

**MINUTES
OF THE
REGULAR MEETING OF THE
ELECTIONS COMMISSION**

**FEBRUARY 17, 2010
LEIOPAPA A KEMEHAMEHA BUILDING, ROOM 204
235 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813**

Commissioners in Attendance:

Mr. William Marston, Chair
Ms. Margaret Masunaga
Mr. Brian Nakashima
Ms. Zale Okazaki
Ms. Donna Soares
Mr. Richard Swift
Mr. Daniel Young

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Ms. Ciress Cuevo, Office of Elections
Ms. Judy Gold, Office of Elections
Mr. Scott Nago, Chief Election Officer
Mr. David Rosenbrock, Office of Elections
Mr. Rhowell Ruiz, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Mr. Russell Suzuki, Department of the Attorney General
Ms. Lori Tomczyk, Office of Elections

Guests in Attendance:

Mr. Richard Borreca, Star Bulletin
Mr. Bart Dame
Mr. Jeffrey Kuwada, Maui County Clerk
Ms. Nikki Love, Common Cause Hawaii
Ms. Bernice Mau, Honolulu City Clerk
Mr. Mark Niese, Associated Press
Mr. Glen Takahashi, Honolulu City Clerk's Office

PROCEEDINGS

I. Call to Order

The meeting was called to order by Chair William Marston at 10:00 a.m. on February 17, 2010 at the Leiopapa a Kamehameha Building in room 204.

II. Roll Call and Determination of a Quorum

Ms. Ciress Cuevo, Elections Commission Secretary conducted roll call. Mr. Harold Nelson and Ms. Yuki Lei Sugimura were absent.

III. Approval of Minutes of Meeting of January 20, 2010

Ms. Donna Soares moved to approve the minutes of the meeting of January 20, 2010. Mr. Daniel Young seconded, and the motion carried unanimously.

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

Ms. Bernice Mau, City Clerk of Honolulu provided oral testimony regarding agenda items VII and VIII on behalf of all the County Clerks. Ms. Mau expressed the County Clerks support for the appointment of Mr. Scott Nago as the Chief Election Officer (CEO).

V. Executive Session: Special election relating to the anticipated resignation of U.S. Representative Neil Abercrombie (waiver of attorney/client privilege)

Mr. Daniel Young moved for the Commission to go into executive session. Ms. Zale Okazaki seconded, and the motion carried unanimously.

The Commission resolved to executive session at 10:02 a.m. and reconvened in open meeting at 10:05 a.m.

VI. Special Election Preparations Relating to the Anticipated Resignation of U.S. Representative Neil Abercrombie

Chair Marston read the Commission's request for an Attorney General opinion regarding its question on whether the State of Hawaii would be in compliance with Federal law if it held a special election to fill the vacancy in the first congressional district in conjunction with the Primary Election. Chair Marston reported that the Attorney General opined that the short answer is no and cited cases to justify the recommendation.

In response to Ms. Margaret Masunaga's question regarding the definition of de minimis, Mr. Russell Suzuki, Deputy Attorney General opined that six and a half

months was found not de minimis. Also, Mr. Suzuki explained that despite the formal calendar for Congress, a Congressman still has the responsibility to meet with constituents.

Ms. Donna Soares noted that the Commission considered delaying the special election because of its cost. However, Mr. Suzuki opined that economics is not a justification that can trump a constitutional requirement and State law. Mr. Suzuki explained that if the special election were delayed because of economic reasons, the court would issue an injunction and a temporary restraining order.

In response to Mr. Richard Swift's inquiry on when the latest possible date a special election could be held, Mr. Suzuki opined that it would best serve the people of Hawaii to fill the vacancy as quickly as possible.

Mr. Bart Dame asked who the court order would be directed to if issued. Mr. Suzuki said the Governor and the CEO.

In response to Mr. Dame's question regarding funds for the special election, the Interim CEO noted that the Office of Elections submitted a request to the Governor to have funds unrestricted and to transfers funds within the Department of Accounting & General Services to give the office approximately \$500K. The Interim CEO also noted that there is a Governor's message for \$390K to help make up the difference for the special election, as well as for the Primary and General Elections. The Office of Elections will use Help America Vote Act funds for voting machines and voter education.

The Interim CEO reported that issuing the proclamation is dependent upon securing funds and procuring the voting system. If there is a protest, the entire process is put on hold for 45 days to resolve the issue.

Mr. Bart Dame noted that it is in the public's interest to have an established date for the special election. Mr. Suzuki opined that the Legislature determined 60 days notice to be sufficient.

Ms. Masunaga asked Ms. Bernice Mau whether the May 1, 2010 special election timeline is possible. Ms. Mau stated that she doesn't think May 1, 2010 would be possible because it will take time to procure the voting equipment. Mid-May to early June would be a more likely time frame.

In response to Mr. Young's question on when a response can be expected from the Governor regarding funds, the Interim CEO said the Office of Elections was informed that all the paper work has been submitted and is now waiting for the House Budget and Finance Committee to transfer the funds. However, no timeline was provided to the Office of Elections.

Mr. Young asked if the Commission would need to schedule another meeting when the funds are released. Chair Marston said no and explained that the

Commission's job is to advise the Interim CEO. Unless the Interim CEO wants the Commission's advice, Chair Marston believes that the Interim CEO is knowledgeable to set the timeline.

Mr. Suzuki noted that the administrative process is in place, but funds will likely not be released any earlier than the resignation date.

- VII. Executive Session: Pursuant to Haw. Rev. Stat. §92-5(a)(2) and 92-5(a)(4), selection committee's recommendation on hiring a Chief Election Officer and consult with counsel on questions and issues pertaining to the commission's powers and duties with respect to the hiring or appointment of a chief election officer (waiver of attorney/client privilege)

Ms. Okazaki moved for the Commission to go into executive session. Mr. Young seconded, and the motion carried unanimously.

The Commission resolved to executive session at 10:30 a.m. and reconvened in open meeting at 11:00 a.m.

- VIII. Selection Committee's Recommendation on Hiring a Chief Election Officer

Chair Marston announced that the Commission voted to appoint Mr. Scott Nago as the permanent Chief Election Officer with a term that expires on February 1, 2012.

Mr. Bart Dame expressed that the Commission made a great choice that will provide stability for the Office of Elections.

Mr. Jeffrey Kuwada, County Clerk of Maui thanked the Commission on behalf of the County Clerks for its selection.

- IX. Status of Voting Machine Bid Process

In response to Chair Marston's inquiry whether the administrative rules have been approved, the CEO said yes.

The CEO reported that proposals are due on February 26, 2010 and will award the job on March 23, 2010.

The CEO explained that there is a bill to change statute to exempt the voting system procurement from protest, which would prevent the losing vendor from protesting the award. The bill has gone through the House of Representatives, but still needs to pass through the Senate.

Mr. Suzuki clarified that it is not an exemption from the procurement process, but rather an alternative procurement process that allows a committee composed of Legislators, County Clerks, handicap individuals, and representatives from the

Office of Elections to jointly make a selection on the voting system. It is a transparent process that involves public interest groups.

Mr. Richard Swift expressed that Commissioners should be allowed to observe the process, but not vote. Commissioners Okazaki and Soares expressed that they do not want to observe the process. The CEO responded that offerors can not be disclosed until after the award is made.

X. Primary and General Election Preparations and Planning

The CEO reported that candidate filing started, seasonal staff is on board, and the Ballot Operations and Warehouse positions have been filled. Also, the CEO noted that the State still plans to implement precinct closures.

XI. Executive Session: Pursuant to Haw. Rev. Stat. §92-5(4), consult with counsel regarding the commission's powers, duties, privileges, immunities and liabilities re:

1. Babson v. Cronin, Civil No. 08-10-378(3)
2. Procurement appeals (ES&S v. Cronin, Civil No. 08-101657-08, Hart InterCivic v. ES&S, Civil No. 08-1-1665-08, Cronin v. ES&S, Civil No 08-1-1680-08)

Ms. Zale Okazaki moved for the Commission to go into executive session. Mr. Richard Swift seconded, and the motion carried unanimously.

The Commission resolved to executive session at 11:20 a.m. and reconvened in open meeting at 11:25 a.m.

XII. Adjournment

Chair Marston adjourned the meeting at 11:25 a.m. The next meeting date of the Elections Commission is to be determined.

Respectfully submitted,
Ciress Cuevo
Elections Commission Secretary