

SUNSHINE LAW MEETING



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

NOTICE OF MEETING OF THE HAWAI'I STATE ETHICS COMMISSION

Date: March 27, 2020

Time: 9:30 a.m.

Call-in: 808-829-4853, access code 624 551 106#

This meeting will be held via conference call only. All members of the public are invited to join this meeting using the above call-in information; anyone wishing to testify may do so during the conference call, or may submit written testimony in advance of the meeting via e-mail, fax, or mail.

To avoid excessive noise/feedback, please mute your telephone except to testify.

A G E N D A

CALL TO ORDER

I. Consideration and Approval of the Minutes of the February 20, 2020 Meeting

II. Extension of Deadline for Jan-Feb 2020 Lobbyist Expenditure Reports

The Commission will consider extending the filing deadline for lobbyist expenditure reports for the period January 1 - February 29, 2020 from March 31, 2020 to April 30, 2020.

III. Proposed Administrative Rules

The Commission will consider rescheduling the public hearing regarding its proposed administrative rules to Thursday, May 7, 2020, via videoconference only. The original date for the public hearing, March 19, 2020, has been canceled due to concerns with COVID-19.

IV. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, please contact the Hawaii State Ethics Commission by telephone at (808) 587-0460, by facsimile at (808) 587-0470 (fax), or via email at ethics@hawaiiethics.org. Requests made as early as possible will allow adequate time to fulfill your request.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

Any interested person may submit data, views, or arguments in writing to the Commission on any agenda item. An individual or representative wishing to testify may notify any staff member of the Commission prior to the meeting or, during the meeting itself, may inform a Commissioner or Commission staff of a desire to testify. Testimony must be related to an item that is on the agenda, and the testifier shall identify the agenda item to be addressed by the testimony.

SUNSHINE LAW MEETING
AGENDA ITEM I

CONSIDERATION AND APPROVAL OF THE MINUTES OF THE
FEBRUARY 20, 2020 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the February 20, 2020
Hawaii State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: Thursday, February 20, 2020

Time: 9:00 a.m.

Place: Hawaii State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawaii 96813

Present: State Ethics Commission Members

Reynard D. Grauly, Chair
Ruth D. Tschumy, Vice Chair
Susan N. DeGuzman, Commissioner
Melinda S. Wood, Commissioner (joined meeting at 9:10 a.m.)
Wesley F. Fong, Commissioner

State Ethics Commission Staff

Daniel M. Gluck, Executive Director
Susan D. Yoza, Associate Director
Nancy C. Neuffer, Staff Attorney
Virginia M. Chock, Staff Attorney
Bonita Y.M. Chang, Staff Attorney
Kee M. Campbell, Staff Attorney

CALL TO ORDER

Chair Grauly called the meeting to order at 9:00 a.m.

Agenda Item No. I: Consideration and Approval of the Minutes of the November 21, 2019 Meeting

Chair Grauly noted that Commissioner Fong had inadvertently voted to approve the minutes of the November 21, 2019 meeting at the January 16, 2020 meeting, such that the Commission would re-vote to approve the minutes.

1 Vice Chair Tschumy made and Commissioner DeGuzman seconded a motion to
2 approve the minutes of the November 21, 2019 Sunshine Law Meeting. The motion
3 carried (Graulity, Tschumy, and DeGuzman voting; Fong abstaining).
4
5

6 **Agenda Item No. II: Consideration and Approval of the Minutes of the**
7 **January 16, 2020 Meeting**
8

9 Vice Chair Tschumy made and Commissioner DeGuzman seconded a motion to
10 approve the minutes of the November 21, 2019 Sunshine Law Meeting. The motion
11 carried (Graulity, Tschumy, DeGuzman, and Fong voting).
12
13

14 **Agenda Item No. III: Proposed Administrative Rules**
15

16 Executive Director Gluck reported that the Commission and staff were ready for
17 the March 19, 2020 rulemaking hearing: the agenda had been posted with the Office of
18 the Lieutenant Governor and materials were posted on the Commission's website.
19 Computer Specialist Lui then described and demonstrated the videoconferencing
20 system that would be used to allow testifiers from Kaua'i, Maui, and Hawai'i Island.
21

22 (Commissioner Wood joined the meeting at 9:10 a.m.)
23
24

25 **Agenda Item No. IV: Executive Director's Report**
26

27 *Education / Training Report*
28

29 Executive Director Gluck had nothing to add to the Commission's meeting folder
30 materials.
31

32 *Guidance and Assignment Statistics – January 2020*
33

34 Executive Director Gluck had nothing to add to the Commission's meeting folder
35 materials.
36

37 *The High Road Newsletter – February 2020*
38

39 Executive Director Gluck thanked Associate Director Yoza for her work on the
40 newsletter.
41

42 *Miscellaneous Office Projects/Updates*
43

44 Executive Director Gluck noted that the work in the main office area was largely
45 complete and thanked the staff for their work to improve the office space.
46

1 **Agenda Item No. V: 2020 Legislative Session**

2
3 Executive Director Gluck gave an update on ethics bills at the Legislature. He
4 reported on the status of the Ethics Commission's bills: H.B. 2124/S.B.2114, H.B.
5 2125/S.B. 2115, and H.B. 1673/S.B.2100. He also reported on the status of bills
6 introduced by legislators, including H.B. 2120 on conflicts of interests, H.B.2256 on
7 technology transfer activities at the University of Hawaii, H.B. 361 on emoluments,
8 multiple bills purporting to allow for the forfeiture of public employees' pensions after
9 conviction of an employment-related felony, and bills on a variety of task forces
10 containing carve-outs from the Ethics Code.

11
12 Regarding H.B. 2120 – which would include legislators in HRS § 84-14(a), except
13 for legislators' constitutionally protected legislative functions – the Commission agreed
14 to support the measure, but take no position as to the inclusion of justices and judges.
15 Regarding the pension forfeiture bills, the Commission agreed to support the intent of
16 the proposals.

17
18 Executive Director Gluck also reported on the status of the Commission's budget
19 bills and the other items listed on the agenda.

20
21 Executive Director Gluck reported on one item not on the agenda: S.B. 1056,
22 carried over from last session, was being heard at the same time as the Commission
23 meeting. The measure would require more frequent reporting of lobbying expenditure
24 reports.

25
26
27 **Agenda Item No. VI: *Akana v. Hawaii State Ethics Commission and Daniel Gluck*,**
28 **Civil No. 18-1-1019-06 (JHA)**

29
30 Executive Director Gluck reported no change in this matter.

31
32
33 **Agenda Item No. VII: *Akana v. Hawaii State Ethics Commission, Civil No. 19-1-***
34 **0379-03 (JHA)**

35
36 Executive Director Gluck reported no change in this matter.

37
38
39 **Agenda Item No. VIII: *State of Hawaii, Ethics Commission, by and through its***
40 **Attorney General, v. Rowena Akana, Civil No. 1DRC-20-0000134**

41
42 Executive Director Gluck reported that the Department of the Attorney General
43 had initiated proceedings to recover the gifts improperly received by Akana, and Akana
44 counterclaimed against the Commission. Executive Director Gluck reported that the
45 Department of the Attorney General was handling the matter.
46

1 **Agenda Item No. IX: Office of Information Practices: Opinion Upholding**
2 **Commission's Denial of Request to Access Government Records**
3

4 Executive Director Gluck reported that the Office of Information Practices ("OIP")
5 recently issued an Opinion Letter in an appeal from 2017. OIP concluded that, because
6 of the confidentiality language within the Ethics Code, the Commission was not required
7 to disclose materials relating to its investigations in response to a request to access
8 government records.
9

10
11 **ADJOURNMENT OF SUNSHINE LAW MEETING**
12

13 At 9:44 a.m., Commissioner Fong made and Commissioner Wood seconded a
14 motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Grauldy,
15 Tschumy, DeGuzman, Wood, and Fong voting).
16
17
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21 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM II

EXTENSION OF DEADLINE FOR JAN-FEB 2020 LOBBYIST
EXPENDITURE REPORTS

The Commission will consider extending the filing deadline for lobbyist expenditure reports for the period January 1 - February 29, 2020 from March 31, 2020 to April 30, 2020.

Attachment 1: Order Regarding Lobbying Expenditure Reporting

BEFORE THE HAWAII STATE ETHICS COMMISSION
STATE OF HAWAII

ORDER REGARDING LOBBYING EXPENDITURE REPORTING

Given the threats posed by COVID-19, and given the directives from many employers for employees to work remotely, the Commission finds good cause to extend the March 31, 2020 deadline to file lobbying expenditure reports for the period January 1 to February 29, 2020.

Therefore, it is hereby ORDERED as follows:

1. Lobbying expenditure reports for the period January 1 to February 29, 2020, shall be filed no later than April 30, 2020; and
2. The Commission hereby delegates to the Executive Director the authority to extend this deadline until May 31, 2020, if appropriate, without further Order of the Commission.

Dated: Honolulu, Hawaii, March 27, 2020

HAWAII STATE ETHICS COMMISSION

Reynard D. Gaulty, Chair

Ruth D. Tschumy, Vice Chair

Susan N. DeGuzman, Commissioner

Melinda S. Wood, Commissioner

Wesley F. Fong, Commissioner

SUNSHINE LAW MEETING
AGENDA ITEM III

PROPOSED ADMINISTRATIVE RULES

The Commission will consider rescheduling the public hearing regarding its proposed administrative rules to Thursday, May 7, 2020, via videoconference only. The original date for the public hearing, March 19, 2020, has been canceled due to concerns with COVID-19.

Attachment 1: Notice of Public Hearing



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

NOTICE OF PUBLIC HEARING ON PROPOSED ADMINISTRATIVE RULES

Pursuant to Hawai'i Revised Statutes ("HRS") Chapter 91, and the Governor's March 16, 2020 Supplemental Emergency Proclamation regarding COVID-19, notice is hereby given that the Hawai'i State Ethics Commission ("Commission") will hold a public hearing to hear all persons interested in the proposals to amend Title 21, Hawai'i Administrative Rules ("HAR").

SCHEDULE OF PUBLIC HEARING

The public hearing is scheduled as follows:

Date: Thursday, May 7, 2020

Time: 9:00 a.m.

Location: Via videoconference: <https://bit.ly/HSECMay72020> (Note: If you have any technical difficulties, please call the Commission office at (808) 587-0460 and we will be happy to assist you.)

Members of the public may join via videoconference, or may also join via telephone only:

Phone number: (808) 829-4853

Conference ID: 198 567 175#

If conditions allow, one or more Commissioners may convene in person at the Commission's Conference Room, 1001 Bishop Street #960, Honolulu, HI 96813. That decision will not be made until the date of the hearing. Regardless, the entire hearing will be accessible to the public via videoconference and telephone conference.

AGENDA OF PUBLIC HEARING

- I. Call to Order
- II. Purpose of the Public Hearing
- III. Outline of Proceedings
- IV. Public Testimony
- V. Discussion by Commission
- VI. Announcement of Decision by Commission (or Deferral to Subsequent Meeting)
- VII. Adjournment

TOPICS OF PROPOSED RULES

The proposals include amendments to existing provisions of HAR, Title 21, chapters 1-6; adoption of new rules within HAR, Title 21, chapters 1-6, and adoption of four new chapters (HAR, Title 21, chapters 7-10). Overall, the proposals would address the Commission's operations and procedures (including issuance of advisory opinions, procedures for investigating and settling cases, and contested case hearing procedures); provide greater clarity to various provisions of the State Ethics Code, HRS chapter 84 (including but not limited to the gifts law, gifts reporting law, fair treatment law, and conflicts of interests law); and various provisions of the Lobbyists law, HRS chapter 97 (including but not limited to reporting and registration requirements for lobbyists).

The proposed amendments include provisions relating to the following:

1. HAR, Title 21, chapter 1: the Commission's operations, including provisions on general principles guiding the Commission's actions; definitions of terms used throughout the commission's rules; confidentiality; staffing; disqualification of commissioners; adjudicatory functions; and the commission's role in educating state officials and the public about ethics and lobbying matters.
2. HAR, Title 21, chapter 2: filing of documents, issuance of subpoenas, computation of time and continuances, and service of process.
3. HAR, Title 21, chapter 3: financial disclosure statements, including definitions; public access to certain financial disclosure records; amended disclosures; exit disclosures; administrative penalties for failure to file forms; and destruction of records.
4. HAR, Title 21, chapter 4: the Commission's procedures for giving advice on ethics and lobbying matters, including advisory opinions.
5. HAR, Title 21, chapter 5: the Commission's procedures for investigating cases, issuing charges, issuing further statements of alleged violations, conducting contested case hearings, and settling cases.
6. HAR, Title 21, chapter 6: procedures for petitions for rulemaking and declaratory orders.
7. HAR, Title 21, chapter 7: gifts and fair treatment, including definitions; prohibitions on certain kinds of gifts and allowances for other types of gifts; valuation of gifts; and gifts disclosure statements.
8. HAR, Title 21, chapter 8: conflicts of interests.
9. HAR, Title 21, chapter 9: post-employment restrictions.

10. HAR, Title 21, chapter 10: lobbying, including provisions on registration requirements for lobbyists; termination of lobbying registration; exclusions from registration requirements; clarifications as to what activities constitute "lobbying"; the circumstances under which contributions are deemed made for the purpose of lobbying; and a requirement that expenditures be reported on an accrual basis (rather than a cash basis).

PUBLIC TESTIMONY

All interested persons shall be afforded the opportunity to submit data, views, or arguments, orally or in writing, on the proposed administrative rules at the time of the public hearing. Persons wishing to submit written testimony may do so by emailing their testimony to ethics@hawaiiethics.org (preferred), by mailing or hand delivering their testimony to the Hawai'i State Ethics Commission, 1001 Bishop Street, Suite 970, Honolulu, HI 96813, or by sending their testimony via facsimile to (808) 587-0470.

All written testimony shall be submitted and must be received no later than 12:00 noon on May 8, 2020 (the day before the public hearing). Interested persons are encouraged to submit their testimony in advance of the public hearing, as this will give the Commission more time to read and consider the testimony.

The Commission may impose a time limit for each person presenting testimony at the hearing.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy. If you need an auxiliary aid/service or other accommodation due to a disability, please contact the Commission's staff by telephone at (808) 587-0460, by facsimile at (808) 587 0470 (fax), or via email at ethics@hawaiiethics.org. Requests made as early as possible will allow adequate time to fulfill your request.

AVAILABILITY OF COPIES OF THE PROPOSED RULES AND OTHER RELATED INFORMATION

The proposed rules may be viewed and downloaded free of charge from the Commission's website at https://ethics.hawaii.gov/wp-content/uploads/2020/02/AdminRules_Hearing.pdf. An Impact Statement, giving comments and examples on some of the proposed rules, is available on the Commission's website at https://ethics.hawaii.gov/wp-content/uploads/2020/03/ImpactStatement_Hearing.pdf. A copy of the proposed rules may also be mailed to any person who requests a copy from the Commission via e-mail (ethics@hawaiiethics.org), phone (808-587-0460), facsimile (808-587-0470), or mail (1001 Bishop Street, Suite 970, Honolulu, HI 96813). Copying costs of \$0.99, along with actual costs for postage, will apply.

Decision-making on the proposed administrative rules will either take place at the conclusion of the public hearing or at a properly noticed meeting of the Hawai'i State Ethics Commission. A tentative date and time of the decision-making meeting may be announced at the public hearing.