



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

STATE OF HAWAII ELECTIONS COMMISSION

MINUTES – DRAFT

REGULAR MEETING OF THE
ELECTIONS COMMISSION

MARCH 19, 2024 @ 1:30 PM

Pursuant to Section 92-.37, Hawaii Revised Statutes, the Elections Commission (EC) will be meeting remotely using interactive conference technology.

Commissioners in Attendance:

Michael Curtis, Chair
Dylan Andrion
Anita Aquino
Ralph Cushnie
Stafford Kiguchi
Jeffrey Kuwada
Clare McAdam
Kahiolani Papalimu
Cynthia Takenaka

Support Staff in Attendance:

Stella Kam, Department of the Attorney General (AG)
Nedielyn Bueno, Elections Commission Secretary, Office of Elections

PROCEEDINGS

I. Call to Order [1:30 p.m.]

The meeting of the Elections Commission was called to order by the Elections Commission Chair Michael Curtis at 1:30 p.m.

II. Roll call and Determination of a Quorum [1:30 p.m.]

Chair Curtis conducted roll call. All members of the Elections Commission were present at the meeting with the exception of Commissioner Dylan Andrion.

III. Approval of Minutes for the February 20, 2024 meeting [1:32 p.m.]

Commissioner Andrion was acknowledged as present at the meeting.

Commissioner Takenaka made a motion to approve the minutes the minutes which was seconded by Commissioner McAdam.

Commissioner Cushnie proposed amendments to the minutes to clarify a motion made regarding the Office of Elections responding to his formal complaint and another amendment to correct how a vote to reappoint CEO Nago was taken at the end of the meeting. Commissioner Kiguchi said that he recalled Chair Curtis adjourning the meeting and the last thing he recalled before leaving the meeting was Commissioner Andrion saying that Chair Curtis was no longer present and that he did not hear Commissioner Papalimu's question because he logged off at that point.

Chair Curtis called for a roll call vote on the motion.

Motion: Motion to amend the minutes of the meeting of February 20, 2024, which was seconded by Commissioner Papalimu. The motion failed. [1:38 p.m.]

AYES: Andrion, Aquino, Cushnie, and Papalimu

NOES: Curtis, Kiguchi, Kuwada, McAdam, and Takenaka

The original motion made by Commissioner Takenaka to approve the minutes and seconded by Commissioner McAdam was brought back to the floor for a vote. The motion passed.

Motion: Motion to approve the written minutes of the February 20, 2024 meeting.

AYES: Curtis, Kiguchi, Kuwada, McAdam, and Takenaka

NOES: Andrion, Aquino, Cushnie, and Papalimu

IV. Public Testimony [1:40 p.m.]

Jamie Detwiler testified on agenda item relating to Communications and Correspondence stating that she had submitted two letters certified by USPS Mail and in person to the Office of Elections two years ago and has not received a response from the office. Ms. Detwiler asked if she would get a response in which Chair Curtis said that he advises the public to address their correspondence to the Elections Commission in which that then becomes public record and can be

addressed through the Commission.

Rosemarie Jauch testified regarding the reappointment of the CEO Nago. Ms. Jauch said that she submitted written testimony and also wanted to ask for clarification if CEO Nago was reappointed as it was unclear to her from reading the written summary. Chair Curtis shared that at the last meeting there was a motion to not reappoint CEO Nago and the motion failed and the meeting was adjourned. Chair Curtis also shared that following the meeting he was queried regarding the motion in which he added the topic again for discussion for today's meeting.

Judith Wong, on behalf of the League of Women Voters, provided written and oral testimony in support of the reappointment of CEO Nago.

Janet Mason provided written and oral testimony in support of the reappointment of CEO Nago.

Steve Pasnik provided testimony opposing the reappointment of CEO Nago.

Charles Kauai Jochanan Amsterdam provided testimony that he acknowledges the work that the Commission does and that Hawaii should have fair elections.

Andy Crossland provided testimony opposing the reappointment of CEO Nago.

Tom Stanton provided testimony opposing the reappointment of CEO Nago.

AnnMarie Hamilton providing testimony regarding chain of custody and expressed that the topic has not been addressed by the Commission.

Hui Hoola Aina (Jared) provided testimony opposing the reappointment of CEO Nago.

Karl Dicks provided testimony opposing the reappointment of CEO Nago.

Adriel Lam provided testimony relating to state and county responsibilities. He shared that he submitted data to the Commission that show data discrepancies thus raising security concerns.

Keikilani Kealoha provided testimony opposing the reappointment of CEO Nago.

Richelle Thompson, Deputy County Clerk of Maui provided testimony in support of the reappointment of CEO Nago.

David Callahan provided testimony opposing the reappointment of CEO Nago.

Moana Lutey, County Clerk of Maui provided testimony in support of the

reappointment of CEO Nago.

Wallyn Christian provided testimony opposing the reappointment of CEO Nago.

Steve Yoder provided testimony opposing the reappointment of CEO Nago.

Forest Callahan provided testimony opposing the reappointment of CEO Nago.

Rami Donahoe provided testimony opposing the reappointment of CEO Nago.

Belinda Jacobs of The Christian Counseling and Research Centers of America provided testimony on chain of custody expressing discrepancies with voting data in the 2022 Primary Election and shared that she supports hand count. She also testified that she opposes the reappointment of CEO Nago.

Boyd Ready provided testimony expressing concerns about the reappointment process of the Commission citing lack of public hearings and alternative candidates.

Martin Choy provided testimony expressing that the public has a right to correct what seems to be inadequate service provided by public servants.

V. Communications & Correspondence [3:11 p.m.]

Chair Curtis proposed to move agenda item six regarding discussion of the reappointment of the chief election officer after executive session in order for the Commission to enter into executive session to discuss the minutes of executive session meeting of February 20 and to also invite Scott Nago into executive session to discuss his evaluation stating that as an employee, CEO Nago has the right to have his evaluation conducted in private. Chair Curtis added the Commission will then move the discussion of the reappointment and voting into open session.

There was discussion amongst the Commissioners whether or not to move agenda items around and that they preferred to follow today's meeting agenda.

Chair Curtis expressed that he plans to have the topic of chain of custody at the next Commission meeting. Commissioners Cushnie and Papalimu expressed that they prefer to have the discussion at today's meeting since it is already on the agenda.

Commissioner Cushnie made a motion to pursue adopting a rule in accordance with HRS 11-7.5(3) to require the county clerks and the chief election officer to individually under penalty of perjury that chain of custody was maintained in accordance with HAR 3-177-61 and HAR 3-177-453 which was seconded by Commissioner Papalimu.

Deputy AG Kam advised the Commission that the motion they plan to vote on is contrary to HRS 11-7.5(3) which states that the Elections Commission may adopt rules pursuant to chapter 91. She added chapter 91 relates to the adoption of Administrative Rules which has a different set of procedural steps which is different from a board adopting a rule by motion.

Commissioner Cushnie expressed that he supports the motion stating after reviewing the responses provided by the counties that they did not address the chain of custody between the time of pick up at drop boxes to signature verification to the transfer of ballots to the State. He added that the response did not mention observers being present at collection sites.

Commissioner Papalimu expressed her support for the motion stating that while she served as an observer in the last election, she witnessed ballots being picked up and transported by one person rather than two people. She expressed that transparency is important because it shows the public that procedures are being done correctly and if it requires the Commission going through the act of adopting rules to ensure that the law is being followed then she supports the motion.

Commissioner Takenaka asked Commissioner Cushnie to send his notes on the motion to the rest of the Commissioners so that they can review the materials so that the Commission can have a proper discussion on the topic.

Commissioner Andrion expressed his support for the motion stating that it is the responsibility of the Commission to investigate concerns brought before the Commission. He added that he wanted clarification on how information is being disseminated to the Commission because it seems that some Commissioners may not be getting the materials.

Chair Curtis called for a vote on the motion made by Commissioner Cushnie.

Motion: Motion to adopt a rule in accordance with HRS 11-7.5(3) that requires the county clerks and the chief election officer to individually certify under penalty of perjury that chain of custody was maintained in accordance with HAR 3-177-61 and HAR 3-177-453 which was seconded by Commissioner Papalimu. The motion carried.

AYES: Andrion, Aquino, Cushnie, Papalimu, and Curtis

NOES: Kiguchi, Kuwada, McAdam, and Takenaka

VI. Discussion of the evaluation and reappointment of the Chief Election Officer
[3:34 p.m.]

Chair Curtis proposed that the Commission enter executive session with CEO Nago to discuss with him his evaluation adding that CEO Nago has the right to have his evaluation done in private. Chair Curtis added that after their discussion with CEO Nago he intends to have the Commission's discussion done in open session.

Commissioner Takenaka made a motion to go into executive session to discuss the evaluation of CEO Nago and to approve the executive session minutes of February 20. The motion was seconded by Commissioner Kuwada.

Chair Curtis called for discussion on the motion in which Commissioner Papalimu proposed that the two topics be addressed separately rather than together.

Commissioner Takenaka called for a point of order and asked Deputy AG Kam whether CEO Nago has the right to have his evaluation in executive session in which Deputy AG Kam responded that CEO Nago does have that right and has the choice to waive that right. Deputy AG Kam added that she believes CEO Nago has not waived his right in which Chair Curtis confirmed that he did not.

A vote was taken on the motion made by Commissioner Takenaka to enter executive session. The motion failed.

AYES: Kiguchi, McAdam, Takenaka, and Curtis

NOES: Andrion, Aquino, Cushnie, and Papalimu

VII. Executive Session [3:37 p.m.]

A. Vote to approve the executive session minutes from February 20, 2024 meeting

B. Summary of the criteria and key points in the evaluation of the Chief Election Officer. Vote on the reappointment of the Chief Election Officer [3:49 p.m.]

Commissioner Takenaka made a motion to enter Executive Session to approve the minutes for the executive session for the meeting of February 20, 2024, and to discuss and evaluate the performance of and the reappointment of the chief election officer, which was seconded by the Commissioner Kuwada. The motion failed due to the lack of a 2/3 vote.

AYES: Kiguchi, Kuwada, McAdam, Takenaka, and Curtis

NOES: Andrion, Aquino, Cushnie, and Papalimu

Commissioner Papalimu made a motion to approve the minutes of the executive session of the February 20, 2024 meeting, which was seconded by Commissioner Aquino and approved unanimously by the Commission. [3:46 p.m.]

The Commission moved on to the agenda item relating to the evaluation and reappointment of the chief election officer. Commissioner Papalimu expressed that the public should be allowed to participate in the discussion. Chair Curtis said that the public has already provided their comments and that the discussion will be solely for the Commissioners.

Commissioner Cushnie called for a point of order stating that the public was not given proper notice about the meeting. Chair Curtis overruled Commissioner Cushnie stating that his point of order is invalid as the topic of reappointment is on the agenda.

Commissioner Cushnie made a motion to postpone the reappointment of Scott Nago until a properly noticed meeting has been held as he believes that the public was not properly notified of the reappointment because the agenda item referencing the topic did not cite HRS 11-7.5.

Commissioner Kiguchi commented that he recalled discussion on the topic was done at the last meeting and that the Commission was prepared to vote at the last meeting, however it was decided that the vote would occur at the next meeting and expressed that he did not understand why the vote would need to be postponed again. Commissioner Cushnie explained that he is seeking to postpone the discussion because the topic should be a standalone meeting. Chair Curtis called for a roll call to vote on the motion.

Motion: Commissioner Cushnie made a motion to postpone the motion to reappoint the chief election officer until a properly noticed public hearing has been held in accordance with HRS 11-7.5 and the chief election officer petitions the Elections Commission for reappointment in accordance with 11-1.6(f), which was seconded by Commissioner Aquino. The motion failed. [3:52 p.m.]

AYES: Andrion, Aquino, Cushnie, and Papalimu

NOES: Kiguchi, Kuwada, McAdam, Takenaka, and Curtis

A new motion was made by Commissioner Andrion regarding the reappointment of CEO Nago.

Motion: Commissioner Andrion made a motion to reappoint Scott Nago as chief election officer by a 2/3 vote which was seconded by Commissioner Cushnie. The motion failed. [3:56 p.m.]

AYES: Cushnie, Papalimu

NOES: Andrion, Aquino, Kiguchi, Kuwada, McAdam, Takenaka, and Curtis

Commissioner Andrion expressed that there was no discussion on the motion so that he could explain that his intent of the motion was to require a 2/3 vote to reappoint Scott Nago.

Commissioner McAdam made a motion to reappoint Scott Nago to chief election officer effective February 1, 2024, which was seconded by Commissioner Kuwada.

There was discussion amongst the Commission regarding the motion to reappoint Scott Nago.

Commissioner Papalimu expressed her frustration that the Commission did not represent their view regarding ERIC at the Legislature and shared that should the Commission vote on future election issues that she would volunteer to go before the Legislature to share testimony on behalf of the Commission. She also expressed that she is not supporting the reappointment of CEO Nago as she feels that he did not perform well. She shared that she would like to go out to recruit for a new Chief Election Officer.

Commissioner Cushnie expressed his frustration that CEO Nago did not petition the Elections Commission to be reappointed as Chief Election Officer.

Commissioner McAdam expressed that she believes that the vast majority of the public are happy with elections because there is not a lot of testimony complaining about it. She also noted that that testimonies received in support of CEO Nago's reappointment were from people that he works with and staff he manages which shows that CEO Nago is a good manager who is respected.

Commissioner Takenaka expressed that the Commission does not direct Scott's day-to-day work including going before the Legislature to comment on election related bills. She felt that it is part of his job to go before the Legislature to comment and provide his insight on election bills.

With no further discussion, the Commission voted on the motion to reappointment Scott Nago.

Motion: Motion to reappoint Scott Nago to chief election officer effective February 1, 2024 which was seconded by Commissioner Kuwada. The motion passed. [3:58]

AYES: Kiguchi, Kuwada, McAdam, Takenaka, and Curtis

NOES: Andrion, Aquino, Cushnie, and Papalimu

VIII. Adjournment [4:14 p.m.]

Commissioner Takenaka made a motion to adjourn the meeting which was seconded by Commissioner Kuwada.

Commissioner Andrion expressed that he is committed to working with the Commission, the public, and CEO Nago to bring higher accountability to the process

The Commission voted on the motion to adjourn. The motion passed. [4:16]

AYES: Andrion, Aquino, Kiguchi, Kuwada, McAdam, Takenaka, and Curtis

NOES: Papalimu

ABSTAIN: Cushnie

Elections Commission meeting was adjourned at 4:16 p.m.

Respectfully submitted,

Nedielyn Bueno
Elections Commission Secretary