

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: June 18, 2020

Time: 9:00 a.m.

Location: Via Videoconference or Phone:

Videoconference: [Join Zoom Meeting](#)

Phone: +1 (669) 900-6833 or +1 (253) 215-8782

Meeting ID: 989 6230 6605

Password: 865290

Due to COVID-19, this meeting will be held via videoconference and phone conference. All members of the public are invited to join this meeting using the above 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.

In person:

Hawai'i State Ethics Commission Conference Room
American Savings Bank Tower
1001 Bishop Street, Suite 960
Honolulu, Hawai'i 96813

***Note: Commissioners and staff will appear remotely, via videoconference, and members of the public are encouraged to attend via videoconference or telephone. Staff will make every effort to accommodate members of the public who wish to testify in person at the Commission's Conference Room. If you wish to attend in person, you must wear a mask and must remain more than six feet away from every other person in attendance.*

A G E N D A

CALL TO ORDER

I. Consideration and Approval of the Minutes of the May 21, 2020 Meeting

II. Executive Director's Report

1. Education / Training Report

Attachment 2: 2020 Training Attendance / Schedule

Attachment 3: Online Training Completions by Department

2. Guidance and Assignment Statistics – May 2020

Attachment 4: 2020 Guidance and Assignment Statistics / Website Traffic

3. Ethics Survey of State Employees

4. Financial Report for FY 2019-2020 (preliminary year-end report)

Attachment 5: Preliminary Year-End Financial Report FY2019-2020

5. Miscellaneous Office Projects / Updates

III. Proposed Administrative Rules

Deliberation and decision-making on proposed administrative rules.

Attachment 1: Testimony received from Bob Toyofuku, Esq., on 5/20/20

Attachment 2: Staff memorandum in response to Mr. Toyofuku's testimony

***Please also see materials provided to the Commission for its May 21, 2020 meeting, available at <https://tinyurl.com/HSEC-5-21-20>*

IV. Office of Information Practices: Request for Comments for Draft Legislation

Attachment 1: OIP Memo, May 14, 2020

V. Evaluation of Executive Director Daniel Gluck

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee.

VI. Recognition of Commissioner Susan DeGuzman

VII. 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
MAY 21, 2020 MEETING

Attachment 1: Sunshine Law Meeting Minutes of the May 21, 2020
 Hawaii State Ethics Commission Meeting

SUNSHINE LAW MEETING
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: May 21, 2020

Time: 9:00 a.m.

Call-in: Held via Microsoft Teams video and audio conference,
with some present in the Commission's conference room,
1001 Bishop St. #960, Honolulu, HI 96813

Present: State Ethics Commission Members

Reynard D. Graulty, Chair (via video conference)
Ruth D. Tschumy, Vice Chair (present in conference room)
Susan N. DeGuzman, Commissioner (via video conference)
Melinda S. Wood, Commissioner (via video conference)
Wesley F. Fong, Commissioner (via video conference)

State Ethics Commission Staff

Daniel M. Gluck, Executive Director (present in conference room)
Susan D. Yoza, Associate Director (via audio conference)
Nancy C. Neuffer, Staff Attorney (via audio conference)
Virginia M. Chock, Staff Attorney (via audio conference)
Bonita Y.M. Chang, Staff Attorney (via audio conference)
Kee M. Campbell, Staff Attorney (via video conference)
Patrick Lui, Computer Specialist (via audio conference)

CALL TO ORDER

Chair Graulty called the meeting to order at 9:15 a.m. and confirmed that all Commissioners and staff were present via videoconference.

Chair Graulty requested that any members of the public joining the meeting via videoconference or telephone state their presence to the Commission. The following individuals identified themselves: Bob Toyofuku, lobbyist with BT Consulting dba Advocates; Sandy Ma, Executive Director of Common Cause Hawaii; and Kristin Izumi-Nitao, Executive Director of the Campaign Spending Commission.

1 **Agenda Item No. I: Consideration and Approval of the Minutes of the**
2 **April 16, 2020 Meeting**
3

4 Commissioner Fong made and Commissioner DeGuzman seconded a motion to
5 approve the minutes of the April 16, 2020 Sunshine Meeting. The motion carried
6 unanimously (Grauly, Tschumy, DeGuzman, Wood and Fong voting).
7

8
9 **Agenda Item No. II: Executive Director's Report**
10

11 *Education / Training Report*
12

13 Executive Director Gluck explained that in-person training sessions remain on
14 hold due to COVID-19 restrictions. Individuals interested in receiving ethics training
15 continue to access and complete the Commission's online ethics training module.
16

17 *Guidance and Assignment Statistics – April 2020*
18

19 The Commission did not have any questions or further discussion regarding the
20 Guidance and Assignment Statistics for April 2020.
21

22 *Miscellaneous Office Projects / Updates*
23

24 Executive Director Gluck shared that staff has been working on a revamp of the
25 Commission's website (ethics.hawaii.gov) and plans to launch this new layout in the
26 near future.
27

28 The Commission took a short recess to resolve technical issues, then
29 reconvened.
30

31 Executive Director Gluck explained that staff has redesigned the Commission's
32 website to make the information most commonly requested by the public more easily
33 accessible from the homepage. For example, the new homepage will include buttons to
34 request ethics advice, file a complaint, view public documents, and file forms. Executive
35 Director Gluck stated that he will circulate a mockup of the proposed layout to the
36 Commissioners for review after the conclusion of this meeting.
37

38
39 **Agenda Item No. III: Proposed Administrative Rules**
40

- 41 A. Consideration and approval of the minutes of the May 7, 2020 rulemaking
42 hearing
43

44 Commissioner DeGuzman noted a typographical error on the draft minutes. Vice
45 Chair Tschumy made and Commissioner DeGuzman seconded a motion to

1 approve the minutes of the May 7, 2020 rulemaking hearing as amended. The motion
2 carried unanimously (Graulty, Tschumy, DeGuzman, Wood and Fong voting).
3

4 B. Deliberation and decision-making on proposed rules
5

6 Chair Graulty explained that the Commission had received late testimony from
7 Bob Toyofuku the evening prior, May 20, 2020. Chair Graulty questioned whether the
8 Commission could consider this testimony given that the official notice of public hearing
9 for the proposed administrative rules required receipt of all written testimony by 12 p.m.
10 on May 6, 2020.
11

12 Executive Director Gluck stated that he had requested feedback from the
13 Department of the Attorney General regarding the acceptance of late testimony but had
14 not received a response back as of the time of this meeting. However, given the benefit
15 of public input, Executive Director Gluck recommended that the Commission allow the
16 late testimony from Mr. Toyofuku.
17

18 Commissioner Fong moved and Commissioner DeGuzman seconded a motion
19 to allow the late testimony from Mr. Toyofuku to be considered by the Commission. The
20 motion carried (Graulty, Tschumy, DeGuzman, and Fong voting aye; Wood voting nay).
21

22 Executive Director Gluck stated that staff had reviewed Mr. Toyofuku's testimony
23 and subsequently recommends an additional change to the proposed administrative
24 rules.
25

26 Due to the late nature of the testimony, Chair Graulty requested that staff
27 continue to conduct a further review of Mr. Toyofuku's comments and formally provide
28 the Commission any new proposed language for consideration at a later time. Chair
29 Graulty also requested that the Commission defer decision-making until a future date to
30 allow ample time for analysis.
31

32 Executive Director Gluck stated that staff would provide updated materials in
33 writing, so both the Commissioners and members of the public will able to review and
34 comment on any new proposed changes if desired. Executive Director Gluck also
35 stated that he will consult with Chair Graulty on an appropriate date to reschedule the
36 decision-making meeting.
37

38 Vice Chair Tschumy made and Commissioner Fong seconded a motion to defer
39 the approval of the proposed rules until a future date. The motion carried unanimously
40 (Graulty, Tschumy, DeGuzman, Wood and Fong voting).
41

42 Mr. Toyofuku expressed his apologies for the lateness of his testimony and the
43 subsequent need to defer decision-making on this matter. He thanked the Commission
44 for its consideration and stated that he would provide any needed clarifications to
45 Executive Director Gluck. Chair Graulty and Executive Director Gluck thanked Mr.
46 Toyofuku for his participation and for his helpful and substantive testimony.

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

2
3 Executive Director Gluck reported that the Legislature was scheduled to convene
4 on May 21, 2020, and reopen in June, although he was unsure as to whether the
5 Legislature's reopening would be via special session or an extension of the 2020
6 regular session. Executive Director Gluck explained that nevertheless, the
7 Commission's bills relating to policy were not experiencing any forward movement at
8 this time. However, the budget bill, which makes appropriations for the legislative
9 branch for next year (FY2020-2021), was approved and signed by the Governor, with
10 the Legislature maintaining the ability to amend the budget next year if it deems
11 appropriate.
12

13
14 **ADJOURNMENT OF SUNSHINE LAW MEETING**

15
16 At 9:39 a.m., Vice Chair Tschumy made and Commissioner DeGuzman
17 seconded a motion to adjourn the Sunshine Law Meeting. The motion carried
18 unanimously (Graulty, Tschumy, DeGuzman, Wood and Fong voting).
19

20 The meeting was adjourned at 9:39 a.m.

21
22
23 Minutes approved on: _____

SUNSHINE LAW MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT

- Attachment 1: Executive Director's Report
- Attachment 2: 2020 Training Attendance / Schedule
- Attachment 3: Online Training Completions by Department
- Attachment 4: 2020 Guidance and Assignments Statistics / Website Traffic
- Attachment 5: Preliminary Year-End Financial Report FY2019-2020

SUNSHINE MEETING
AGENDA ITEM II

EXECUTIVE DIRECTOR'S REPORT
June 18, 2020

1. Education / Training Report

All in-person trainings have been postponed indefinitely due to COVID-19.

Attachment 2: 2020 Training Attendance / Schedule

Attachment 3: Online Training Completions by Department

2. Guidance and Assignment Statistics – May 2020

Attachment 4: 2020 Guidance and Assignment Statistics / Website Traffic

3. Ethics Survey of State Employees

4. Financial Report for FY 2019-2020 (preliminary year-end report)

Attachment 5: Preliminary Year-End Financial Report FY2019-2020

5. Miscellaneous Office Projects/Updates

HAWAII STATE ETHICS COMMISSION 2020 EDUCATION PROGRAM (Ethics Workshops and Presentations)		
DATE	PRESENTATIONS	NUMBER OF PARTICIPANTS
1/2/2020	General Ethics Training, House of Representatives Staff Training	99
1/7/2020	General Ethics Training, Windward Community College	122
1/13/2020	Ethics Refresher Course, State Capitol, Honolulu	30
1/14/2020	Lobbyists Law Training, State Capitol, Honolulu	30
2/24/2020	General Ethics Training, DCCA, Supervisors	32
2/24/2020	General Ethics Training, DCCA, Non-Supervisors	58
2/25/2020	General Ethics Training, DCCA, Supervisors	24
2/25/2020	General Ethics Training, DCCA, Non-Supervisors	61
2/27/2020	General Ethics Training, DCCA, Supervisors	24
2/27/2020	General Ethics Training, DCCA, Non-Supervisors	69
3/17/2020	General Ethics Training, Hilo (CANCELLED)	
3/20/2020	General Ethics Training, DOT, Harbors (2 sessions) (CANCELLED)	
3/24/2020	General Ethics Training, Honolulu (CANCELLED)	
3/25/2020	General Ethics Training, Lihue (CANCELLED)	
4/6/2020	General Ethics Training, Kona (CANCELLED)	
4/21/2020	General Ethics Training, DLNR, DOFAW (CANCELLED)	
4/28/2020	General Ethics Training, DOH Executive Committee, Honolulu (CANCELLED)	
5/8/2020	General Ethics Training, Kahului (CANCELLED)	
5/12/2020	General Ethics Training, Pearl City (CANCELLED)	

10/20/2020	General Ethics Training, Honolulu	
xx/xx/2020	General Ethics Training, DOT, Harbors (supervisors)	
TOTAL	22 Presentations	549 participants

Department/Agency	# of Completions
Department of Health (DOH)	171
Department of Transportation (DOT)	146
Department of Education (DOE)	131
Department of Land and Natural Resources (DLNR)	61
Department of Accounting and General Services (DAGS)	59
Department of the Attorney General (ATG)	48
Department of Public Safety (DPS)	39
University of Hawaii-West Oahu (UOHW)	37
Hawaii Health Systems Corporation (HHSC)	35
Department of Commerce and Consumer Affairs (DCCA)	32
Department of Agriculture (DOA)	31
University of Hawaii-Manoa (UOHM)	28
Judiciary (JUD)	24
University of Hawaii-System (UOH)	16
Department of Business, Economic Development and Tourism (DBEDT)	15
Other (Please fill-in "Other Department/Agency")	9
Office of the Governor (GOV)	7
Public Charter School (SPCSC)	4
University of Hawaii-Community Colleges (UOHC)	3
Research Corporation of the University of Hawaii (RCUH)	3
Office of the Auditor (AUD)	3
Department of Human Services (DHS)	2
Department of Human Resources Development (DHRD)	2
Department of Labor and Industrial Relations (DLIR)	2
Senate (SEN)	1
Office of the Lieutenant Governor (LTG)	1
Total Certificate of Completions Issued	910

As of June 10, 2020

2020	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Year to date
Training statistics													
# of In-Person Trainings	4	6	0	0									10
# of People Trained In Person	281	268	0	0									549
# of On-Line Training	403	182	190	76	49								900
Attorney of the Day													
	148	96	79	61	72								456
New assignments													
Advisory Opinion	0	0	0	0	0								0
Complaint	7	7	8	8	8								38
Gifts/Invitations/Travel	16	12	3	1	0								32
Guidance	2	2	0	2	0								6
Judicial Selection Comm'n	1	5	3	2	2								13
Training Request	0	0	0	0	0								0
Record Request	1	1	2	0	0								4
Project/Other	3	3	3	1	1								11
Total	30	30	19	14	11	0	0	0	0	0	0	0	104
Closed Assignments													
Advisory Opinion	0	1	1	0	0								2
Complaint	8	3	9	11	10								41
Gifts/Invitations/Travel	22	5	11	5	1								44
Guidance	4	1	5	2	1								13
Judicial Selection Comm'n	1	4	2	0	6								13
Training Request	1	0	0	0	0								1
Record Request	3	2	1	0	0								6
Project/Other	3	1	2	5	1								12
Total	42	17	31	23	19	0	0	0	0	0	0	0	132

Dataset Views

Disclosures	97	91	64	58	84													394
Lobbyist Registrations	364	276	221	113	127													1,101
Organization Expenditures	67	51	27	11	12													168
Lobbyist Expenditures	53	44	25	17	24													163
Ethics Advice	108	112	66	39	59													384
Total	689	574	403	238	306	0	0	0	0	0	0	0	0	0	0	0	0	2,210

HAWAII STATE ETHICS COMMISSION FINANCIAL REPORT
 PROJECTIONS FOR QUARTER ENDING: June 30, 2020
 Appropriation Symbol: G-20-393-Y6

	Amount Appropriated FY 2019-2020	Expenditures for Qtr. End 9/30/2019	Expenditures for Qtr. End 12/31/2019	Expenditures for Qtr. End 3/31/2020	Expenditures for Qtr. End 6/30/2020	Year-To-Date Expenditures Totals	% of Budget Expended
A. PERSONNEL SERVICES							
Staff Salaries	\$ 977,445.00	\$ 244,354.50	\$ 235,116.50	\$ 243,622.50	\$ 243,622.50	966,716.00	98.9%
Vacation Payout		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	
Total Personnel Services	\$ 977,445.00	\$ 244,354.50	\$ 235,116.50	\$ 243,622.50	\$ 243,622.50	\$ 966,716.00	98.9%
B. OTHER CURRENT EXPENSES							
Office Expenses	14,650.00	2,983.76	5,266.19	1,234.77	5,163.68	14,648.40	100.0%
Intrastate Transportation and Travel	9,250.00	459.02	238.36	622.79	-307.19	1,012.98	11.0%
Out-of-State Travel	12,660.00	4,557.00	1,847.33	2,928.22	0.00	9,332.55	73.7%
Equipment Rental and Maintenance	25,550.00	3,365.10	704.45	812.64	17,392.17	22,274.36	87.2%
Dues, Subscriptions, Training	16,410.00	2,515.95	6,091.72	1,786.58	1,330.86	11,725.11	71.5%
Newspaper Advertisements	1,100.00	35.00	0.00	376.20	376.20	787.40	71.6%
Comm'n Mtgs, Investigations, Hrgs	11,600.00	549.74	5.23	285.79	0.00	840.76	7.2%
Consulting Services	23,900.00	139.99	632.46	142.00	25,593.71	26,508.16	110.9%
Office Rent	105,500.00	12,244.29	23,006.10	35,213.36	27,745.77	98,209.52	93.1%
Total Other Current Expenses	\$ 220,620.00	\$ 26,849.85	\$ 37,791.84	\$ 43,402.35	\$ 77,295.20	\$ 185,339.24	84.0%
C. CAPITAL OUTLAY							
Office Furniture and Equipment	4,000.00	0.00	6,888.34	-6,888.34	0.00	0.00	0.0%
Total Capital Outlay	\$ 4,000.00	\$ 0.00	\$ 6,888.34	-\$ 6,888.34	\$ 0.00	\$ 0.00	0.0%
GRAND TOTAL (A+B+C)	\$ 1,202,065.00 ¹	\$ 271,204.35	\$ 279,796.68	\$ 280,136.51	\$ 320,917.70	\$ 1,152,055.24	95.8%
VACATION		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	

General Fund Allocation **\$ 1,202,065.00**
 Projected Expenditures for June 30, 2020 **\$ 1,152,055.24**
 Projected Balance for June 30, 2020 **\$50,009.76**

¹ \$1,202,065 awarded by Act 1, SLH 2019 - Appropriation 393.

SUNSHINE LAW MEETING
AGENDA ITEM III

PROPOSED ADMINISTRATIVE RULES

Deliberation and decision-making on proposed administrative rules.

Attachment 1: Testimony received from Bob Toyofuku, Esq., on 5/20/20

Attachment 2: Staff memorandum in response to Mr. Toyofuku's testimony

Please also see materials provided to the Commission for its May 21, 2020 meeting, available at <https://tinyurl.com/HSEC-5-21-20>.

BT Consulting, Inc. dba Advocates
1000 Bishop Street, Suite 808
Honolulu, HI 96813

To: Commission Members, Hawaii State Ethics Commission
1001 Bishop Street, Suite 970
Honolulu, Hawaii 96813
Attn: Daniel Glick, Esq., Executive Director

From: Bob Toyofuku, President BT Consulting, Inc.

Date: May 20, 2020

Re: Comments on Proposed Rules on Lobbying and Lobbyists

I am submitting my comments for the members of the Ethics Commission to consider at its meeting on Thursday, May 21, 2020. It has been about four (4) months since I appeared before you in January 2020 and want to, first of all, extend my thanks to the commission members for allowing me to make some comments and answer some questions at that time.

I have been lobbying at the Hawaii state legislature since 1984 and my comments and some suggestions are included below and relate specifically to Section 21-10 on Lobbying.

I. Section 21-10-1

I acknowledge and agree with the definition of “Direct Lobbying” in the context of when an individual is deemed to be actually lobbying which comports with HRS 97-1 and the definition of lobbying. However, what may need to be clarified is the second sentence where it states that direct lobbying includes “discussing existing or potential legislation or administrative rules,” It is unclear to me whether this only applies when you are discussing potential legislation or rules with a legislator, employee, etc. of the legislature or an agency. What confused me is

that this segment of the sentence follows “drafting or submitting testimony” which is not usually discussed with members of the legislature and discussed and done primarily internally with persons in your organization. When members of a lobbying organization or firm meet, formally or informally, to discuss legislation or rules, among themselves, including strategy to pass or defeat legislation, I am assuming it was not your intent to consider this as Direct Lobbying. On the other hand, if the lobbyist or members of the firm are meeting with a client to discuss the legislation and strategy, was it the commission’s intent to include this as direct lobbying even where there is no contact with any members of the legislature or agency? I am interpreting the words “Direct Lobbying” literally and happens when you are communication with a legislator or agency director or staff.

I raise this here because it affects how to report the compensation that a firm receives because close to 75-100% of the compensation may be attributable to lobbying depending upon what the intent is. If so this would be misleading to the public if the primary definition of “lobbying” is communication with a legislator to influence legislation and discussing matters internally should not be considered direct lobbying.

One example that was provided previously was when an organization research and write a paper on a proposal from another state and then decides, internally, to promote legislation based on that paper, this work is considered lobbying. I took issue with this example when no communication was made with any legislator or staff, etc. It was all internal within the organization or firm. *See Example 5 to 21-10-1.*

Because “lobbying” in Section 21-2 includes the definition in HRS 97-1 AND includes direct lobbying it is crucial that the direct lobbying definition be as clear and specific as possible. I would be concerned if the intent is to include all internal discussions as direct lobbying.

II, Section 21-10-2 and Section 21-10-4 - Registration

Oftentimes a third party is paid to do research or assist in drafting legislation. I wanted to be certain that although Section 21-10-2 (b) (1) refers to “drafting and providing testimony” which may require registration, Section 21-10-4 seems to create the exception for a person who is hired to assist in drafting testimony and doing research on an issue provided that that third party does not meet or communicate with any official in the legislative or executive branch.

Also, the five day time frame may be too short. The lobbyist needs to have the client sign the form and oftentimes the lobbyist does not get the form back within 5 days.

III Section 21-10-7 and Section 21-10-8 - Reporting of Expenditures & Expenditures

Lobbyists and firms report compensation received on the basis of direct lobbying when the lobbyist is communicating with someone in the legislature or an agency to influence legislation. If a firm receives \$2000 per month and only spend one hour communicating with a legislators(s), neither the lobbyist nor the client reports \$2000 received, but rather a percentage of that total. I am assuming that this fits within the proposed rules. However, I do recognize that Section 21-10-8 refers to “discussing legislative strategy” and “monitoring the status of proposed legislation ...” It is unclear that when this strategy discussion or monitoring is done internally by the firm’s staff and not with any legislator, whether it is considered an expenditure. Every firm needs to monitor legislation for the client to advise them on hearings, etc. This is all done electronically. Does the staff person’s (receptionist/secretary) salary need to be reported as an expenditure?

Thank you for allowing me to submit these comments and questions. I am available to answer any questions if needed. My cell number is (808) 554-0852 and I will make myself available when you have your meeting tomorrow. I plan to listen to the meeting tomorrow morning.



HAWAI'I STATE ETHICS COMMISSION

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

MEMORANDUM

To: Hawai'i State Ethics Commission

From: Daniel M. Gluck, Executive Director and General Counsel

Re: Proposed administrative rules: response to late testimony

Date: June 1, 2020

Dear Chair Grauly, Vice Chair Tschumy, and Commissioners DeGuzman, Wood, and Fong,

My colleagues and I have had an opportunity to review the testimony submitted by Mr. Bob Toyofuku, Esq., regarding the proposed administrative rules on lobbying. I also had an opportunity to discuss the proposed rules with Mr. Toyofuku; Mr. Toyofuku had several questions as to how the rules would apply to different hypothetical scenarios, and I pointed Mr. Toyofuku to the relevant proposed rules that addressed his questions.

In response to Mr. Toyofuku's written testimony, staff recommends two edits to the proposed rules.¹ Staff believes that neither edit changes the overall purpose or substance of the rule being edited. Instead, these suggested edits provide some additional clarity as to the Commission's intent in promulgating rules regarding the Lobbyists Law:

1. **Proposed Edit:** In the definition of "Direct lobbying" in proposed Hawai'i Administrative Rules ("HAR") § 21-10-1, we recommend deleting the second sentence ("Direct lobbying includes but is not limited to drafting or submitting testimony; discussing existing or potential legislation or administrative rules; and advocating for the passage or defeat of any legislation or administrative rule.").

Rationale: HAR § 21-10-1 contains definitions of "Direct lobbying" and "Grassroots lobbying" to show that lobbying can be both direct and indirect, consistent with the definition of lobbying in Hawai'i Revised Statutes ("HRS") § 97-1. However, the second sentence of the definition of "Direct lobbying" is unnecessary: detailed explanations of which activities count towards the registration threshold, and which expenditures must be reported on periodic expenditure reports, appear in proposed HAR §§ 21-10-2 and 21-10-8. The second sentence of "Direct lobbying" was intended to be illustrative (rather than exhaustive), but Mr. Toyofuku's testimony suggests that it adds more confusion than

¹ In reviewing the rules, staff discovered a typographical error: in proposed Hawai'i Administrative Rules § 21-10-9(c), the word "purposes" should be "purpose."

clarity. As such, staff recommends that this sentence be deleted for clarity; staff does not believe that the deletion will result in a substantive change to the proposed rule.

2. **Proposed Edit:** In proposed HAR § 21-10-7(b)(1)(C), we recommend adding the word “Total” before the word “Compensation.”

Rationale: Addition of the word “total” will clarify that all expenditures to lobbyists for the purpose of lobbying must be reported; non-lobbying activities still do not need to be reported, as discussed in proposed HAR § 21-10-9(c). Staff believes that the rules are already clear that “total” compensation must be reported, *see, e.g.*, proposed HAR § 21-10-8(a) (“Expenditures made ‘for the purpose of lobbying’ means *all those expenditures in support of and in preparation for* direct lobbying or grassroots lobbying.” (emphasis added)); however, addition of the word “total” in HAR § 21-10-7 may help to clarify this requirement for lobbyists.

The remainder of Mr. Toyofuku’s comments are generally answered through application of the proposed rules. For example, the question regarding a research project that *might* be used for lobbying is dealt with by proposed HAR §§ 21-10-2(b)(2) and 21-10-8(b)(2). The question regarding flat-fee payment arrangements (page 3) is addressed by proposed HAR § 21-10-9. The question regarding background strategy discussions is addressed by applying HAR § 21-10-8(a)(3) and (b)(2). Mr. Toyofuku and I discussed that the proposed rules *will* change the ways that some lobbyists report clients’ expenditures, and I assured Mr. Toyofuku that the Commission staff intends to spend significant effort to educate lobbyists regarding these new requirements upon enactment of any proposed rules.

Mr. Toyofuku’s comment on page 3 of his memorandum, regarding the five-day period to register, is set by HRS § 97-2 (and, therefore, cannot be altered by these rules).

Staff respectfully recommends that the Commission incorporate the proposed edits set forth herein, approve the draft rules (as amended), and move forward with the rule-making process.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

SUNSHINE LAW MEETING
AGENDA ITEM IV

OFFICE OF INFORMATION PRACTICES:
REQUEST FOR COMMENTS FOR DRAFT LEGISLATION

Attachment 1: OIP Memo, May 14, 2020



DAVID Y. IGE
GOVERNOR

**STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES**

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CHERYL KAKAZU PARK
DIRECTOR

**WHAT'S NEW: OIP COLLECTING COMMENTS FOR DRAFT
LEGISLATION
May 14, 2020**

The COVID-19 pandemic, and the possibility of future crises, have changed many things forever, including some ways that government may be conducted. While the partial suspension of Hawaii's open records and open meetings laws are temporary until amended or terminated by the Governor's emergency orders, there could be lasting changes in how the public will be able to access information and participate in government. There could be negative effects, but hopefully, most changes would be for the better, if we can use technology to enable greater access and participation by the public in a safe manner, such as through virtual meetings by boards subject to the Sunshine Law. To ensure that best practices are followed by agencies, and safeguards remain in place to protect the public's safety and interest, changes to the laws and resources to implement those changes may be required. To possibly develop draft legislation for 2021, the Office of Information Practices (OIP) wants to hear from you.

OIP is particularly interested in gathering information on how agencies and boards are changing their procedures to cope during the crisis, what works or did not work, and what changes to the law or resources they need to expand their ability to provide public access to government records and public meetings. OIP also wants to hear from the public about constructive suggestions to improve public access while maintaining health and safety.

Please put in the subject line "comments for draft legislation" and email your comments to oiip@hawaii.gov. OIP will collect comments until the end of July and plans to begin working on draft legislation thereafter, with the goal of having proposals ready in time for the 2021 legislative session. Mahalo.

SUNSHINE LAW MEETING
AGENDA ITEM V

EVALUATION OF EXECUTIVE DIRECTOR DANIEL GLUCK

The Hawai'i State Ethics Commission may convene an executive session pursuant to Hawai'i Revised Statutes section 92-5(a)(2) to discuss matters relating to the evaluation of an employee.

No attachments.

SUNSHINE LAW MEETING
AGENDA ITEM VI

RECOGNITION OF COMMISSIONER SUSAN DEGUZMAN

No attachments.