

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

STATE OF HAWAI'I

Date: February 15, 2023
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. Grauly, Vice Chair (via video conference)
Robert Hong, Commissioner (via video conference)
Beverley Tobias, Commissioner (via video conference)

Excused: Harry J. McCarthy, Commissioner

State Ethics Commission Staff

Robert D. Harris, Executive Director (present in conference room)
Susan D. Yoza, Associate Director (via video conference)
Nancy C. Neuffer, Staff Attorney (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 9:00 a.m. Chair Fong, Vice Chair Grauly, Commissioner Hong, Commissioner Tobias, and all Commission staff were present except Jennifer Yamanuha. All 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 noted that no members of the public were present, and the public meeting notice included instructions for the public if the Commission's video conference connection was lost during the meeting.

Agenda Item No. I: Consideration and Approval of the Minutes of the January 19, 2023 Meeting

Commissioner Tobias made and Commissioner Hong seconded a motion to approve the minutes of the January 19, 2023, meeting. The motion carried unanimously (Fong, Grauly, Tobias, and Hong voting).

Agenda Item No. II: Consideration and Approval of the Minutes of the January 19, 2023 Executive Session Meeting

The Commission deferred this agenda item.

Agenda Item No. III: Executive Director's Report

Chair Fong recently attended a Hawai'i State Ethics Commission training session. He commended Susan Yoza, Kee Campbell, Patrick Lui, and Lynn Santiago for doing an excellent job in teaching and running the session.

Executive Director Harris reviewed the training statistics for January 2023 and the training schedule for 2023. He noted that the Ethics Commission had roughly doubled the total number of participants in our training sessions from the prior year (over 9,000 participants anticipated for 2023).

Staff requested the Governor issue a proclamation recognizing March as National Ethics Awareness Month. The proclamation would be an opportunity to encourage state employees to fulfill their training requirement.

Chair Fong noted that our training is excellent, but he questioned how to ascertain whether it is an effective means of ensuring ethics compliance. Executive Director Harris acknowledged the importance of the question. Although the trainings consistently receive high reviews from participants, it is difficult to gauge the effectiveness of the training over time. A discussion occurred about what factors to consider. Complaints, for example, could go up because of employees becoming more aware of the Ethics Code. Ideas discussed included polling the public or legislators to get their input. After the discussion, Executive Director Harris committed to provide more information around Attorney of the Day requests and feedback received from the training sessions to the Commission.

Agenda Item No. IV: 2023 Legislative Session

Executive Director Harris updated the Commission about the status of legislation that staff have been tracking. The Commission reviewed each category of bills.

Starting with the Commission's budget request (HB 1514) Executive Director Harris noted the Commission's budget was modified to account for an across-the-board 4% increase to staff salaries and some related expenses.

Executive Director Harris noted that two bills funding county ethics boards or commissions (HB 134 and SB 181) were subject to resistance at the Legislature. Many legislators felt it was not the Legislature's responsibility to fund county-mandated programs.

Another bill (SB 1565) required that any person or organization that files an ethics charge with the Commission be notified of the status of the charge upon request. This was not an Ethics Commission bill. Executive Director Harris noted that Commission staff would likely support this measure in a limited capacity, recognizing that although transparency is important only limited information could be provided about an ongoing investigation.

Two measures amending the fee schedule for late or missing financial disclosure statements (HB 135 and SB 182) were moving through the Legislature. Both bills were part of the Ethics Commission's package, Commissioner Tobias asked whether these bills addressed the amount of the fine assessed. Executive Director Harris stated that the bill established a \$50 fine for failing to timely file a financial disclosure statement and escalated the charge to \$250 if the statement wasn't filed within one month thereafter.

Executive Director Harris noted that a measure requiring disclosure of legislator allowance expenditures (HB 136) was moving forward. Further, he noted that the Senate President had committed to posting these allowances online with the first posting in March.

A proposed requirement to require legislators to disclose financial relationships with lobbyists or lobbying organizations (HB 141) was moving forward without significant opposition. Similarly, restrictions on lobbyists from giving prohibited gifts (HB 142) was moving through the Legislature.

The Commission discussed a proposal to establish a continuous legislative session (SB 149). Executive Director Harris noted the proposal could allow for greater restrictions on secondary employment for legislators and, thus, reduce the possibility of conflicts of interest, and allow for the opportunity for expanded sunshine requirements on the legislature. Commissioner Graulty expressed concern with the concept. He noted the Constitution intended citizen-legislators to come from the community and not be, essentially, professional legislators. Commissioner Graulty also noted that part-time legislators were largely already working full-time. Commissioner Tobias concurred.

Commissioner Hong stated that the idea of a full-time legislature had merit, but believed the concept should be tied to term limits.

Commissioner Gaulty made and Commissioner Tobias seconded a motion to take no position on legislation establishing a continuous legislative session. Commissioner Gaulty stated that this issue was a thicket and controversial, and believed the Commission did not need to be involved. The motion carried unanimously (Fong, Gaulty, Tobias, and Hong voting).

Executive Director Harris noted that a bill requiring lobbyists to disclose the matter on which they lobbied with more specificity (HB 137) was contested by a well-known and well-respected lobbyist, Bob Toyofuku. The concerns raised appeared to be focused on the logistics of the bill, rather than opposition to the concept. Commission staff committed to working with lobbyists to make sure any future reporting requirements were as simple as possible.

Mandatory lobbyist training (HB 138) appeared to be moving forward without opposition.

Executive Director Harris asked the Commission for guidance on a proposal (SB 805) to expand the definition of lobbying to interactions with the executive branch. He noted that an expansion of the definition of lobbying was likely reasonable, but that the line would have to be carefully crafted to avoid unintended consequences. Executive Director Harris recommended asking the Legislature to defer this concept, with a commitment that the Commission would research the issue and propose a bill next legislative session.

Commissioner Hong made and Commissioner Gaulty seconded a motion to request the Legislature to defer attempts to expand the definition of lobbying. The motion carried unanimously (Fong, Gaulty, Tobias, and Hong voting).

Executive Director Harris noted that a bill to prohibit nepotism (HB 139) was deferred because the House Judiciary Committee was concerned with outside oversight over the Legislature. The House was considering an internal rule to prohibit nepotism, but nothing on this issue had been circulated yet. If the House were to prohibit nepotism, it may be possible to pass a revised draft that applied solely to state employees. A discussion ensued discussing the definition of family member.

Executive Director Harris made a recommendation to support SB 1187, which extends the post-employment law restriction on legislators lobbying the legislature from one year to two years. Commissioner Gaulty agreed that there was logic to matching the full term of a House member.

Commissioner Gaulty made and Commissioner Tobias seconded a motion to support SB 1187. The motion carried unanimously (Fong, Gaulty, Tobias, and Hong voting).

HB 725, establishing a public bill of rights, was deferred. The Attorney General's office submitted testimony in opposition based on concerns about giving another entity oversight over the Legislature. Executive Director Harris noted that some "citizen rights" concepts may be inserted into internal House of Representative rules, but that nothing had been publicly circulated yet.

Finally, Executive Director Harris noted that HB 140, giving the Commission discretion on record disposition, was moving forward without opposition.

Agenda Item No. V: Discussion Regarding Support of an Increase to the Administrative Fines Allowed Under Haw. Rev. Stat. § 84-39 and Haw. Rev. Stat. § 97-7

Commissioner Fong noted the Ethics Commission is statutorily limited to issuing a \$1,000 fine per violation, and questioned whether a higher fine may act as a greater deterrence. He invited the Commissioners to discuss. Other Commissioners concurred and suggested that the staff should review standards in other states and make a recommendation to the Commission for consideration. Executive Director Harris agreed to work on a draft bill for consideration by the Commission with possible introduction next legislative session.

Agenda Item No. VI: 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.

Agenda Item No. VII: Evaluation of Executive Director Robert Harris

The Commission postponed this agenda item till the next meeting.

ADJOURNMENT OF SUNSHINE LAW MEETING

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

The meeting was adjourned at 10:11 a.m.

Minutes approved on March 15, 2023.