised to take into consideration all of the suggested amendments and further refined by our discussion today and consensus on whether or not to include in the Interim Report, and whether amendments to certain bills are suggested.

CHAIR FOLEY: The revised draft will be circulated to the members on Monday. We will review once again and if everything can be agreed via email then we will not need to meet again next week. Concerns over certain measures can be noted in the Interim Report, but the Interim Report itself will be adopted by all the members.

VICE CHAIR HARRIS: With that in mind, I would delete the reference to the word unanimous on page 5 of the draft report as that may not accurately convey the position of all members on certain bills and recommendations. Also there is a typo on page 5 that I think should reference 2023, instead of 2022.

MEMBER MARUMOTO: I would suggest that the revised Interim Report include more language concerning the potential impact that these recommendations could have to deter public corruption.

4. Next meeting date

Next meeting will take place on day April 14, 2022, at 2:00pm, via videoconferencing.