

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAI'I STATE ETHICS COMMISSION

STATE OF HAWAI'I

Date: December 14, 2022  
Time: 9:00 a.m.  
Location: Held via Zoom video and audio conference

Public Meeting Location

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

Present: State Ethics Commission Members

Wesley F. Fong, Chair (present in conference room)  
Reynard D. Gaulty, Vice Chair (via video conference)  
Harry J. McCarthy, Commissioner (via audio conference)  
Beverley Tobias, Commissioner (present in conference room)  
Robert Hong, Commissioner (present in conference room)

State Ethics Commission Staff

Robert D. Harris, Executive Director (via video conference)  
Susan D. Yoza, Associate Director (via video conference)  
Bonita Y.M. Chang, Staff Attorney (via video conference)  
Kee M. Campbell, Staff Attorney (via video conference)  
Patrick W.C. Lui, Computer Specialist (via audio conference)

**CALL TO ORDER**

Chair Fong called the meeting to order at 9:01 a.m. All Commissioners and Commission staff (except Staff Attorneys Neuffer and Yamanuha) were present. Commissioner McCarthy participated in the meeting remotely by phone and said his spouse was present in the room with him from time to time; all other Commissioners and staff participating via video or audio conference confirmed no one was in the room with them at their respective remote locations.

Chair Fong announced that if the Commission's video conference connection was lost during the meeting, the meeting would be recessed and reconvened after the connection was restored; members of the public were asked to check the Commission's website ([www.ethics.hawaii.gov](http://www.ethics.hawaii.gov)) for information about reconnecting to the meeting. Chair Fong also announced that if the meeting was continued to a later date or terminated, information about this would be posted on the Commission's website.

Duane from KITV 4 News identified himself via video conference and said he was observing the meeting.

### **Agenda Item No. I: Consideration and Approval of the Minutes of the October 19, 2022 Meeting**

Commissioner Tobias made and Commissioner McCarthy seconded a motion to approve the minutes of the October 19, 2022, meeting. The motion carried (Fong, McCarthy, and Tobias voting aye; Grauly and Hong abstaining).

### **Agenda Item No. II: Consideration and Approval of the Minutes of the November 16, 2022 Meeting**

Commissioner Hong made and Vice Chair Grauly seconded a motion to approve the minutes of the November 16, 2022, meeting. The motion carried (Fong, Grauly, McCarthy, and Hong voting aye; Tobias abstaining).

### **Agenda Item No. III: Executive Director's Report**

Executive Director Harris reviewed the training, guidance, and assignment statistics for November. The number of assignments going into December was slightly lower, but is expected to pick up in January.

Executive Director Harris also discussed staff's plans to administer the mandatory ethics training law starting in January. He said staff has begun working with different state departments, such as the University of Hawai'i, to obtain their assistance in making the training course available to their employees and encouraging their employees to take the course. Initially, the goal will be to get as many employees as possible to take the ethics training course. It will be up to the Commission to decide what enforcement action should be taken against employees who fail to take the course.

### **Agenda Item No. IV: 2022 Council on Governmental Ethics Laws Conference**

Executive Director Harris said that he, Commissioner Hong, and Staff Attorneys Campbell and Yamanuha recently attended the COGEL conference in Montreal,

Canada. Executive Director Harris, Commissioner Hong, and Staff Attorney Campbell each discussed their impressions of the conference.

Executive Director Harris said other states are using information on financial disclosure filings to proactively flag potential conflicts of interests by filers. He also said some states are taking a more aggressive approach to regulate lobbying and the Commission may wish to look into this in light of its own lobbying statutes.

Commissioner Hong said he found the conference very worthwhile. He said it caused him to reflect on the purpose of government and his role as a member of the Commission. He also appreciated the opportunity to meet people from other states, as well as people from other government offices in Hawai'i. Chair Fong said Commissioner Hong prepared a synopsis of his impressions of the conference, which other Commissioners could review.

Staff Attorney Campbell agreed the conference was a valuable experience. He mentioned two ideas he brought back from the conference: (1) creating a handbook for commissioners which can be incorporated into the onboarding process for new commissioners, and (2) preparing a summary in plain language of the Commission's opinions to make the opinions easier to understand and more accessible to the public.

#### **Agenda Item No. V: Proposed Budget: FY 2023-2024**

Executive Director Harris reviewed the proposed budget of \$1,490,115 for FY 2023-2024, which is a 5% increase over the current budget. The proposed budget includes funding for a full-time position for an analyst to help with the review of financial disclosures and investigations. There is also funding for the Commission to expand its training capabilities. There is also funding for another state ethics conference, which would include neighbor island ethics commissions. There is also funding for improvements to the Commission's file server and database system. Executive Director Harris also reviewed funding in the proposed budget for Commissioner interstate and intrastate travel.

Commissioner Hong made and Vice Chair Gaulty seconded a motion to approve the proposed budget for FY 2023-2024. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

#### **Agenda Item No. VI: Proposed Legislation**

Executive Director Harris reviewed the proposed bills for 2023 (copies of which were included in the Sunshine meeting materials). He said two of the proposed bills were new and the remaining bills were previously discussed in connection with the recommendations of the Commission to Improve Standards of Conduct ("Standards Commission"). Executive Director Harris said the approved bills will be submitted on behalf of the Ethics Commission to the Senate President and/or House Speaker for

introduction. He asked for the Commission's substantive approval of the proposed bills, with the understanding that there may be some stylistic changes made later.

Chair Fong suggested the Executive Director review each proposed bill and the Commission then vote whether or not to support the bill. There were no objections.

Bill Relating to Financial Disclosure. The purpose of this proposed bill is to facilitate the enforcement of the financial disclosure law. The current procedure for imposing administrative fines for delinquent filers is cumbersome. The proposed bill provides for an automatic \$50 fine and a \$250 fine if the person does not file within a month. The bill also creates a more streamlined process for enforcement and for the collection of fines by the Attorney General's office.

Commissioner Tobias made and Commissioner Hong seconded a motion to support the proposed bill relating to financial disclosures. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Bill Relating to Record and Document Disposition. The purpose of this proposed bill is to provide the Commission with more discretion and flexibility with regard to the disposal of records. This will allow the disposal of records to be more efficient and cost effective.

Commissioner Hong made and Commissioner McCarthy seconded a motion to support the proposed bill relating to the disposition of records. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Bill Making an Appropriation for County Ethics. The purpose of this proposed bill is to provide a one-time appropriation by the Legislature to help the county ethics boards expand their ethics programs.

Chair Fong asked whether this was just a band-aid approach to help the county boards. Executive Director Harris said the bill is intended to help the county boards get started by establishing the infrastructure for their programs, such as by using the funding to hire a full-time director. Hopefully, the counties will provide continued funding thereafter. Executive Director Harris also explained that the counties would have to submit a proposal on how they intend to use the funds given to them.

Commissioner McCarthy made and Commissioner Hong seconded a motion to support the proposed bill relating to county ethics funding. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Resolution Urging County Governments to Review Their Government Structure to Identify Risks of Corruption and Ethical Violations. The purpose of this proposed resolution is to ask the counties to look at their governmental infrastructure to identify risks of public corruption and see what can be improved. This will also provide an opportunity for the counties to see whether their ethics boards have sufficient resources to perform their duties.

Commissioner Tobias made and Vice Chair Gaulty seconded a motion to support the proposed resolution for the counties to review their governmental structure to identify risks of corruption. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Bill Relating to Legislative Allowance. The purpose of this proposed bill is to require each house of the Legislature to post on its website the legislative allowance expenditures of its members.

Commissioner Tobias made and Commissioner Hong seconded a motion to support the proposed bill relating to legislative allowance disclosures. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Bill Relating to Financial Disclosures. The purpose of this proposed bill is to require legislators to disclose their financial relationships with lobbyists. A legislator who does not comply with this requirement would be subject to the Commission's enforcement authority, which may include a public settlement agreement with the legislator.

Vice Chair Gaulty made and Commissioner Hong seconded a motion to support the proposed bill relating to legislator financial disclosures. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Bill Relating to Lobbyists. The purpose of this proposed bill is to require lobbyists to disclose the specific bill number, resolution number, or program identifier for matters on which they lobby. A lobbyist's failure to disclose this information would not preclude the individual from lobbying, but would be a violation of the Lobbyists Law.

Commissioner Hong made and Commissioner Tobias seconded a motion to support the proposed bill relating to lobbyists' disclosures. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Bill Relating to Mandatory Lobbyist Training. The purpose of this proposed bill is to require lobbyists to take a mandatory training course every two years. Lobbyists must take the training before they can register with the Commission.

Chair Fong asked whether a lobbyist who does not take the training would be prohibited from lobbying. Executive Director Harris said the bill does not prohibit lobbying. However, a lobbyist who lobbies without taking the training would be in violation of the Lobbyists Law and this would be treated as an enforcement matter.

Commissioner McCarthy said he supported the idea in principle but could see difficulties with enforcement down the line. He could foresee a lot of lobbyists not taking the training and he wondered what sanctions would be imposed to enforce the law.

Vice Chair Gaulty said he had reservations about the bill. He suggested that a fine might help get people to register. It could be a daily fine so there was some bite to it. He said the Commission cannot take away people's right to be heard as that is a constitutional right, but the Commission can fine them if they are not following the ethics rules.

Executive Director Harris clarified that there is no prohibition on lobbying under the bill. If someone lobbies without registering, they are violating HRS Chapter 97 and the Commission can fine them. Lobbyists are required to register within five days of becoming a lobbyist. The bill has an add-on requirement that in order to register, the person must take the required training. For most lobbyists, this would not be burdensome. The training would be available online and a lobbyist could take the training quickly as part of the registration process.

Staff Attorney Chang said the intent of the bill is to educate people at the front end so they are aware of what the law requires. The bill is also intended to make it simple for people to meet the training requirement.

Commissioner Tobias made and Vice Chair Gaulty seconded a motion to support the proposed bill relating to mandatory lobbyist training. The motion passed (Gaulty, McCarthy, Tobias, and Hong voting aye; Fong voting aye with reservations).

Bill Relating to Nepotism. The purpose of this proposed bill is to prohibit the hiring and supervision of relatives by legislators and employees. The bill includes a definition of the term, "relative."

Commissioner Hong made and Commissioner McCarthy seconded a motion to support the proposed bill relating to nepotism. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Resolution Amending the Rules of the Senate Regarding Conflicts of Interests. The purpose of this proposed resolution is to amend the Senate rules to identify more specifically what constitutes a conflict of interest for legislators. The resolution also makes excusal from voting a default mode and makes the process of waiving a conflict of interest more public. The resolution adopts a more comprehensive approach towards conflicts of interests.

Vice Chair Gaulty said legislator conflicts of interests will never be eliminated, but the proposed resolution is a good move.

Vice Chair Gaulty made and Commissioner McCarthy seconded a motion to support the proposed resolution relating to legislator conflicts of interests. The motion carried unanimously (Fong, Gaulty, McCarthy, Tobias, and Hong voting).

Bill Relating to Gifts from Lobbyists. The purpose of this proposed bill is to prohibit lobbyists from giving gifts to legislators and employees if the gifts are prohibited by the Gifts law or the Commission's administrative rules.

Commissioner Tobias made and Vice Chair Graulty seconded a motion to support the proposed bill relating to gifts from lobbyists. The motion carried unanimously (Fong, Graulty, McCarthy, Tobias, and Hong voting).

Chair Fong thanked Executive Director Harris and staff for their work on the proposed legislation.

### **Agenda Items No. VII: Update on Commission to Improve Standards of Conduct**

Executive Director Harris reported that the Standards Commission submitted its final report on December 1, 2022, which is now posted on the Legislature's website. The Standards Commission no longer exists, but there will be a continued effort to support the bills and ideas proposed by the Standards Commission.

Chair Fong thanked Executive Director Harris for his work as Vice Chair of the Standards Commission.

Executive Director Harris updated the Commission on the status of the criminal cases against two former legislators for bribery and corruption. He said staff submitted an op ed piece in response to those cases as previously discussed by the Commission. There has been a fair amount of media attention focused on what can be done to prevent such cases from happening again.

### **Agenda Item No. VIII: Akana v. Hawaii State Ethics Commission and Daniel Gluck, Civil No. 18-1-1019-06 (JHA); Akana v. Hawaii State Ethics Commission, Civil No. 19-1-0379-03 (JHA); State of Hawaii, Ethics Commission v. Rowena Akana, Civil No. 20-1-0453 (BIA)**

There was no update on the Akana case.

### **ADJOURNMENT OF SUNSHINE LAW MEETING**

At approximately 10:36 a.m., Commissioner Tobias made and Vice Chair Graulty seconded a motion to adjourn the meeting. The motion carried unanimously (Fong, Graulty, McCarthy, Tobias, and Hong voting).

The meeting was adjourned at 10:36 a.m.

Minutes approved on January 19, 2023.