STATE OF HAWAII
ELECTIONS COMMISSION

WILLIAM B. MARSTON
ELECTIONS COMMISSION CHAIR

MINUTES

REGULAR MEETING OF THE
ELECTIONS COMMISSION

NOVEMBER 4, 2015 @ 10:00 AM
STATE OFFICE TOWER
235 SO. BERETANIA STREET, ROOM 204
HONOLULU, HAWAII 96813

Commissioners in Attendance:

Mr. William Marston, Chair
Ms. Patricia Berg
Mr. Kenneth Hiraki
Mr. Charles King
Ms. Carol Kitaoka
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. Judy Gold, Office of Elections
Ms. Jaime Kataoka, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. 'Auli'i Tenn, Office of Elections
Ms. Jamee-Lee Toro-Lopes, Office of Elections
Ms. Kristen Uyeda, Office of Elections

Guests in Attendance

Mr. F. Scotty Anderson
Ms. Adrienne Horton
Ms. Janet Mason, League of Women Voters
Mr. Kendrick Settsu

Sen. Sam Slom
Mr. Timothy Sutton, Senate Minority

PROCEEDINGS

I. Call to Order

Chair Marston called the meeting to order at 10:00 a.m. on November 4, 2015 at the State Office Tower, Room 204.

II. Roll Call and Determination of a Quorum

Elections Commission (EC) Secretary conducted roll call. All Commissioners were in attendance and the Commission had a quorum.

III. Approval of Minutes for the Meeting of September 16, 2015

Commissioner King moved that the minutes be approved; the motion was seconded by Commissioner Young and approved unanimously by the Commissioners.

IV. Public Testimony – Any interested person may submit comments or testimony on any agenda item

Senator Sam Slom: Sen. Slom reported that there was a bipartisan House and Senate joint Informational Briefing regarding the elections process yesterday with representatives from each of the four counties and Chief Election Officer (CEO) Scott Nago. Sen. Slom expressed concerns that there were many unanswered questions and a lack of knowledge that he felt was very unsettling. He suggested that they revisit the training that is conducted for volunteers and new workers, as well as for those who have held their positions in the counties for quite some time.

Sen. Slom stated that with the move toward electronic or mail delivery ballots, the issue of voter identification was discussed at length. The contentious issue has been whether or not to implement a photo identification requirement in order to vote. Sen. Slom recalled that several voter officials said that they will ask for identification, but it is okay if it is not provided. If a voter does not have a photo ID, driver's license, or State ID, a utility bill (or other document approved by the Federal Voting Rights Act) will suffice. Sen. Slom explained that this system is flawed as there is no verification that the person handling the bill is actually who they claim to be. Those who disagree say that fraud is not an issue in Hawaii.

Sen. Slom said that Sen. Donna Mercado Kim brought up two salient points. In recent years, there have been very close elections decided by 10 votes or less, so just a few changes in those votes could make a significant difference. Secondly, in response to comments about the nonexistence of voter fraud in Hawaii, she also recalled a local incident in which an individual organized a very elaborate scheme of voter fraud, and was ultimately indicted, convicted, and imprisoned. Sen. Slom went on to say that when the county officials were asked about their experience with voter fraud, they replied that they did not investigate or follow up because they do not believe that it is a problem.

Sen. Slom also mentioned the discussion that took place regarding the growing number of homeless individuals who are being solicited to vote. He described this conversation as "humorous," as it is unlikely that a homeless person would have a utility bill to verify their identity. Sen. Slom urged the EC to take all of these issues more seriously as the State moves closer to electronic and mail delivery ballots.

Sen. Slom commented that he noticed on the agenda that the EC would be going into Executive Session during today's meeting to interview candidates for a new EC Chair. He asked Chair Marston how many applicants the EC would be interviewing today, to which Chair Marston replied that the EC would be interviewing two individuals. Sen. Slom asked Chair Marston if there is a reason why the interviews will not be available to the public. Chair Marston explained that he is the first Chair of the EC and that his interview was also conducted during Executive Session. Sen. Slom suggested that the decision making remain confidential, but the questioning process and the applicants' background should be open to the public. Deputy AG Kunimoto explained that the reason for Executive Session is to protect the confidentiality of the applicants. Sen. Slom asked if the applicants could waive that confidentiality and Deputy AG Kunimoto responded that they could.

Chair Marston asked Sen. Slom if he is recommending any legislation going forward regarding any of the issues that he mentioned (e.g., mandatory check of photo ID). Sen. Slom reported that his research and legal staff are looking into the laws, and have been asking the Neighbor Island counties for input regarding legislation that they would like to see. He stated that up until yesterday's Informational Briefing, their responses have been that they are still "considering and studying." Sen. Slom expressed concern as the counties should be the most knowledgeable, and also because another election is quickly approaching.

Commissioner Moore asked if the EC could get the transcript of the November 3rd Informational Briefing. Sen. Slom suggested that the EC contact the Judiciary House Chairman, Karl Rhoads, and the Judiciary Senate Chairman, Gilbert Keith-Agaran.

Commissioner Vierra stated that he was unable to attend the Informational Briefing yesterday but had read a related article in today's Star Advertiser. In it, Chair Keith-Agaran had made a comment to the legislators that it was a faulty law that had been passed. Sen. Slom clarified that Chair Keith-Agaran had said, "We passed this law and we did not consider the consequences." Sen. Slom explained that these consequences were brought up by himself and others, but the law was voted on and passed nonetheless. Sen. Slom said that this is especially why they need the input of the county officials and the EC who are most knowledgeable about the elections process.

Commissioner Vierra asked what specific law Chair Keith-Agaran was referring to and what its problems are. Sen. Slom replied that Chair Keith-Agaran was discussing the issues of proper identification and the possibility of a person voting more than once in two different jurisdictions. The county clerks reported that there were two sources: the Kansas source that charged nothing for double checking all data, and the Pew source that charged $80,000-$90,000, which they thought was too expensive. In regards to reports of double voting, the counties' stock answer is that the voter has to sign the affidavit declaring that they are a U.S. citizen and that they are not voting anywhere else. Sen. Slom said that the legislators, particularly the senators, pointed out that the affidavit is of little significance if there is no follow up.

Commissioner Moore asked if Sen. Slom thinks that the EC should participate in or at least audit these types of Informational Briefings. Sen. Slom explained that the Informational Briefing yesterday was not a hearing, so there was no testimony. However, if it had been, the Commissioners would not have been denied if they had wanted to testify. Sen. Slom stated that everyone involved wants the same things, which are good, fair elections, and an increase in voter participation. He said that they are currently not doing much more than studying and talking about the issues, but anything they can all do together would be beneficial.

Janet Mason – League of Women Voters: Ms. Mason reported that the League of Women Voters (LWV) was very pleased that there was the Informational Briefing yesterday regarding elections and voting. She mentioned that there seems to be a growing understanding that all-mail voting could save the state a lot of money (i.e., the most recent estimate being $800,000 per election cycle).

However, Ms. Mason expressed concerns on behalf of LWV regarding the possibility of implementing stricter voter identification requirements. She stated that LWV completely rejects the notion that voter fraud is a serious problem in Hawaii, and that there is already a good system of checks and balances in place to ensure the integrity of voters. If a person is registering to vote online, they are required to provide a state ID or driver's license number and social security

number. If a person is registering to vote in person, they must provide identification and sign an affidavit that states that they are qualified to register to vote. Furthermore, anyone has the ability to challenge another voter, and there are penalties in place for registration fraud (i.e., up to $2,000 in fines).

Ms. Mason explained that in 40 years, there were only two incidents of registration fraud. One occurred in 1982, in which 30 people registered to vote in a district that they did not belong to. The consequence included a prison sentence and fines for everyone involved. The second episode occurred in 2000, concerning an absentee voting scheme that was investigated by the Honolulu City Clerk, though the allegations were never proven. Ms. Mason urged the EC not to overreact to the issue of voter fraud because LWV views it as a nonissue, and believes that implementing new photo ID requirements would restrict the process of voter registration.

In addition, Ms. Mason argued that modern voter registration and voting by mail can exist at the same time, as other states practice this and experience great success. There is no proof that voter turnout improves with voting by mail, but there is evidence that voter participation increases when people are able to vote late and online. Ms. Mason stated that LWV supports Act 166, improved modern voter registration, and voting by mail, but these changes should not come at the cost of restrictive photo ID requirements.

Commissioner Vierra asked what Ms. Mason means by "restrictive" photo ID requirements. Ms. Mason answered that many people do not have a photo ID (e.g., young people, non-drivers), which would mean that the State would have to pay for everyone to get a free voter ID. She said that this would be expensive and unjustified, as voter fraud is not a problem in Hawaii. Commissioner Berg commented that it is unknown whether or not voter fraud is a problem in Hawaii. She also disagreed with Ms. Mason, saying that a photo ID requirement would not be restrictive at all. Commissioner Berg reasoned that photo IDs are required to do a number of things, and that most people do have identification.
Chair Marston said that this discussion has continued for a long time and that the issue is not going to be solved today.

Commissioner Moore suggested that the EC should acquire the transcripts from yesterday's Informational Briefing so that they can understand the total picture of what had transpired, rather than just what was shared today. She said that she feels it is important so that the EC can make more informed decisions as a body. Sen. Slom shared that the Informational Briefing was broadcasted on Olelo, so the EC should be able to obtain the transcripts directly from them. Chair Marston asked the EC Secretary to obtain the transcripts and distribute to the EC.

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

Chief Election Officer (CEO) Nago reported that since the last EC meeting, the Office of Elections (OE) has met with the counties in preparation for the 2016 Elections. The updated procedures and manuals were discussed and adopted and are ready for implementation in 2016. Candidate filing begins on February 1, 2016 so the training with the counties is scheduled for December 1, 2015. In regards to online voter registration, as of yesterday, the system has processed 1,931 transactions statewide (i.e., to register, update information, or check voter status). Over the past two months, OE has provided voter outreach services at a variety of events, including naturalization ceremonies on the USS Missouri, the Disability Employment Forum and Disability Fair on Kauai, and a National Federation for the Blind of Hawaii meeting. OE and the county clerks attended the legislative informational briefing yesterday, as raised by Sen. Slom. Discussions revolved around online voter registration, same day registration, and potential tools for modernizing elections including all-mail elections, electronic transmission of ballots, and electronic and automatic voter registration. CEO Nago explained that OE supports automatic voter registration for everyone getting a driver's license, as long as it contains an opt-out clause to meet federal law requirements.

Commissioner Moore inquired about the details of the candidate filing training in December 2015. She said that she often finds that some of the candidates who file to run for office do not seem to have a full understanding of how the system works. CEO Nago explained that the candidate filing training is not for the candidates who run for office, but rather for the staff who process the candidate filing. Commissioner Moore asked if the candidates are given any kind of informational guide upon filing, to which CEO Nago replied that OE provides every candidate a manual with information regarding the necessary qualifications and the elections process in Hawaii. Commissioner Moore asked if OE staff are prepared to handle the training. CEO Nago confirmed that they are prepared and that the process is the same statewide.

Commissioner Berg asked if Campaign Spending Commission (CSC) is involved in the candidate filing training. CEO Nago clarified that OE provides training to the election officials, and that CSC has their own training program for candidates.

Commissioner Vierra stated that this morning's Star Advertiser reported on yesterday's Informational Briefing, and had implied that OE and the county clerks are "adrift in a sea of paperwork." He asked CEO Nago what the article was referring to. CEO Nago explained that the "Motor Voter" Act is a federal law that was passed in the '80s that allows a person to register to vote at the same time that they apply for or renew a driver's license. There is a portion on the application that allows a person to check off the appropriate box, affirm that they

are a U.S. citizen, a resident of Hawaii, and 18+ years old, and provide a signature. Whether or not the person chooses to register to vote, all of these paper applications are then sent to the clerk's office to be processed. Thus, CEO Nago said that the best solution would be to electronically transfer the data from the Department of Motor Vehicles (DMV) to the clerk's office to eliminate the double data entry and the chance for error. However, this currently cannot be done as OE has no control over the DMV system.

Commissioner Vierra asked who would be the best people to speak with to encourage this change to occur. CEO Nago replied that OE has had conversations with the DMV, but the modification would require building an interface and coordinating with the DMV.

Commissioner Vierra asked if the DMV and OE are both state offices. CEO Nago explained that the Department of Transportation (DOT) is a state office, but the task of issuing driver's licenses has been delegated to the counties. Furthermore, the Honolulu County also administers for the neighbor island counties. CEO Nago stated that OE has approached DOT a couple of times.

Commissioner Moore asked if the EC could be provided with a copy of the instructional manual that is provided to candidates upon filing. She indicated that the more informed the EC is, the more effectively they will be able to do their jobs as Commissioners. In regards to the modernization of elections via tools such as electronic transmission of ballots and all-mail elections, Commissioner Moore asked if CEO Nago could briefly discuss what OE would like to see happen and how soon he might foresee implementation of some of these items. CEO Nago responded that all of the things mentioned would first require a statute change prior to implementation. Commissioner Moore asked CEO Nago to confirm that OE is a proponent of these changes, to which CEO Nago agreed.

Commissioner Berg asked if OE is planning to propose any other type of legislation other than what has already been discussed. CEO Nago replied that OE is preparing to propose a different all-mail bill.

Because the EC submits a report to the Legislature, Commissioner Moore asked if there is a way that the EC can support the modernization of the election process safely and effectively. CEO Nago stated that there is nothing preventing any EC member from testifying, and that they are all appointed by a political entity with whom they can communicate.

VI. 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.

No public comments were made.

Prior to going into Executive Session, Chair Marston addressed Sen. Slom's question regarding whether the EC Chair applicants could waive their right to being interviewed in the privacy of Executive Session. Chair Marston explained that he is not part of the selection process of the new EC Chair, and will thus leave the decision up to the rest of the Commissioners.

Commissioner Hiraki said that the EC began the interview process in Executive Session and believes that it is important to maintain consistency with all of the candidates. He stated that it is something that the EC could possibly consider moving forward, but at this time, the EC should respect the process that has already been established. The rest of the Commissioners agreed.

Chair Marston explained to the EC Chair candidates that they will be called in one at a time, and that they will require a two-thirds majority vote in order to be elected. With no further comments, Chair Marston asked for a motion to go into executive session to interview the applicants for the EC Chair position.

The motion was made by Commissioner Orikasa, seconded by Commissioner King, and approved unanimously by the Commissioners.

The Commission resolved into Executive Session at 10:42 a.m.

VII. Executive Session

Pursuant to Section 92-5(a)(2), HRS, the Commission will interview the applicants for the anticipated Elections Commission Chair vacancy, and take action, if appropriate.

The Commission resolved into open meeting at 12:37 p.m.

VIII. Adjournment

Chair Marston announced that the EC has elected Mr. Scotty Anderson to be the next EC Chair, and that the next EC meeting will be on Wednesday, January 13, 2016 at the State Office Tower.

With no further business before the Commission, Chair Marston asked for a motion to adjourn the meeting. The motion to adjourn was made by Commissioner Vierra, seconded by Commissioner King, and approved unanimously by the Commissioners.

Elections Commission meeting was adjourned at 12:39 p.m.

Respectfully submitted:

Jaime Kataoka
Elections Commission Secretary