



MICHAEL CURTIS
ELECTIONS COMMISSION CHAIR

STATE OF HAWAII ELECTIONS COMMISSION

MINUTES

REGULAR MEETING OF THE ELECTIONS COMMISSION

April 16, 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
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 excused absence of Commissioner Stafford Kiguchi.

III. Approval of Minutes for the March 19, 2024 meeting [1:31 p.m.]

Commissioner Cushnie proposed an amendment to item V of the minutes, stating it should read “I move 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 certify under penalty of perjury the chain of custody was maintained in accordance with HAR 3-177-61 and HAR 3-177-453.” The motion was seconded by Commissioner Papalimu and approved by the Commission. [1:31 p.m.]

Commissioner Andrion made a motion to approve the amended minutes of the meeting of March 19, 2024, which was seconded by Commissioner Aquino and approved by the Commission noting the excused absence of Commissioner Kiguchi. [1:32 p.m.]

IV. Public Testimony [1:33 p.m.]

Andy Crossland provided testimony regarding the Commission’s powers, duties, and privileges expressing that CEO Nago supported legislation relating to SB2240 in which the Commission was in opposition of.

Jamie Detwiler provided testimony expressing her frustration about the lack of response to her inquires about compliance with HRS 16-42 specifically for House District 37.

Rosemarie Jauch provided testimony raising concerns about the reappointment of CEO Nago.

Cynthia Jo provided testimony expressing that certain commissioners may have violated their oaths office and cited concerns about foreign interference in the election process.

Doug Pasnik provided testimony regarding the Commission’s powers and duties. He expressed that the Commission is failing to do their job.

Thomas Stanton provided testimony on audits expressing that he hopes the procedures for audits for the upcoming elections will be similar to the one that was conducted within the County of Kauai.

AnnMarie Hamilton provided testimony about the importance of election integrity and called for an investigation into concerns over election laws.

Hui Hoola Aina provided testimony expressing frustration over the current administrative system.

Wendell Elento provided testimony expressing that the Commission should hold public hearings and investigate violations.

April Lee provided testimony questioning the appointment of CEO Nago.

V. Communications & Correspondence [2:11 p.m.]

Commissioner Cushnie made a motion to request ballot box chain of custody procedures and documentation from the counties, which was seconded by Commissioner Andrion.

Commissioner Cushnie expressed that the laws are not being followed giving the example of County of Kauai in which he said Kauai provided him their procedures for collecting ballots at ballot boxes. He said that Kauai does not follow the procedures which outlines filling out a form and he believes that the other counties also do not fill out the form. He proposed that the Commission request for ballot box chain of custody procedures and documentation.

Commissioners Andrion and Papalimu supported the motion.

Commissioner Takenaka asked if the motion would require the counties to change their procedures. Chair Curtis clarified that the motion is for the counties to show evidence that they are following the process.

The Commission voted and the motion passed noting the excused absence of Commissioner Kiguchi. [2:14 p.m.]

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

NOES: Kuwada and Takenaka

Commissioner Cushnie stated that there have been complaints about HRS 16-42b(3) regarding voter verifiable paper audit trail and made a motion to advise the Chief Election Officer to use voter verifiable paper audit trail to conduct all audits, which was seconded by Commissioner Aquino.

Commissioner Andrion spoke in favor of the motion as he believes that procedures are already in place and the counties should not have issues providing the requested materials.

The Commission voted and the motion carried noting the excused absence of Commissioner Kiguchi. [2:21 p.m.]

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

NOES: Kuwada, McAdam, and Takenaka

Commissioner Cushnie made a motion to have the State Chief Information Officer review pre-election audit and safety procedures and report to the commission the effectiveness of the procedures to identify hacking or mistakes in the voting system. The motion was seconded by Commissioner Papalimu.

Commissioner Takenaka proposed reaching out to the CIO first to get his opinion on the feasibility of the request and to move discussion to the next meeting.

Commissioner Andrion expressed his support in favor of the motion adding that he recalled from a previous meeting that CEO Nago stated that Hart InterCivic overlooks the voting system.

The Commission voted on the motion to review pre-election audit and safety procedures and report to the Commission the effectiveness of the procedures to identify hacking or mistakes in the voting system. The motion passed noting the excused absence of Commissioner Kiguchi. [2:27 p.m.]

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

NOES: Kuwada, McAdam, and Takenaka

The Commission called for a recess at 2:33 p.m.

The Commission reconvened the meeting at 2:40 p.m.

Commissioner Cushnie expressed that he would like to ensure that ERIC is compliant with the Help America Vote Act (HAVA) and made a motion to investigate if there are any HAVA violations being committed by the Office of Elections. The motion was seconded by Commissioner Andrion.

Commissioner Andrion expressed support for the motion as he believes there is suspicion behind the unique ballot identifier (UBI) correlating with private information.

Commissioner Takenaka asked who would be responsible for the investigation. Chair Curtis responded that the Commission would be responsible as it falls within their authority.

The Commission voted and the motion failed noting the excused absence of Commissioner Kiguchi. [2:43 p.m.]

AYES: Andrion, Aquino, Cushnie, and Papalimu

NOES: Kuwada, McAdam, Takenaka, and Curtis

Commissioner Cushnie proposed a motion to advise CEO Nago to report to the Commission on how audits will be implemented in accordance with HRS 3-177-762 (a)(3). CEO Nago shared that they are currently working on procedures and will report back to the Commission with those procedures.

Commissioner Cushnie made a motion to eliminate early counting, which was seconded by Commissioner Aquino.

CEO Nago shared that eliminating early counting would require a change in law as state law provides for officials to process ballots before election day. He added that by processing ballots prior to election day, it allows election officials to release the results on election night.

Commissioner Aquino asked CEO Nago how they were able to release election results when voters voted at polling places. CEO Nago explained that the ballots were being counted at the polling place using the precinct counters and the number of mail ballots to process was less.

Commissioner Cushnie proposed to amend his original motion to allow processing and counting of ballots to occur up to 3 days prior to election day which was seconded by Commissioner Andrion. The motion failed noting the excused absence of Commissioner Kiguchi. [2:54 p.m.]

AYES: Andrion, Aquino, Cushnie, and Papalimu
NOES: Kuwada, McAdam, Takenaka, and Curtis

The original motion moved by Commissioner Cushnie and seconded by Commissioner Aquino, to eliminate early counting was brought back to the Commission to vote.

Commissioner Andrion expressed his support for the motion stating that when it was in-person voting, there was a higher turnout and all ballots were still counted, tabulated and results released on the same day.

The motion failed noting the excused absence of Commissioner Kiguchi. [3:00 p.m.]

AYES: Andrion, Aquino, Cushnie, and Papalimu
NOES: Kuwada, McAdam, Takenaka, and Curtis

Commissioner Cushnie made a motion to request log of signature sensitivity settings from the counties who are using signature machines, which was

seconded by Commissioner Papalimu. The motion passed noting the excused absence of Commissioner Kiguchi. [3:03 p.m.]

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

NOES: Kuwada, McAdam, and Takenaka

Commissioner Cushnie made a motion to randomly audit one precinct in House District 37 in accordance with HRS 16-42b(3) using voter verifiable paper audit trail counting all races on the ballots in accordance with Jamie Detwiler's request, which was seconded by Commissioner Andrion.

Chair Curtis asked CEO Nago if the 2022 ballots were still available. CEO Nago confirmed that the ballots are available adding that his office would need to locate the ballots associated with the precinct to audit.

Commissioner Andrion requested the question to be asked thereby stopping discussion and voting immediately on Commissioner Cushnie's motion to randomly audit one precinct in House District 37 in accordance with HRS 16-42 b(3) using the voter verifiable paper audit trail counting all races on the ballots in accordance with Jamie Detwiler's request. The request failed as it lacked a 2/3 vote needed to pass and discussion continued. [3:18 p.m.]

AYES: Andrion, Kuwada, McAdams, Takenaka, and Curtis

NOES: Aquin, Cushnie, and Papalimu

Discussion continued with Commissioner Andrion expressing his support for the motion adding that addressing Ms. Detwiler's request should not have taken 2 years.

Chair Curtis expressed that he agrees to have the audit done and believes that it would be minimal intrusion on the Office of Elections while they prepare for the elections.

The Commission voted on the motion to randomly audit one precinct in House District 37 in accordance with HRS 16-42b(3) using the voter verifiable paper audit trail counting all races on the ballots in accordance with Jamie Detwiler's request. The motion passed noting the excused absence of Commissioner Kiguchi. [3:21 p.m.]

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

NOES: Kuwada, McAdam, and Takenaka

VI. Documented Ballot Security [3:29 p.m.]

Commissioner Cushnie inquired about the status of the motion made at the last meeting requesting the chief election officer and county clerks to certify under penalty of perjury that chain of custody is maintained in accordance with law. Commissioner Cushnie added that he believes Chapter 91 gives the Commission authority to adopt administrative rules and he proposes to form an interaction committee to oversee the process.

Deputy AG Kam recalled Commissioner Cushnie's motion was to amend a rule by voting and added that she recalled advising the Commission that they cannot adopt a rule by voting but that the Commission would need to follow the requirements prescribed under Chapter 91 should they decide to amend a rule.

As the matter was not included on the agenda, Deputy AG Kam advised the Commission that discussion on the matter should not proceed. Chair Curtis said that he will include the matter on the agenda for the next meeting.

VII. Executive Session [3:36 p.m.]

- A. Pursuant to section 92-5(a)(4), HRS, the Commission anticipates going into executive session to consult with the Commission's attorney on questions or issues regarding the Commission's powers, duties, privileges, immunities, and liabilities.

Commissioner Cushnie made a motion to enter into Executive Session to discuss the duties and privileges of the Commission, which was seconded by Commissioner Aquino. The motion failed noting the excused absence of Commissioner Kiguchi. [3:41 p.m.]

AYES: Cushnie and Papalimu

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

VIII. Adjournment [3:43 p.m.]

Commissioner Kuwada made a motion to adjourn the meeting, which was seconded by Commissioner McAdam. The motion failed. [3:37 p.m.]

AYES: Kuwada, McAdams, Takenaka, and Curtis

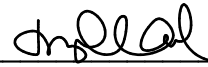
NOES: Andrion, Aquino, Cushnie, and Papalimu

Commissioner Cushnie requested to discuss the duties and privileges of the Commission. Chair Curtis said that the Commission will take it up the matter at the next meeting.

Commissioner Kuwada made a motion to adjourn the meeting, which was seconded by Commissioner McAdam. The motion carried unanimously.

Elections Commission meeting was adjourned at 3:43 p.m.

Respectfully submitted,



for _____
Nedielyn Bueno
Elections Commission Secretary