



**STATE OF HAWAII
ELECTIONS COMMISSION**

MINUTES

WILLIAM B. MARSTON
ELECTION COMMISSION CHAIR

**REGULAR MEETING OF THE
ELECTIONS COMMISSION**

**OCTOBER 3, 2014 @ 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. Charles King
Ms. Zale Okazaki
Mr. Warren Orikasa
Mr. Victor Vierra
Mr. Danny Young

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Mr. Scott Nago, Chief Election Officer
Ms. Nedielyn Bueno, Office of Elections
Ms. Judy Gold, Office of Elections
Mr. Rex Quidilla, Office of Elections
Ms. Carolyn Roldan, Office of Elections
Mr. David Rosenbrock - Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Ms. Aulii Tenn, Office of Elections
Ms. Kristen Uyeda, Office of Elections

Guests in Attendance:

Ms. Anna Bain
Ms. Nancy Bernol - Office of Senator Donna Mercado Kim
Ms. Maigee Chang - Office of Senator Russell Ruderman
Ms. Khistina Caldwell DeJean

Ms. Sarah Fukumoto - HMIR
Ms. Malia Gray - Office of Representative Johanson
Mr. Michael Greenough - Office of Senator Russell Ruderman
Mr. Calvin Griffin
Ms. Lisa Kubota - Hawaii News Now
Ms. Carmille Lim - Common Cause Hawaii
Ms. Suzanne Marinelli - Public Access Room
Mr. Danny Mateo - County of Maui
Ms. Pat Nakamoto - County of Hawaii
Ms. Jeanne Ohta - HSDWC
Mr. Michael Palcic
Ms. Tisha Panter - Senate Minority Research Office
Mr. Andrew Perreira - KITV
Mr. Dan Purcell
Senator Russell Ruderman
Senator Sam Slom
Ms. Cindy Vaillancourt
Mr. Lyndon Yoshioka – County of Kauai
Mr. Ricky Watanabe - County of Kauai

PROCEEDINGS

I. Call to Order

Chair Marston called the meeting to order at 10:00 a.m. on October 3, 2014 at the State Office Tower, Room 204.

II. Roll Call and Determination of a Quorum

Elections Commission Secretary conducted roll call. Commissioner Kitaoka was not in attendance. All other Commissioners were in attendance and the Commission had a quorum.

III. Approval of Minutes for the August 22, 2014 Elections Commission Meeting

Chair Marston asked for a motion to approve the minutes for the August 22, 2014 meeting. Commissioner Young moved that the minutes be approved, the motion was seconded by Commissioner Vierra and approved by the remaining Commissioners.

Chair Marston then made a motion to amend the agenda to include an executive session for the Commission to consult with its attorney about matters pertaining to the Commission's powers, duties, privileges, immunities and liabilities related

to Haw. Rev. Stat. 92-2.5. The motion was seconded by Commissioner Vierra and carried by all Commissioners.

Dan Purcell, a member of the public attending the meeting, objected to the Commission's decision to go into executive session on the grounds that the public is entitled to know why the Commission is going into executive session and what the Commission was going to discuss. Deputy AG Robyn Chun responded to Mr. Purcell and stated that the Commission was going into executive session for the purpose of consulting with its attorney to discuss its rights, duties and liabilities related to Haw. Rev. Stat. 92-2.5 which provides for permitted interaction groups.

After amending the agenda to include an executive session, Chair Marston then moved that the Commission go into executive session for the purpose he just stated. His motion was seconded by Commissioner Orikasa and approved by all commissioners.

The Commission resolved into Executive Session at 10:05 a.m. and returned into open meeting at 10:23 a.m.

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

Dan Purcell - Mr. Purcell asked if a motion will be made to have the Chief Election Officer give his status report before public testimony and he was told no, the agenda will be followed as is. Dan Purcell then asked if the public will be allowed to comment after each agenda item or if they will have to make their comments now under this agenda item. He was told that the public can comment under this agenda item.

Mr. Purcell commented that the meeting room is never set up correctly which is indicative of elections itself. He continues that the agenda wasn't prepared correctly and he holds the Chair responsible for that. He stated that he had a conversation with the Commission Secretary and she would not answer if the reports listed on the agenda were from permitted interaction groups or standing committees. Also, she would not give him her email address and could not or would not answer other questions that he had for her. He states that she is the public's point of contact for the Commission and should be knowledgeable if someone should call and ask for information. He also testifies that there is a lack of transparency and holds the Commission responsible for this.

Senator Sam Slom - Senator Slom testified that as he has mentioned before, he is disappointed that public testimony is still not listed after agenda items are discussed therefore giving the public the opportunity to comment. He also notes

that the public is frustrated and upset because nothing is being done about errors and perceived errors. He also commented that the three internal committees formed to investigate the Primary Election did not post meeting notices and there were no written reports published. He further notes that it is important that the meetings be more inclusive. People should be encouraged to attend and materials should be made available to them. He states that for the outer islands, there is a room available on the fourth floor of the State Capitol that can be used for video conferencing and he doesn't understand why only this room is used and he urges us to look into using the other room at the capitol. Lastly, he asks if the Chief Justice has made an appointment to the vacant Maui County seat that he was unable to fill. Chair Marston responded that the Commission has not yet heard from the Chief Justice but will follow up. The Commission Secretary noted that the Chief Justice solicited resumes and is reviewing them now. He will notify Chair Marston when his selection is made.

Senator Slom testified that he is planning on introducing legislation during the next legislative session to: 1) reorganize the elections process and; 2) make it so that investigations are done externally to make sure that the investigations are objective and therefore restoring the public's faith in the process.

Senator Russell Ruderman - Sen. Ruderman testifies that thousands of Big Island voters were disenfranchised during the Primary Election due to human errors and bad judgment. He states that with the current threat of the lava flow, there is sufficient time to address things that should be done in preparation for the General Election. He requests that the Commission either considers holding a meeting on the Big Island or have the meetings available to the Big Island residents through video conferencing since many of them are not able to travel to attend meetings held on Oahu. He would like for them to be included and given an opportunity to testify during Commission meetings.

Senator Ruderman also feels that one solution for the General Election would be to have an all mail election for the residents since we do not currently know which polling places will be accessible and which ones will need to be closed. By doing this, it would give fair and equal access to all of those that will be affected and the Office of Elections has the power to do this.

He also notes that he is not sure if any action that will be taken for things that happened during the Primary Election but notes that it is the responsibility of the Commission to address the issues before them. He asks that the Commission conducts a meeting on the Big Island or has the meeting available for the Big Island residents through video conferencing. He also asks that the Commission considers having an all mail election to avoid a situation like the one that happened during the Primary Election.

Commissioner Young told Senator Ruderman that he does not want any misconceptions, the Commission is concerned and does care about the residents of the Big Island.

Calvin Griffin - Mr. Griffin testifies that as a former military personnel, he has been a resident of Hawaii for the past 22 years and it never ceases to amaze him that there are problems during every election cycle. He states that military personnel are told that they are fighting for freedom and the right to vote which is what makes our country great. In this State, problems such as not having an open Primary, lack of candidates, and the limited group of people that are allowed to participate in the electoral process, there is a definite need for change. These things are discouraging for the members of the military community and they are left wondering what they are fighting for. He also states that the men and women that are overseas are currently either not receiving their ballots or are receiving them late and their votes are not being counted.

He further testifies that year after year there are problems. People are always being encouraged to get involved and get active in the process and yet problems keep occurring. He feels that it is time for a change in the State of Hawaii and the country.

Khristina Caldwell DeJean - Ms. DeJean testifies that she is currently involved in a lawsuit against the Chief Election Officer regarding her run for Governor of this State. She continues to speak about the circumstances of her run for Governor and demands that a special election be held for her. Chair Marston tells Ms. DeJean that the Commission is aware of her concerns since she covered them at the last Commission meeting and asks that she tries to summarize her testimony so that the Commission can continue with the other agenda items. Ms. DeJean responds that she is done with her testimony and she basically would like a special election and have the Chief Election Officer fired.

V. Chief Election Officer: Status of preparations for the 2014 General Election

Chief Election Officer Scott Nago reported that since the last meeting on August 22, the Office of Elections has been working on closing out matters that concern the Primary Election and is moving forward with the planning of the General Election. For the Primary Election, the OE has processed payroll for over 3,000 election day workers. Also, the absentee ballots for the General Election will start to get mailed out next week and the testing of the vote counting system and its machines will also begin.

He further reported that the OE is looking at the lava flow occurring in the County of Hawaii. Each affected voter was sent an absentee voter application last week. This will allow each voter to tell us where they want their ballots sent if they

relocated temporarily, but are still officially a resident of that district, in preparation of the lava flow. Additionally, the County of Hawaii will be opening up an additional early voting walk-in site in Nanawale to accommodate the impacted residents. As of now, the Office of Elections intends to open all polling places but those plans may change depending on how the lava flow continues.

Commissioner Berg noted that she is concerned about the County of Maui and the large voter turnout due to the agricultural initiative on the ballot. She asks if the County of Maui is prepared to accommodate the large voter turnout. CEO Nago responded that the formula used for this elections ballot order is different from the one used in the last General Election. A ballot for every registered voter has been ordered for this election. So there will be a sufficient amount of ballots for this General Election.

He also noted that there was a TRO filed in Maui County which disrupted the printing of the Maui County ballots. However, the TRO was dissolved by the court, the ballots were printed and the UOCAVA ballots were transmitted to the overseas voters on time.

Commissioner King asked how the OE will be getting location information for early voting walk-in sites to the public. CEO Nago responded that it's a little early but like in previous elections, there will be a press release made to announce the locations, dates and times for the early walk sites. This press release will be done in a few weeks.

Commissioner Vierra stated that in the Primary, there were problems with voters having access to the polling places. He asked CEO Nago if he knows what the polling place accessibility is now for voters. CEO Nago stated that as of now, the polling places are accessible. If the lava flow cuts off Highway 130, there will be an alternate access road opened. In the Puna area, the polling places are accessible, so an additional early vote site will also be opened for the voters to access from the other direction.

Commissioner Okazaki asked what type of efforts have been made to pass on information to the residents of the Big Island. CEO Nago responded that he has already talked to the daily papers on the Big Island and relayed the information that he just gave to the Commission. He also noted that in advance of opening the AB walk sites, press releases will be done by the Office of Elections.

Commissioner Okazaki asked if it would be possible to send ballots out now as Senator Ruderman commented. CEO Nago responded that HRS 11-92.3 does not allow us to send out the ballots now because access has to be substantially impeded. Commissioner Okazaki asked when the cutoff date for accessibility is and CEO Nago responded that there is no date. The Office would have to be

notified that access for the residents has been seriously impeded or cut off and this notification would come from the Big Island Civil Defense. Commissioner Okazaki asks how to avoid another Iselle. CEO Nago responds that information would have to get out sooner.

Commissioner Orikasa asked CEO Nago what sources will let us know the status of accessibility to the precincts. CEO Nago responded that right now the Hawaii County Office is working with Big Island Civil Defense and Hawaii County is notifying us what the accessibility is. He noted that Hawaii County has also sent residents Absentee Applications asking where they want their ballots sent and the County has also opened an extra early voting walk-in site on the opposite side of the lava flow to allow residents who may be blocked in to vote. Commissioner Orikasa then asked if the OE is relying on people from the Big Island for information and CEO Nago responded yes.

Commissioner King asked if these are the same people that the OE relied on during Iselle. CEO Nago responded that Iselle happened the day before the election. He states that if Iselle had hit even a day sooner, information would have gotten to us sooner. Once the polls had opened, the OE was not able to do anything which is why as soon as information was received, it was passed on to the Governor.

Commissioner Okazaki asked if the OE had plans in place to deal with the potential problems that may occur with the lava flow. CEO Nago responded that there are plans in place should the polling places become inaccessible. CEO Nago also notes that the plans will need to be adjusted to address whatever type of scenarios occur, like which and how many polling places become inaccessible. Commissioner Okazaki asks if there are plans in place for things like obtaining the keys to enter into alternative polling sites. CEO Nago responded yes. Commissioner Young asks if the plans are in writing and with the proper authorities. CEO Nago responded yes.

Commissioner King asked if the issue of the 800 votes on Maui County was addressed with the vendor. CEO Nago responded yes. Both the vendor and the Office of Elections have new procedures in place to ensure there is accountability and this does not happen again.

VI. Report from Commissioner Vierra regarding the Big Island Primary Election for precincts affected by weather conditions in District 4, discussion and action, if appropriate

Commissioner Vierra reported that he represents the East Hawaii portion of the Big Island and was tasked with looking into the interaction between the Office of Elections and the County of Hawaii personnel that are charged with that

responsibility. In the report that was distributed at the last meeting, CEO Nago made several statements regarding his understanding of the facts presented to him and the actions he took as Hurricane Iselle approached the Big Island.

Commissioner Vierra reported that he took the report with him and interviewed three of the four County officials that were named in that report. Specifically, he interviewed Ms. Molly Stebbins, Hawaii County Corporation Counsel; Ms. Pat Nakamoto, Hawaii County Elections Administrator; and Mr. Steward Maeda, Hawaii County Clerk. Unfortunately, due to conflicting schedules, he was unable to interview Mr. Darryl Oliveira, Hawaii County Civil Defense Director who was the fourth individual mentioned in the report. Commissioner Vierra noted that Mr. Oliveira is currently dealing with the current lava flow situation on the Big Island. Mr. Oliveira is also involved with cleaning up after Iselle.

Commissioner Vierra noted that the three individuals he interviewed were working in collaboration with Mr. Oliveira and he was confident that the information he received from them would be the same as he would have gotten from Mr. Oliveira.

He reports that in his meeting with the three Hawaii County officials, he went through the contents of each paragraph of the report as it applied to the events leading up to the Special Election of August 15th and the information provided by these individuals matched the comments and contents provided by the Chief Election Officer Scott Nago in his report to the Commission. There were no variations or deviations. Commissioner Vierra states that based on the results of his interviews, it is his opinion that the decisions made by CEO Nago prior to, during and after Iselle, was not unilateral but included collaboration with the appropriate Hawaii County officials as well as the State Attorney General.

Commissioner Vierra further states that determining whether the decisions made were lawful and or proper, that was not within the purview of his inquiry.

Dan Purcell asked if the report given was from a permitted interaction group or a committee of one. Chair Marston responded that he is a committee of one. Dan Purcell asked if there was going to be any action taken today. Chair Marston responded that there will be no action taken today, the Commission will wait until the next meeting to discuss any action.

- VII. Report from Commissioner Orikasa regarding the Maui County Ballot Counting issue which occurred during the Primary Election, discussion and action, if appropriate

Commissioner Orikasa reported that he met with Maui County Clerk Danny Mateo, Deputy County Clerk Josiah Nishita, Elections Administrator Shirley

Magarifuji, HART Project Manager David Magedeson and HART Professional Services Consultant Jessica McKay at the Office of the Maui County Clerk. He states that he was assigned to investigate the delay in the counting of 800 Maui County ballots in the Primary Election.

Commissioner Orikasa reported that his findings were that there was a human error when counting and accounting of a card. He continued that the built in system to check ballot over and undercounting worked as designed but was not confirmed until an audit was done in the week following the Primary Election. He reports that this was a unique situation because of the unusual timing of the ballot rally and the early physical arrival of the card at the County Clerk's Office. Human oversight appears to have been the proximate cause. The procedures and inadvertent HART rally counting misstep was difficult to recognize in advance but was discovered in the subsequent audit.

Commissioner Orikasa further reports that the entire process which involved receipt, accumulation, validation, tabulation, recording and security provision of the public's ballot is a very complex affair. He notes that even with one "glitch" in the entire Primary Election, the other multiple events that took place were done seamlessly and without incident. He states that any attempt to simplify the process with broad brush sweeps of remedies is not indicative of a competent awareness of a complex process.

Commissioner Orikasa states that in summary, while there was a temporary delay in the accounting of 800 ballots, no candidate, cause or party suffered any injury. He also stated that no entity was diminished and no entity was ostracized or disenfranchised. He further notes that to remedy this situation, it was agreed that HART and the Maui County Clerk's Office will continue to work closely to examine and refine the election day process that contributed to the election day incident.

Commissioner Orikasa's closing comments were that he feels the meeting between all parties was successful in that it brought the operational misstep into focus so that it could be examined and remedied. He also notes that it is not the intention, when having this meeting, to micromanage or attempt to implement specific operational changes or procedures. He states that the process is complex and the conduct of the process should be left to the trained professionals.

VIII. Report from Commissioners Young and Okazaki regarding the Office of Elections conduct during the Primary Election, discussion and action, if appropriate

Commissioner Young reported that he and Commissioner Okazaki met with CEO Nago at the Office of Elections a week after the last Commission meeting. At this

time he asked CEO Nago who the vendor was for Maui County. CEO Nago responded HART InterCivic. Commissioner Young then asked what the name of the vendor is and CEO Nago responded that Jessica McKay is the lead person on Maui. Commissioner Young noted that he requested that CEO Nago bring this person to Oahu for a meeting. He then stated that he and Commissioner Okazaki met with the Hart vendor on the 30th of September. He stated that they questioned the vendor about the incident involving the 800 ballots for Maui County. Commissioner Young stated that they asked the vendor if he had any approval to do this or if he had notified anyone that he was going to do this. The vendor responded that he did not ask the Chief Election Officer or any election official for permission but did the procedure on his own with his staff.

Commissioner Young stated that in a previous meeting with CEO Nago, he and Commissioner Okazaki informed him that the CEO will ultimately be held responsible for errors that his staff and vendors make. Having said that, Commissioner Young also noted that in his meeting with the vendor, the vendor was made to understand that even though the CEO will ultimately be held responsible for any error, the vendor must communicate with the CEO or his deputy before any major changes are made, if not there will be consequences. He asked CEO Nago if this statement was correct and CEO Nago responded yes.

Commissioner Young then asked to go on record and stated that the vendor did admit to making an error and the vendor did this on his own. Commissioner Young further states that even though it is the responsibility of the Chief Election Officer, like any leader of an organization, there are instances where staff go off on their own and make decisions that cause big problems. He states that this is what he and Commissioner Okazaki found when looking into the Maui County 800 ballot situation and steps will be taken to make sure this type of situation does not happen again.

Khristina DeJean began to comment about Honolulu ballots, Commissioner Orikasa called point of order, Chair Marston noted for Ms. DeJean that her comments were not in line with the current discussion. Commissioner Young wanted to answer her and stated that the current discussion is on reports from Commissioners on topics relating to incidents which occurred during the Primary Election. Ms. DeJean then continued to comment on Honolulu ballots. Once again Commissioner Orikasa called point of order. Chair Marston notified Ms. DeJean that she was out of order.

- IX. Discussion of correspondence sent to the Office of Elections from Bernice Mau, City Clerk, City and County of Honolulu, discussion and action, if appropriate

Chair Marston opened discussion on City and County Resolution 14-196 and asked if there was any response prepared for this Resolution. CEO Nago responded that the resolution was a request for the State Legislature and there was no response prepared.

- X. 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.

Chair Marston stated that this agenda item is an opportunity for the audience to request topics to be considered as future agenda items. If the Commission considers the topics appropriate, they will be considered for placement on future agendas. He then asked if there were any requests from the audience.

Dan Purcell noted that he would like to see discussion on how Commission meetings are held such as the room, the set up of the room, having microphones and whether it is possible to have video conferencing capabilities. He would like to see more professional and substantive meetings. He also states that this is the State of Hawaii and not the State of Oahu. Chair Marston responds that his concerns are valid.

Suzanne Marinelli from the Public Access Room wanted to remind the Commission that Room 414 at the State Capitol is available for use and is set up for video conferencing. Commissioner Okazaki asked how many people it holds and she responded that it would easily hold the amount of people that are currently in this meeting room. She said she would get that information and give it to the Commission Secretary.

Anna Bain noted that she would appreciate microphones during the meetings. She notes that it may be an ADA requirement.

Senator Ruderman asks that video conferencing be done at the next meeting and because of the extreme situations that occurred on the Big Island, hold a meeting on the Big Island. He feels that once again, people are sitting in an air conditioned room in Honolulu making inaccurate assessments of what the situation is. He feels that the situation on the Big Island has not been addressed. He further asks that an agenda item requiring the Chief Election Officer to be available on election day for urgent and crucial communication in case of emergencies be placed on the next agenda for discussion. He states that the Chief Election Officer was unavailable on Primary Election day and claims that he was not taking phone calls which is inexcusable. He also requests a copy of the plan that the Office of Elections say they have and the report prepared by Commissioner Vierra. He also comments that if no action is taken in light of the serious things that have happened, what are we even meeting for?

Anna Bain comments that prior to the election, she also tried to reach Scott Nago and the Commission but was unable to. She feels that Scott should have an assistant that could place priority on his calls and direct calls to the right people in the organization that can answer questions in a timely manner. Commissioner Okazaki asked CEO Nago if there are operators at the Capitol. CEO Nago responded yes, there is a team of 8-12 people who answer the telephones on election day.

Dan Purcell stated that he attended the Board of Registration meeting at the Capitol on election day. He stated that it took him a whole week of working with the Office of Information Practices and the Office of Elections before he could attend the meeting which is supposed to be open to the public. He told the Commission that in being mean spirited, butcher paper was placed on the windows in the room used by the Board of Registration.

Khristina DeJean raised her hand and Chair Marston asked her if her comments pertained to anything that she had already talked about today regarding her campaign to run for Governor. If it did, it is not appropriate for the topics that are being discussed today. He also notes that she has given the Commission her request and testimony and it will be taken into consideration. Ms. DeJean is allowed to make a comment. She says that if there is a debate, it can be held at the Blaisdell.

XI. Adjournment

With no further business before the Commission, Chair Marston asked for a motion to adjourn the meeting. Motion was moved by Commissioner Young, seconded by Commissioner Okazaki and approved unanimously by the remaining Commissioners.

Next Commission meeting is scheduled for Friday, November 14, 2014.

Elections Commission meeting was adjourned at 11:24 a.m.

Respectfully submitted,



Carolyn L. Roldan
Elections Commission Secretary