# STATE OF HAWAII
# ELECTIONS COMMISSION

## MINUTES

WILLIAM B. MARSTON
ELECTION COMMISSION CHAIR

REGULAR MEETING OF THE
ELECTIONS COMMISSION

APRIL 7, 2015 @ 10:00 AM
KAKUHIHEWA STATE OFFICE BUILDING
601 Kamokila Blvd., Room 167B
KAPOLEI, HAWAII 96707

| MAUI | BIG ISLAND | KAUAI |
|---|---|---|
| Wailuku State Office Building<br>54 So. High Street, 3rd Fl.<br>Wailuku, Hawaii 96793 | Hilo State Office Building<br>75 Aupuni Street, Basement<br>Hilo, Hawaii 96720 | Kauai State Office Building<br>3060 Ewa Street, Basement<br>Lihue, Hawaii 96766 |

Commissioners in Attendance:

Mr. William Marston, Chair
Ms. Patricia Berg
Mr. Charles King
Ms. Ruth Limtiaco
Ms. Terry Lynn Moore
Mr. Warren Orikasa
Mr. Victor Vierra
Mr. Danny Young

Technical Support Staff in Attendance:

Ms. Valri Kunimoto, Department of the Attorney General
Mr. Scott Nago, Chief Election Officer
Ms. Ruthie Ah Hee, Office of Elections
Ms. Judy Gold, Office of Elections
Ms. Shirley Magarifuji – County of Maui – Wailuku State Office Building
Mr. Danny Mateo – County of Maui – Wailuku State Office Building
Ms. Pat Nakamoto – County of Hawaii – Hilo State Office Building
Mr. Rex Quidilla, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Ms. Cori Saiki – County of Hawaii – Hilo State Office Building
Mr. Aaron Schulaner, Office of Elections

Ms. Aulii Tenn, Office of Elections
Ms. Jamee-Lee Toro-Lopez, Office of Elections
Ms. Kristen Uyeda, Office of Elections
Mr. Chris Wong, Office of Elections
Mr. Lyndon Yoshioka – County of Kauai – Lihue State Office Building

Guests in Attendance – Kakuhihewa State Office Building:

Mr. Tony Baldomero – Campaign Spending Commission
Ms. Janet Mason – League of Women Voters
Mr. Dan Purcell
Ms. Marianna Scheffe – League of Women Voters – Hilo State Office Building
Mr. Ken Settsu
Ms. Margaret Wille – Hawaii County Council – Hilo State Office Building

PROCEEDINGS

I. Call to Order

Chair Marston called the meeting to order at 10:02 a.m. on April 7, 2015 at the Kakuhihewa State Office Building, Room 167B.

Chair Marston advised two Commissioners are on their way. He notified attendees at the neighbor island video conference centers that, if communication is lost, the meeting will continue. Commissioner Moore arrived at 10:03 a.m.

II. Roll Call and Determination of a Quorum

Elections Commission Secretary conducted roll call. Commissioner Kitaoka was not in attendance and excused. Commissioner Limtiaco was on her way and arrived at 10:12 .m. All other Commissioners were in attendance and the Commission had a quorum.

III. Approval of Minutes for the meeting of February 20, 2015

As there were no additions or corrections to the minutes, Commissioner Orikasa moved that the minutes be approved, the motion was seconded by Commissioner Young and approved by the remaining Commissioners.

IV. Public Testimony – Any interested person may submit data, views or arguments on any agenda item

a. County of Kauai – Lyndon Yoshioka informed no one available to testify.

b. County of Maui – Ms. Magarifuji informed no one available to testify.

c. County of Hawaii:

**Margaret Wille** – County Councilmember Wille thanked the Commission for conducting this video conference meeting; stated she supports their effort in providing this opportunity; and encourages video conferencing for Boards and legislative hearings.

Councilmember Wille commented she represents North and South Kohala and is in support of the vote-by-mail legislation. In the past, she raised concerns of individuals sharing mail boxes. In her North Kohala district for example, there are no mail boxes and four to five families may share one mail box. However, considering the current low level of voting and since vote-by-mail may increase the number of votes, it will certainly be a positive step.

Regarding the Campaign Spending Commission's Public Funding for Candidates, Councilmember Wille stated she probably would not have run for office, if it hadn't been for the public funding. It's a good plan, she encourages its continuation as it brought in new people willing to participate in the program.

Relating to the Super PACs (political action committees) and current legislation, Councilmember Wille suggested it appears money goes into one group, they are listed as the only party putting in the money, but the true source is unknown and feels there has to be a better way to follow the money.

There is legislation by the Campaign Spending Commission to add one more report, and feels that transparency, open government, and accountability are important.

d. City and County of Honolulu

**Dan Purcell** – Mr. Purcell thanked Councilmember Margaret Wille for testifying in Hilo. Mr. Purcell thanked the Commission for the extra effort involved in conducting this video conference meeting, and commended the Commission for bringing the islands together to communicate on issues. He stated although this is a non-election year, this was a good trial run, and hopefully the Commission will have this available during an election year.

**Janet Mason** – Ms. Mason thanked the Commission for conducting this teleconference meeting. The League of Women Voters (LWV) anticipates it will take some time for the public to adjust to this new opportunity to participate and

hopes the Commission will continue to publicize that the meetings will be by teleconference.

Relating to Agenda Item No. VI, the LWV continues to track all the voting and election measures introduced, there may be 16 measures that are still viable and think only a handful of these will pass during the next month.

A main legislative effort continues to be voting-by-mail, where the rationale is to significantly reduce the logistical issues related to conducting elections. There is still some confusion whether this will improve voter turnout; but the LWV doesn't think that it will, research on this is not conclusive. The introduction in Senate Bill 287 does point out that voter turnout is already very high among permanent absentee voters.

A review of the testimonies on the two voting-by-mail bills shows that people are concerned whether voter service centers, voter assistance would still be available with vote-by-mail if precinct polls are eliminated, whether an absentee voting system will continue to be available, how confidentiality of mailed ballots can be maintained, and whether in-person voting will still be available. A review of the Committee Reports, there have been eight public hearings so far and another one this afternoon, provide some idea of how the legislature is addressing issues. The Senate and the House versions are very close, both measures call for the gradual implementation of this new law starting with the Kauai Primary in 2016, and apparently no rulemaking is contemplated until 2017 after this first primary.

One difference between the House and Senate Bills concerns the division of responsibility and costs between the state and the counties. The LWV thinks this difference can be resolved in conference committee and favor cost sharing on the basis of the type of election, whether it's an all county election, a state election or a combination. The only other major difference in the two bills is whether voter rights to late registration and same day registration, from 2014 Act 166, will be eliminated. Senate Ways and Means Committee hasn't yet provided an explanation for eliminating Election Day registration in HB 124, which was only passed last year. The LWV strongly oppose eliminating late and same day registration, which they view as a step backward in voting rights and voting modernization. Act 166 that was just passed last year should be given a chance to work. Same day registration and voting-by-mail can work together, as Colorado admits is working very well.

Ms. Mason noted the LWV doesn't always support progressive voting and elections measures. As an example, when House Bill 15 was introduced, it was a terrific bill, it created a statewide standard for the distribution of absentee ballots, and they certainly think that it's a good idea and testified in support of that. But in

late March, this measure was amended with the Proposed Senate Draft 1, it added an entirely new section that has to do with the Elections Commission governance including procedures for removing the Chair of the Commission. Both subjects are definitely worthy of consideration but the Proposed SD1 has a very different subject and it was added to the original bill after crossover, so it's not going to be able to have the three readings required in the House, so the LWV oppose the bill at this point, because of process problems.

Ms. Mason stated our Constitution requires that "No bill shall become law unless it has had three readings in each house on separate days." The three reading requirement applies to the subject of the bill, not just the bill title and the bill number. Interestingly, the Attorney General provided an opinion about the details of the Proposed SD1, concerning the Elections Commission governance, but no opinion about the Constitutional problem. The Senate is moving ahead with what the League calls a "Frankenbill" that constitutes two unrelated subjects. The LWV oppose any Frankenbill that they identify in the legislature.

Relating to Agenda Item No. VII, the performance appraisal for the Chief Election Officer, Ms. Mason stated there are still a couple of bills alive requiring performance evaluation for the Chief Election Officer. The LWV is pleased to see that the Commission appear to be getting ready to have some kind of method for doing this.

Relating to Agenda Item No. VIII, the LWV is happy to learn that the Commission is finalizing and adopting the overdue biennial report to the legislature. Ms. Mason stated completing the report should set the relationship on a more collegial footing and the tone for future work with the legislature.

Commissioner King asked Ms. Mason what is the concern with the confidentiality of the mail ballots, since we do it now. Ms. Mason responded, it's not the LWV concern, but it does concern some people. The LWV is satisfied that, with the secrecy ballot, and provision for not opening the ballots until they're back in the Counting Center, that the confidentiality will be taken care of.

Commissioner Moore asked Ms. Mason if she's conveying that there will always be the option for the in-person voting by way of the AB Walk. Ms. Mason replied the option is in both bills, it's just that the message hasn't sunk in.

Commissioner Moore asked Ms. Mason what she thinks we can do, to indicate that there will always be an option for voter assistance as well, through the AB Walk. Ms. Mason responded she think what's going to happen if voting-by-mail passes, the so called AB Walk Centers will be replaced by Voter Service Centers, but effectively they will offer the same service. Ms. Mason noted she thinks the Chief Election Officer mentioned that he plans a public relations, public

voter service campaign, before the 2016 election. If the bill passes, and the message is repeated about what's available at each Center, what to expect, what the schedule is, she thinks it can be dealt with a good voter service campaign. The LWV doesn't oppose voting-by-mail, they support it, but they are not in support of anything that eliminate late registration or same day registration.

V. Status Report from the Chief Election Officer, discussion and action, if appropriate

CEO Nago reported, since the last meeting, OE has focused on legislation, on-line voter registration and revising the website. CEO Nago commented that Ms. Mason provided a rundown of election related bills, and will add those OE is following.

- House Bill 124 relates to all-mail elections, it calls for conducting elections by mail for the County of Kauai starting in 2016. OE has supported that bill, and for logistical reasons we testified against a part of that bill.

- House Bill 179 relating to permanent absentee ballot, the Office submitted this bill for introduction. It basically requires that anyone requesting a permanent absentee mail ballot, shall have that ballot sent to a mailing address in Hawaii or the mailing address on record. Currently some voters have the permanent absentee ballots sent out-of-state which defeats the residency requirement. This bill would allow for the ballot to be sent to their Hawaii mailing address on record.

- Senate Bill 364, this requires the Office of Elections to conduct recounts; we submitted testimony asking for clarification regarding votes cast and ballots cast. This would require recounts for elections decided by less than five hundred votes or one-quarter of one per cent of all votes cast for the contest. Chair Marston inquired if this is for any elections, and Mr. Nago responded it will be for any elections, Federal, State and County elections.

- Senate Bill 440 relates to vacancy elections. Since the Primary Election date was changed, and to meet the 45-day mailing of ballots to overseas voters, this bill changes the candidate filing deadline for a vacancy of the U.S. Senator. This is a recommendation by the Department of Justice to change this law, so we can meet that requirement.

Regarding online voter registration, CEO Nago reported OE is on track to launch online voter registration on August 3, 2015. OE is required by law to implement this by the 2016 Primary Election. Anyone with a Hawaii State Identification, or a Hawaii Driver's License will be able to register to vote online. OE is in the

process of finalizing the screens, what a voter sees when they register online, and will continue testing the system.

CEO Nago reported that June 30, 2015 is the target date to launch the new redesigned OE website. The website hasn't been updated in a while, items have been rearranged, there's a fresher look, and more intuitive for voters to actually obtain Election Day information. In previous years, voters called OE for information, they are starting to go to the website to get information. The goal is to make it user friendly for voters to obtain the information they are looking for.

Commissioner King asked if this is all being done within the State, CEO Nago responded it is being done within OE, and the Office of Information and Communication Services Division (ICSD) of DAGS (Department of Accounting and General Services)

Commissioner King, referenced Councilmember Wille's comment on the Campaign Funding, and asked if OE provided testimony. CEO Nago responded, no, campaign funding is actually under the purview of the Campaign Spending Commission. OE is responsible for the conduct of elections, and not the funding aspect of it.

Commissioner Berg inquired if the four election related bills outlined here, are the only ones alive at this point. CEO Nago responded that these are the ones OE is tracking since the last meeting. CEO Nago noted there may also be some companion bills alive, where there's a house version and a senate version, as Ms. Mason mentioned, with subtle differences in them.

Chair Marston commented he is not receptive to the mail-in ballot. His intuitive feeling is the possibility of fraud occurring, does not know what has been done to address that or why people feel comfortable with it, and asked for any comments. CEO Nago responded, he thinks if Chair Marston saw what is done on the back end, what is done with a mail-in ballot, it is not simply just mailing a ballot out to the voter, getting the mail back and we count it. There's a lot done on the back end that a voter is not aware of. For example, when a voter first registers to vote, the application is signed, so the voter's signature is on file. When a voter applies for an absentee mail ballot, another application is filled out, and that signature is then compared to the original signature to make sure the voter is the person actually requesting a ballot. Someone else cannot request a ballot for you. When the ballot gets sent out, the voter needs to sign it, and when it comes back that signature is also verified. If a voter's wife voted for him because he was away and signed the ballot, if the signature doesn't match, it's put on the side and doesn't get counted. There are a lot of checks in the system in place, to make sure that the voter is the voter that requested and voted the ballot. Chair Marston asked what system is used to verify the signature, and is it scanned. CEO Nago

responded, the signature from the application is on file, and right now it's a manual verification. CEO Nago added, the respective County Clerks receives the ballot and compares the signature on the envelope with the signature on file.

Commissioner Vierra asked, if a signature is questionable, is the voter contacted. CEO Nago responded, on many occasions, if the voter doesn't sign the envelope, the County Clerks will contact the voter to have them come in and sign it. If the envelope is not signed, the ballot cannot be counted, it's considered an invalid ballot. If the signature is questionable, or doesn't match, it's put on the side and is saved. If it eventually goes to court, it would then be the court to decide whether or not that ballot would be counted. Commissioner Vierra clarified that a voter wouldn't know if his vote wasn't counted. CEO Nago responded, if the voter didn't sign it, yes.

Commissioner Vierra asked, if there was some minor discrepancy, is the voter contacted. CEO Nago responded, he's not actually sure of the details, since absentee mail are handled by the counties.

Commissioner Berg commented that on Kauai, she knows the County Clerk staff did call voters if there was a question about signatures matching, and they actually found one where there was a possible voter fraud, police looked into it, but she never heard anything thereafter. On Kauai, that's a small amount of voters, but when you have everyone on Kauai sending and mailing in an application or mail vote, that might be a little more difficult to process, given their staff. Commissioner Berg added, she doesn't know how they anticipate to address that issue. CEO Nago commented, there are sorters available to address that issue to make it an automated process, and the Office did request an appropriation in the bill to purchase sorters for Kauai. CEO Nago added, one of the reasons we're starting with Kauai is because it's the smallest island, and almost 50% or more of those who voted, voted by absentee ballot, rather than voting on Election Day. Voters are actually choosing to vote that way, and that's another reason why we chose to go with Kauai first.

Commissioner King clarified that the signature verification is not done in the counting room. CEO Nago responded, no, not on Election Day, signature verification is done prior to Election Day. On Election Day, all we're doing is opening the envelopes.

Commissioner King inquired if the signature is verified after, when you open the envelopes. CEO Nago responded, no, once it is received in the mail, it gets verified, placed into two piles, valid or invalid, and on Election Day, the valid ballots are counted.

Commissioner Berg clarified that when all mail is implemented, OE will not be counting the ballots only on Election Day, instead, OE will be counting them all along. CEO Nago responded, with all mail, yes, but we will still do that same process, sort valid and invalid ballots, then count the ballots.

Commissioner Vierra asked if accommodations are made for people who cannot physically sign for whatever reason. CEO Nago clarified, if Commissioner Vierra is referring to someone who can make a mark and have a witness signature, yes, voters can make a mark and have their mark witnessed. Or, if a voter cannot sign, voters can actually go into the available AB Walk sites to vote.

Commissioner Limtiaco mentioned at the last meeting, CEO Nago reported having a campaign and a plan for rolling out the online voter registration, and asked, if the launch date is August 3, 2015, when is the start date for that public education campaign. CEO Nago replied, when OE launches the online voter registration, OE is looking to issue a Press Release. As we get closer to the election, when people actually start taking advantage of the registration process, OE will start rolling out the media campaign, reminding individuals if you are not registered, you can take advantage of the online voter registration process. CEO Nago added, to do the media campaign during a non-election year, not many individuals will go out and register. Commissioner Limtiaco understood and agreed.

VI. Discussion of 2015 Legislative Bills as they affect the Office of Elections and the Elections Commission and action, if appropriate

Chair Marston inquired if Item VI has been covered, discussion of the legislative bills as they affect the Office of Elections and the Elections Commission. Chair Marston noted that it was combined, and if all Commissioners agree. Commissioner Orikasa noted that a list of the bills were distributed and does not think it requires discussion.

VII. Discussion, review and implementation of method of evaluation for the Chief Election Officer and action, if appropriate

Chair Marston noted that all Commissioners received their packet containing the evaluation forms that were originally used, the suggested corrections, and suggested items to be included. Chair Marston noted that he hopes all Commissioners will reach unanimity today in the forms themselves and the method going forward, as it will take another Commission meeting to review those. Chair Marston suggested starting with the questions for the commissioners, and asked if anyone has any additions, or corrections on that particular form.

Commissioner Berg noted that Commissioner Limtiaco had a few recommendations and think those should be addressed first, as they relate to the process. Chair Marston confirmed the Commissioners have a copy of the suggestions from Commissioner Limtiaco, which include some differences of opinion from what the Commission originally started with, and opened discussion on Item No. 1. Commissioner Limtiaco explained she thought it might be of value to broaden the stakeholder group who comment, or are allowed to submit evaluation comments. First, the OE employees, comprised of individuals reporting directly to the CEO, including those who work with and under him, sort of a 360 review that is typical of large organizations. Second, the elected officials, she received feedback and respect the comments that it may not be a good idea. Third, key stakeholder groups that have a big stake outcome in the successful voting process, such as League of Women Voters and Common Cause.

Chair Marston commented, regarding Item No. 1.a., *Employees of the Office of Elections who comprise the individuals reporting directly to the CEO*, the Commission did receive, at the last evaluation, a letter from the OE Staff endorsing CEO Nago, and signed by all the employees. The Commission did not ask for it at that time, it was done on their own. Chair Marston commented, he wonders, how does one ask an employee to rate their boss. Coming from a business world, he has never seen that done. Employees who do not like their boss may express their feelings, and if it's written up, then he's gone. However, Chair Marston noted he has never seen a form where subordinates rate their boss, maybe it happens, but has never seen nor been involved with it.

Commissioner Limtiaco responded, it's been done and is called a 360 Review. She added the questions has to be completely confidential, that's the key, you have to make sure these people are protected and can make comment if they want to.

Commissioner King commented, to him, there's a difference between an appraisal and an evaluation. The appraisal that the legislature seems to be wanting from the Commission is whether the CEO is doing a good job and if the Commission should continue and employ him. An evaluation is more of how can you improve, and he thinks that's more where a 360 is used. Commissioner King thinks a 360 is 30% of a company, but he's not sure that that's appropriate for what seems to be moving through the legislature, that they are asking for the Commission to do.

Commissioner Limtiaco stated she suppose a definition should be in order, an evaluation versus an appraisal, she's always referred to it as an evaluation, so doesn't know the distinction, and thanked Commissioner King for his comment.

Commissioner Berg commented she's had considerable experience with these 360 degree performance evaluation or appraisals, and must say she's not a fan of them, but believe it's more of a representation of whether the employee likes or dislikes their supervisor, and that is not a representation of whether the supervisor is actually doing a good job and performing well. A personality contest is not relative to whether a job is being done in her opinion, and it takes a lot of time.

Chair Marston asked if there are any other thoughts, as this is a cumulative commitment, does the Commissioners want to vote on Item 1.a., or have more discussion.

Commissioner Orikasa thanked Commissioner Limtiaco, noted he liked what she provided, shows she's put in a lot of thought, and shows her competence in what she does as a professional. Commissioner Orikasa suggested, for the purposes of the Commission, if there are any items that may have a conflict, can those be placed on the side, find the ones they agree upon and use those as a basis, as they may be adequate for the Commissioners to utilize in doing this review or evaluation. At a later time, if the Commission feels there should be additional perspective or paradigms discussed, the Commission can introduce it then. If the Commission accepts some, it provides a very comprehensive platform.

Chair Marston noted, then we're back to the original forms.

Commissioner Orikasa clarified, since there are disparate views, for example, on Item 1.a. *Employees of the Office of Elections who comprise the individuals reporting directly to the CEO*, place that on the side. Rather than debating it, we put it in, if we don't agree, we place it on the side unless there is a strong feeling. Commissioner Limtiaco added, that way we can move forward, and Commissioner Orikasa agreed.

Chair Marston asked for comments on Item 1.c. *Key stakeholder groups who show an interest in the election process such as The League of Women Voters and Common Cause.* Commissioner Vierra commented, regarding the LWV, they attend every meeting, follow legislation, he thinks their comments might be welcome, his only concern is how much weight should be given to that evaluation. How do we get together, even with Common Cause if they participated, he asked what did Commissioner Limtiaco have in mind. Commissioner Limtiaco responded, she hasn't thought about a weighting system, but agrees that's a valid point.

Chair Marston commented, one of the things we try to do with the evaluation forms is to get the readings from the people who have immediate contact with the Chief Election Officer, like the County Clerks, and the Commissioners that deal

with him. The LWV do not have the same association as the Commissioners and the Clerks have with the CEO. Chair Marston informed Ms. Mason the Commission always appreciates her comments, they are very well thought out, and are good for the Commissioners. However, Chair Marston noted, in his opinion, he's not sure that does anything to enhance the evaluation process of the CEO.

Commissioner Vierra asked for a comment from the LWV representative. Chair Marston asked Ms. Mason, how does she feels about it. Ms. Mason replied, she understands what the Commission is intending to do, but truthfully, the LWV do not have regular contacts with the CEO, they never have. The LWV are more interested in voting and election policy issues. Ms. Mason commented that she is sure the LWV would not be willing to participate if they were the only community group approached. Ms. Mason also noted the other hesitation she has is that the LWV might not be like the voting constituency in general. Certainly the LWV is interested, but she doesn't see a role for them in the performance appraisal. Commissioners thanked Ms. Mason for her comments.

Commissioner King asked Ms. Mason if she sees another community organization out there that might be interested, like Common Cause? Ms. Mason stated she doesn't know, but Common Cause might be interested.

Commissioner Orikasa commented that he would be against these key stakeholder groups for the following reason, currently the organizations and individuals that have come to testify have been very straightforward, and above forward, with good intent of providing the best for the community. But the Commission would not have a system to determine who share that same perspective, and, if there is another group that has subversive or some deviant intent, how would the Commission disqualify them from being a key stakeholder group if they came to testify regularly. Commissioner Orikasa therefore recommends that the Commission do not include key stakeholder groups.

Commissioner Limtiaco stated the comments received from the LWV on a regular basis are really helpful and very robust, since they focus on outcome which is of great value, and concluded it best to leave it there. Commissioner Orikasa agreed.

Chair Marston proceeded to Item #2 and asked for comments. Commissioner Limtiaco explained what precipitated her comments was why the questions for the Commissioners and the County Clerks are different, and not the same. Chair Marston commented that there are two different relationships, and this is a good point that Commissioner Limtiaco brought up. As he mentioned previously, initially there was a sub-committee of three, two Commissioners and Chair Marston, who met and spent a day putting together these questionnaires. Two of

the committee members are no longer on the Commission, but Chair Marston recalls they had quite a bit of comment about making two separate questionnaires, because the relationships that the respondents would have with the Chief Election Officer. The CEO delegates his authority to the County Clerks, as he's responsible for the whole thing. The Commissioners don't delegate anything, they quiz the CEO, ask him for responses, and receive testimony from him on the goings-on. They are viewed from two different perspectives and that's why there are two different questionnaires. Chair Marston commented he hopes this answers her questions, and Commissioner Limtiaco commented the explanation responds to her query.

Commissioner Limtiaco mentioned, with reference to the questionnaire for the Commissioners, she likes the additions that Commissioner Berg made at the last meeting, and supports those, which also addresses the second paragraph in Item #2 and satisfies that requirement, in a very short and succinct manner. Commissioner Limtiaco thanked Commissioner Berg.

Commissioner Limtiaco explained that with the questions as they existed, she felt there was some substance missing with regard to general outcome in performance, as opposed to answering questions during meetings and that sort of thing. Commissioner Limtiaco likes the addition of question #6 that solves a lot of the problem. That being the case, Commissioner Limtiaco noted that Item #2a through #2j, is covered in that language that Commissioner Berg put forth.

Chair Marston then opened the discussion to what was placed on the side. Commissioner Limtiaco responded the 360 idea, and Chair Marston added the "employees".

Commissioner Orikasa commented that he is not in agreement with that, based solely on personal experience. As an employee, he stated he had no idea what his supervisors did as their job. As responsibilities and jurisdictions changed, then he got to see how wrong he was in his previous perspective. It serves a point to have a venue for objectives from an employee, he doesn't know if it's relevant, or if it would be accurate to be incorporated into the supervisory evaluation.

Chair Marston inquired, instead of an evaluation form, those who report to CEO Nago would come before the Commission and the Commissioners would ask questions. Commissioner Limtiaco commented she thinks that would put the employees in a pretty awkward position. Commissioner Orikasa stated he thinks if an employee would have a particular gripe against anybody within the office, there's enough of a community spirit now, that person, like a whistleblower or whatever you call them, have opportunities now for conversation without having to go into an open forum or wait for an annual evaluation.

Commissioner Vierra stated he's experiencing that issue right now. He's conducting an investigation and employees went forward before the Board that controls the department and voiced their opinion on the abilities of the CEO and the Board accepted the comments but the word got out and some of these employees are now subject to harassment. Issues are being taken with the whistleblower comments, and some have hired an attorney. It's hard to keep comments confidential, of an employee about their boss. Once it leaks out there's going to be some resentment. Commissioner Vierra does not know if the Commission can ever accomplish this and maintain the confidentiality that the people would expect. He thinks employees may not be totally honest with their opinion, so you're not going to get a true representation of how they really feel their boss work.

Commissioner King addressed Chair Marston and Commissioner Young and stated there were issues with the previous Chief Election Officer, and they were the only members on the Commission at that time. Commissioner King asked how did that develop, or how did you find out about it, and could the Commission use that to develop some sort of 360. Chair Marston responded that the big thing was when the County Clerks came before the Commission and said basically we have a big problem. Chair Marston commented he does not remember getting anything from any employees, he doesn't remember that at all, although that may have happened. Commissioner Young commented that is what was represented. Chair Marston noted, if the Chief Election Officer and the County Clerks can't work together, we're in big trouble and that had to be fixed. The Chief Election Officer at that time, did the right thing, he resigned, and the Commission didn't have to terminate him.

Chair Marston inquired, if the Commissioners agree to use the original forms and include Commissioner Berg's suggestions. Commissioner Limtiaco commented she likes the amendments made by Commissioner Berg. Chair Marston called for a vote, and asked for a motion that the revised questionnaires be the vehicles for the evaluation of the Chief Election Officer; Commissioner Moore made the motion, Commissioner Young seconded the motion, and unanimously approved by the remaining Commissioners.

Chair Marston noted the next item the Commissioners need to agree upon is the implementation of the evaluation. Chair Marston explained that in the previous evaluation, Commissioners King, Berg and Chair Marston met with the County Clerk of Kauai and the County Election Administrator, sat down with them and went through the whole process with the County Clerk, asked him questions and in conjunction had him fill out the questionnaire. Chair Marston commented that he does not know if that is required, but they wanted to make sure it was done in a timely fashion. The other thing the Commissioners can do is have the

Secretary mail the questionnaires to the Clerks and have them returned in a timely fashion. Chair Marston commented he liked meeting the Clerk and Election Administrator personally, it was interesting couple of hours spent. Commissioner Young stated he did the same on Oahu, and Commissioner Orikasa stated he did the same on Maui. Chair Marston think that's a good way to conduct it, that way you get together with the Clerks, you learn a little more about them, and get that accomplished because they have other things to do.

Chair Marston then stated, the other item is the Commissioner's report that can be completed on their own. Chair Marston suggested these activities be completed and all the forms returned to the Secretary prior to the next meeting. Chair Marston inquired if everyone agreed, and all Commissioners agreed.

Commissioner Limtiaco asked, with regards to the County Clerks, these are done face-to-face, so their names appear on the form. In reviewing the form, there is no place for a name. Commissioner Orikasa noted that everyone who responded previously, did identify themselves. Chair Marston suggested that Commissioner Limtiaco accompany Commissioner Young and she agreed.

Commissioner Limtiaco suggested that a name and signature line be added to the County Clerks questionnaire as well as the Elections Commission form. Commissioner Orikasa, asked the Secretary to check the previous evaluations if there was a provision for the name and signature. Commissioner King noted that quite often with the County, it's not necessarily the County Clerk that is doing it, because they have someone else that handles elections. Chair Marston asked, and all Commissioners agreed, to add spacing for the Clerks and Commissioners name and signature.

Commissioner Vierra asked Chair Marston if the Commissioners can all agree that they will be representing the Commission with the County Clerk and go over this personally rather than mail them a separate one? Chair Marston agreed that would be a much better way to do it.

Commissioner Limtiaco asked, since the Commissioners will be involved personally in this process, how does the ranking by number work? You add up a total, but then, how does the Commission evaluate, is a total of 3 to 5 considered passing. Chair Marston, noted at the top of the form are the numerical ratings. Commissioner Limtiaco noted, how was this done in the past, how was it discussed, in terms of a numerical rating. Also are they allowed to make comments, and is there room for comments.

Commissioner Berg commented, instead of this being the Commissioners rating of what the County Clerks tell the Commissioners, the Commissioners should ask the County Clerks, in this particular area, would you give the CEO a "5", a

"4", rather than the Commissioners rating the Clerks comments themselves. All Commissioners agreed. Commissioner Berg commented she's not sure if that was done.

Commissioner Vierra added, Commissioners can ask the Clerk, why are you giving a "3", what's the reason. Commissioner Berg clarified that the Clerk need to tell the Commissioners what the reason would be. Commissioner Vierra stated, "50" would be the maximum score on this sheet, and added if the total is "20", there would be some concern. But, what's the cut-off where he's okay, would it be "30", "35". Commissioner Limtiaco commented she would like to understand these numbers. Commissioner Limtiaco noted, she's assuming Item No. 11, "*Other Comments*", at any point in time, under any of these areas, they could make comments, not just at the end. All Commissioners agreed, that it will prompt the Commissioners when they are talking with the Clerks. Commissioner Vierra commented, having spaces between the numbers so Commissioners can write the comments and type it up after, would be helpful. Commissioner Limtiaco noted it sounds like a small idea, but it's a prompt, and also formalizes and shows them they have the opportunity to comment on specific things, or not, rather than just at the end of the whole discussion when everyone is ready to go to their next meeting.

Chair Marston suggested providing larger spacing, and adding a comment section for each item.

Commissioner Vierra suggested sending a copy to the Clerk to let them know to expect us, so at least they know what they are rating and can start thinking about it, all Commissioners agreed unanimously. Chair Marston asked for any other comments on the evaluation process.

VIII. Discuss and finalize the Commission's biennial report to the legislature, and action if appropriate

Chair Marston confirmed all Commissioners received a copy of the biennial report, and asked for any additions or corrections. Commissioner Berg commented, relating to Item #2, she suggested deleting a portion in the second sentence, "*However, ~~there was apparent confusion on the part of some voters, and as a result~~, the Commission recommended that current statutes governing the conduct of elections during such natural disasters be addressed by the legislature.*" All Commissioners agreed unanimously to Commissioner Berg's suggestion, and Chair Marston directed the following be taken out, "*...there was apparent confusion on the part of some voters, and as a result...*"

Chair Marston directed the Secretary to finalize the report, and send the report with a letter to the President of the Senate and the Speaker of the House, with a copy of each letter to their counterpart.

IX. Open Forum: Public comments on issues for the Commission's consideration for the next Commission meeting and action, if appropriate. Presentations limited to three minutes.

a. County of Kauai – no one available to testify

b. County of Maui – no one available to testify

c. County of Hawaii

**Margaret Wille** – Ms. Wille asked if the Biennial Report to the legislature is currently available. Chair Marston replied it should be part of the minutes and be on the website. Commission Secretary responded that the report is not currently available, as it is in a draft form. Commissioner Orikasa suggested that when the Commission submits the report, can the Councilmember from the Big Island be copied, and would that be appropriate. Deputy AG Kunimoto replied it can be sent to the Councilmember; and it's usually posted on the website once it's finalized; and the Commission can do both.

Councilmember Wille commented that she couldn't follow the conversation, and noted, if it is on the Agenda, she thought it would be made available, when the Agenda becomes available, otherwise there is no ability for the public to comment on that Agenda item. Councilmember Wille inquired if she can find it on the website right now and Deputy AG replied, no, not right now, when it's finalized it will be posted. Councilmember Wille stated that means that it's done and there is no opportunity for public input on that item, and stated it wouldn't hurt to have something like this to be posted at the time the Agenda is posted, six days before, and allow the public to provide comments.

Commissioner Orikasa inquired if something like this, a Commission Report, is not for public consumption until the Commission finishes it, since it's a draft of the report. Deputy AG Kunimoto responded right now it's a draft of a report and does not think there is a requirement to put it out, but there is a bill going through the legislature now that might make it a requirement, an Office of Information Practices (OIP) bill.

Commissioner Limtiaco asked if the Commissioners discussion of the modifications just made require a vote and would that vote constitute an approval of it as a final, with the proposed amendment? Chair Marston clarified if it's the Commission Report. Commissioner Limtiaco confirmed and noted, so that it can

be finalized at this meeting by vote. Chair Marston called for a motion, Commissioner Limtiaco moved that the biennial report be approved with the amendments made by Commissioner Berg that was discussed, Commissioner Moore seconded the motion and unanimously approved by the remaining Commissioners.

Councilmember Wille commented that now that the Commissioners voted on the biennial report, it will be posted on the website. Chair Marston replied yes.

Commissioner Moore commented that she was dismayed by how long it took to get information up onto the website, since the February 20, 2015 meeting. In anticipation of today's meeting, the meeting site and time were known at the last meeting and she was not pleased that it was not posted until this past week. She mentioned she doesn't know if there are requirements as to when things are posted, but would like the Commission to make it a requirement, to get known information up as quickly as possible, within a week or ten days after a meeting is done. She feels it has impacted what we see in terms of empty seats.

Chair Marston questioned the Commission Secretary. Commission Secretary responded she understands that in accordance with the OIP Sunshine Law requirement, the Agenda must be posted six days before the meeting date, and the previous Commission Secretary, upon posting the Agenda with the Lieutenant Governor's Office and the other requirements, the Agenda was then posted to the website. Commissioner Moore stated at the February 20, 2015 meeting, the Commissioners talked about ways of promoting the video conference by having public relations, newspaper articles, having the County Clerks involved with getting the information out, and she personally wanted to disseminate information because she feels the public's right to know is primary. Commissioner Moore suggested posting a tentative notice on the website, as she was advised when she contacted the Attorney General's office to see what her parameters were as an individual on the Commission.

Commissioner Orikasa asked, so when we post the meeting, as Commissioner Moore is suggesting, is the Commission obligated to attach an Agenda, or just say there is going to be a meeting. Deputy AG Kunimoto stated, what is normally done is we file the Agenda with the Lieutenant Governor's office, and post the notice of the Agenda on the website, but if you just want to put a tentative Notice of a meeting on the website you can. Commissioner Orikasa noted that Chair Marston develops the Agenda which may not be immediately available, as there may be other things that could occur to add to the Agenda. Deputy AG Kunimoto added, if the Agenda isn't formulated, the Commission can put a Notice of the Meeting then post the Agenda.

Chair Marston suggested, make the announcement stating the next meeting is scheduled and provide the date, notify that the Agenda will be published six days before the meeting. Commissioner Moore agreed. Commissioner Vierra suggested it should be "tentative" because something may come up, and we have to cancel, and that's where the six day notice comes in so, "tentatively this is the next Commission Meeting, however, please check back six days prior". Commissioner Vierra commented he agrees with Commissioner Moore in that the Commission had that information a lot sooner. Chair Marston commented we can do that and thanked Commissioner Moore.

d. City and County of Honolulu

**Dan Purcell** – Mr. Purcell commended Councilmember Margaret Wille on her comments. Mr. Purcell advised he emailed a variety of people about today's meeting including, Councilmember Margaret Wille, Civil Beat, Nancy Cook Lauer at West Hawaii Today, and some other news people.

Mr. Purcell noted he appreciated the comments about signatures, he explained that his signature has changed dramatically over the years and now with credit card receipts, he started scribbling, and his signature is now a couple of circles. Mr. Purcell added a signature can change relative to a person's mood, lighting, writing surface, the pen being used, and whether the individual is tired or energized. He expressed concern and wonders how many ballots are set aside in these elections because of signatures that don't match and is also concerned about who's looking at them. Mr. Purcell added he agrees with the Commission's concerns about the signatures and requested that policies about the signatures are clear and available so the public would know what happens to ballots when signatures are questionable and put to the side.

Mr. Purcell expressed appreciation on Commissioner Limtiaco's comments on the 360.

Mr. Purcell thanked the Commission for conducting this video conferencing meeting, it's very helpful, and he supports having a video conference meeting facility in the Honolulu area.

Mr. Purcell expressed concern that the Biennial Report was not available for the public to view, as the public can comment on every agenda item, but he's glad that the Commission completed it.

Mr. Purcell expressed his mahalo and appreciation to the Commissioners for their efforts, time and contributions.

Commissioner Moore thanked Mr. Purcell for getting the word out.

With no further business, Chair Marston asked for a motion to go into executive session. The motion was made by Commissioner Young and seconded by Commissioner King and approved by the remaining Commissioners.

The Commission resolved into Executive Session at 11:26 a.m.

X. Executive Session

Pursuant to Section 92-5(a)(4), HRS, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities.

Selection of Chair or Presiding Official.

Pursuant to Section 92-5(a)(2), HRS, to consider evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved, provided that if the individual concerned requests an open meeting, an open meeting shall be held.

XI. Adjournment

The Commission resolved into open meeting at 12:33 p.m.

Chair Marston announced the next meeting will be scheduled on Monday, May 18, 2015, it will be a video conference meeting.

With no further business at hand, Chair Marston asked for a motion to adjourn the meeting. The motion was made by Commissioner Young and seconded by Commissioner Vierra and approved by the remaining Commissioners.

Elections Commission meeting was adjourned at 12:34 p.m.

Respectfully submitted,

Judy A. Gold
Elections Commission Secretary