

**Office of Hawaiian Affairs
Salary Commission**

December 4, 2024

9:00 A.M. (HST)

**Physical Location:
Leiopapa A Kamehameha, State Office Tower
MAB conference room #1403
235 S. Beretania Street
Honolulu, Hawai'i 96813**

It is anticipated that most of the OHA Salary Commissioners will attend in person. Interested persons may participate and view the meeting in the following ways:

Attend remotely

Primary meeting link

Zoom: <https://zoom.us/join>
Meeting ID: 967 9585 2664
Meeting Passcode: 8081212

Call in (audio only) - 1 669-444-9171

Meeting ID: 967 9585 2664
Meeting Passcode: 8081212

Attend in person at the physical location stated above.

If the virtual connection is lost or the primary meeting link above fails, please use the alternative meeting link below:

Alternative meeting link

[Join the meeting now](#)

<https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>

Meeting ID: 295 099 802 666

Passcode: fR7TS64D

Alternative call in (audio only) [+1 808-829-4853](tel:+18088294853), [475260396#](tel:+1808829475260396)

Meeting materials are available at: <https://dhrd.hawaii.gov> and in person at 235 S. Beretania Street, Room 1400

Public Testimony:

Interested persons can submit written testimony before the meeting, which will be distributed to the commissioners before the meeting. It is requested that written testimony be submitted no later than 48 hours before the meeting to allow members to review it in advance.

Late written testimony will be retained as part of the record and distributed to the commissioners as soon as practicable. Still, we cannot ensure they receive it in sufficient time to review it before the agenda item goes into decision-making.

Oral testimony will be accepted on each agenda item before discussing that agenda item. To ensure adequate time for the full agenda, testimony should address only the specific agenda item being considered. Oral testimony may be limited at the Chair's discretion.

Submit written testimony:

Via U.S. Postal Mail: 235 S. Beretania Street, Room 1400; or

Via Email to: dhrd@hawaii.gov. Include "OHA Salary Commission Testimony" in the subject line and please reference the agenda item your testimony relates to.

Executive Session:

Commission members may go into Executive Session pursuant to §92-4 and §92-5(a)(4), HRS, on any matter listed on this agenda, to consult with its attorney on questions and issues pertaining to the member's powers, duties, privileges, immunities, and liabilities.

Auxiliary Aids or Services:

Reasonable accommodations for people with disabilities are available upon request. Requests for accommodations should be made to Elena Murayama at (808) 587-1100 or elena.s.murayama@hawaii.gov. Such requests should include a detailed description of the accommodation needed. In addition, please include a way for Elena Murayama to contact the requester if more information is needed to fulfill the request. Last minute requests will be accepted but may not be possible to accommodate.

Upon request, this notice is available in alternate/accessible formats.

Technical Issues:

If audiovisual communication cannot be maintained, the meeting will be automatically recessed for up to thirty minutes. During that time, an attempt to restore audiovisual communication will be made. If the commission members can re-establish audio communication only, the meeting will be reconvened and continued. If the commission members are unable to reconvene the meeting because neither audiovisual communication nor audio communication can be re-established within thirty minutes, the meeting will automatically be terminated.

Note:

Agenda items may be taken out of order.

AGENDA

- 1) CALL TO ORDER
- 2) OPENING REMARKS FROM BRENNNA HASHIMOTO, DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT DIRECTOR
- 3) COMMISSION MEMBERS: ROUNDTABLE INTRODUCTIONS
- 4) ELECTION OF A CHAIRPERSON TO LEAD THE COMMISSION
- 5) GENERAL ORIENTATION
 - a) Overview of the Sunshine Law (HRS §92, Part I)
 - b) Overview of the OHA Board of Trustees and the Salary Commission's statutory mandate
 - c) Overview of the OHA Trustee's current duties and responsibilities
- 6) DISCUSSION AND/OR DECISION MAKING
 - a) Discussion and planning of the Commission's tasks and next steps
- 7) SCHEDULING OF FUTURE MEETINGS
 - a) All meeting notices will be posted on the Hawai'i State Public Meetings Calendar and the Department of Human Resources Development's webpage
- 8) AGENDA ITEMS FOR THE NEXT MEETING
- 9) ADJOURNMENT



OPEN MEETINGS

Guide to
“The Sunshine Law”
for State and County Boards

Office of Information Practices
State of Hawaii

August 2024



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OPEN MEETINGS

Guide to “The Sunshine Law” *for State and County Boards*

August 2024

Part I of Chapter 92,
Hawaii Revised Statutes

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INTRODUCTION

This Open Meetings Guide (Guide) was prepared by the Office of Information Practices (OIP) as a reference tool for board members and members of the public to understand the open meetings requirements of Hawaii’s “Sunshine Law” (Part I of Chapter 92, HRS). This edition of the Guide is applicable to all State and county boards, except neighborhood boards. A separate edition was developed by OIP specifically for neighborhood boards, which have some unique provisions under Part VII of Chapter 92, HRS. Boards may also have additional requirements set by other laws or their own bylaws; however, this Guide is focused on the Sunshine Law’s requirements and is not intended to cover other laws or bylaws, parliamentary procedure, or general best practices for conducting meetings.

Every year, in response to questions and complaints about the manner in which State and county boards conduct their business, OIP investigates alleged Sunshine Law violations. Many of the violations arise because of a misunderstanding or a lack of understanding about the law and its requirements.

The Sunshine Law imposes requirements and restrictions on the manner in which a State or county board can conduct its business. Many board members, especially those who have served on non-governmental boards, are surprised by the restrictions placed on how they, in their capacity as State or county board members, must conduct board business.

For instance, with a few exceptions, board members are not allowed to discuss board business with each other outside of a meeting, including by telephone or through email or social media. In addition, a board usually cannot consider at a meeting matters that were not included in its published agenda.

If you are elected or appointed to a government board, the honor and privilege of serving comes with the added responsibility of learning and complying with the Sunshine Law. We hope that this Guide will assist you and members of the public in generally understanding the statute’s requirements.

OIP has attempted to present the law in “plain English” through the types of questions that are most frequently asked. At the end of the Guide, you will find copies of the law, various forms, and checklists.

The information in this Guide is general in nature. OIP provides more detailed information on various topics in Quick Reviews and other guidance that can be found on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

If you have questions about specific factual circumstances that may not be answered by this Guide, you should consult with your attorney, your board’s attorney, or OIP. OIP provides an “Attorney of the Day” (AOD) service, through which you may speak with an OIP staff attorney to receive, typically on the same day, general legal guidance and assistance with Sunshine Law issues.

Thank you for your participation in Hawaii’s open government.

Carlotta Amerino
Acting Director

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GENERAL INFORMATION

What is the Sunshine Law?

The Sunshine Law is Hawaii’s open meetings law. It governs the manner in which all State and county boards must conduct their business. The law is codified at Part I of chapter 92, Hawaii Revised Statutes (HRS).

What is the general policy and intent of the Sunshine Law?

The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring State and county boards to conduct their business as openly as possible. The Legislature expressly declared in the statute that “it is the policy of this State that the formation and conduct of public policy — the discussions, deliberations, decisions, and actions of governmental agencies — shall be conducted as openly as possible.”

In implementing this policy, the Legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to open meeting requirements be strictly construed against closed meetings. Thus, with certain specific exceptions, all discussions, deliberations, decisions, and actions of a board relating to the official business of the board must be conducted in a public meeting.

In other words, absent a specific statutory exception, board business cannot be discussed in secret. There must be advance notice; public access to the board’s discussions, deliberations, and decisions; opportunity for public testimony; and board minutes.

What boards are covered by the Sunshine Law?

There is no list that specifically identifies the boards that are subject to the Sunshine Law. As a general statement, the Sunshine Law applies to all State and county boards, commissions, authorities, task forces, and committees that have supervision, control, jurisdiction, or advisory power over a specific matter and are created by the State Constitution, statute, county charter, rule, executive order, or some similar official act. A committee or other subgroup of a board that is subject to the Sunshine Law is also considered to be a “board” for purposes of the Sunshine Law and must comply with the statute’s requirements.

Examples of State and county boards that are subject to the Sunshine Law include the county councils, neighborhood boards, police commissions, liquor commissions, licensing boards, island burial councils, Board of Water Supply, Board of Land and Natural Resources, Land Use Commission, Board of Agriculture, Board of Health, University of Hawaii’s Board of Regents, Board of Education, Small Business Regulatory Review Board, Real Estate Commission, and the boards of the Hawaii Tourism Authority, Aloha Tower Development Corporation, Natural Energy Laboratory of Hawaii Authority, and Stadium Authority.

The Sunshine Law does not apply to the judicial branch or to the adjudicatory functions exercised by certain boards (with the exception of Land Use Commission hearings, which are open to the public). The Legislature sets its own rules and procedures concerning notice, agenda, minutes, enforcement, penalties, and sanctions, which take precedence over similar provisions in the Sunshine Law.

What government agency administers the Sunshine Law?

Since 1998, OIP has administered the Sunshine Law. OIP also oversees the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), which is commonly referred to as Hawaii’s “open records” law or Hawaii’s version of the federal Freedom of Information Act.

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PUBLIC MEETINGS

MEETINGS DEFINED

Are all meetings of State and county boards open to the public?

Generally, yes. All meetings of State and county boards are required to be open to the public unless an executive meeting or other exception is authorized under the law. The open meeting requirement also applies to the meetings of a board's committees or subgroups.

Are site inspections, presentations, workshops, retreats and other informal sessions that involve board business considered to be meetings open to the public?

Generally, yes. Apart from the permitted interactions set forth in section 92-2.5, HRS, which are discussed below, the Sunshine Law requires a board to conduct, in either open or executive meeting, all of its discussions, deliberations, decisions, and actions regarding matters over which the board has supervision, control, jurisdiction, or advisory power.

Moreover, based upon the express policy and intent of the Legislature that the formation and conduct of public policy be conducted as openly as possible, OIP interprets the statute to require that any site inspection or presentation regarding a matter before the board, or which is reasonably likely to come before the board for a decision in the foreseeable future, be conducted as part of a properly noticed meeting.

Because the site inspection or presentation of a matter before the board are an integral part of the board's deliberation and decision-making process, they must be conducted in a properly noticed meeting. If it is not practical to allow the public to attend a site inspection as part of a meeting, the board may still be able to conduct the site inspection as a "limited" meeting under section 92-3.1, HRS.

With respect to board retreats, if board business is to be discussed, the retreat must be conducted as a meeting, which requires public notice, the keeping of minutes, the opportunity for public testimony, and public access to the board's discussions, deliberations, and decisions. Conversely, so long as no board business is discussed, the retreat is not considered a meeting subject to the Sunshine Law's requirements.

MULTI-SITE AND REMOTE MEETINGS

Can a member of the public attend public meetings in person?

Yes. Public meetings have traditionally been held in person, whether at a single site or multiple connected sites. Although the Sunshine Law now allows boards to hold remote meetings over the internet, as described below, a board must still provide at least one physical location where members of the public may attend a public meeting in person, even if the rest of the meeting is being conducted remotely.

Must board members attend public meetings in person?

It depends on what type of meeting the board is holding. For an in-person meeting held at a single site or multiple connected sites, members must generally attend in person at a public meeting site listed in the board's notice. However, if the board is holding a remote meeting, board members can attend the meeting remotely from private locations such as their homes or offices.

Even when a board is holding an in-person meeting, a board member with a disability that limits or impairs the member's ability to physically attend may participate from a location not noticed and not accessible to the public, so long as the member is connected by audio and video means and identifies where the member is and who else is present with the member. Thus, for example, a disabled board member may participate from a non-noticed location such as a private residence or hospital, so long as the other Sunshine Law requirements are met. § 92-3.5, HRS.

What is a remote meeting?

The Sunshine Law allows a board to hold a remote meeting by interactive conference technology (ICT). The law does not define a "remote meeting," but ICT is defined in section 92-2, HRS, as "any form of audio and visual conference technology, or audio conference

technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.” Because remote meetings require video interactivity with limited exceptions, a remote meeting held by ICT will typically be hosted via an online meeting platform such as Zoom or WebEx.

The remote meeting option requires the ICT used by the board to allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting. The new section also establishes various requirements for remote meetings discussed below that would allow members of boards and the public to participate in a public meeting held online, from the privacy of their own homes, offices, or other nonpublic locations.

What is the difference between a remote meeting and a multi-site meeting?

A remote meeting allows “remote” board and public participation, typically online, from private locations. By contrast, a multi-site meeting is an in-person meeting held at multiple public locations that are connected by ICT. Even though ICT is used to connect the different sites, **board members must attend a multi-site meeting in person** at one of the physical locations identified in the notice as a public meeting site, unless they are disabled and meet the requirements of section 92-3.5, HRS, to be able to participate remotely. Members of the public are not necessarily required to be in-person — the board has the option, but is not required, to allow members of the public to participate remotely in a multi-site meeting, such as by phoning in oral testimony.

What is the difference between an “additional location” and the official meeting location(s)?

Besides the official in-person meeting site(s) that a board is required to provide for every meeting, the Sunshine Law allows boards to also set up additional unofficial in-person sites, also known as “courtesy” sites. There are two differences between an official meeting site and an additional location. First, for any type of meeting, if a noticed “additional location” is cut off from the rest of the meeting by a connection failure, the meeting can still continue without that location so long as the notice made it clear that such an occurrence could happen. This is in contrast to an official meeting site where the meeting would have to recess and perhaps terminate if that site was cut off. Second, for an in-person meeting, board members cannot participate from an “additional location,” but instead must go to an official meeting site; the “additional

location” is offered as an option for the public rather than for board members.

This option allows boards with a widespread constituency to improve public access to their in-person meetings for constituents in rural areas or on other islands while still limiting the number of sites for which a communication failure could require cancellation of the whole meeting.

What are the requirements for a board to hold a remote meeting online?

A board must provide **public access to the remote meeting**. The meeting has to be on a platform that allows for audio-visual interaction between board members and the public, who can attend and participate from anywhere they wish via an online connection, or in some cases a phone connection. Board members and the public do not need to be at a public meeting site, and the meeting notice is not required to list private locations where board members are attending from or to allow the public to join members at private locations. Instead, **the notice must tell the public how to remotely view and testify at the meeting**. This will usually be in the form of a link to an online platform. A board can choose to have separate connections for viewing and for testifying at a meeting; for instance, a board expecting large public interest in a contentious issue might prefer to offer the public a view-only online connection for those who just want to watch the meeting, with a separate link for board members and people presenting oral testimony. In most cases, though, boards will find it easier to use the same online meeting link for all meeting attendees. In either case, public access to the meeting must be contemporaneous with the meeting and allow members and the public to hear the oral testimony provided.

Although board members and the public need not physically attend a remote meeting and can instead participate from private locations, the board must still **provide for the public at least one physical meeting site linked by ICT** to the remote meeting. This requirement recognizes that in-person meetings are the traditional way of holding public meetings and that not all persons, including board members, have the ability, equipment, internet capacity, or desire to attend online meetings.

Except during executive meetings closed to the public or when the ICT connection is interrupted, a **quorum of board members must be visible** to other members and the public during the public portion of a remote meeting. As with an in-person meeting, a board member’s brief absence from view during a meeting, such as to take a five-minute

restroom break, would not cause the board to lose quorum. However, if a board member who is needed to meet the quorum requirement will be out of view for an extended period of time or will be absent during a vote, the board should call for a recess until quorum can be reestablished.

At the start of the meeting, the presiding officer must **announce the names** of the participating board members, and board members attending from private locations must state who else is with them, though board members are not generally required to name anyone under 18 years old. All votes must be conducted by **roll call**, unless the vote is unanimous.

The notice and minutes requirements for remote meetings are discussed later in the Procedural Requirements section. The requirements when a remote meeting's ICT connection is interrupted or lost are discussed below.

What happens if the ICT connection is interrupted or lost?

If the audio-visual connection is lost during the public portion of a remote meeting or during a multi-site meeting, the Sunshine Law **requires the meeting to automatically recess for up to 30 minutes while the board attempts to restore the connection.** This requirement applies for all official meeting sites and the remote connection(s) provided as part of a remote meeting, however, it does not apply when the remote connection is working properly but a member of the public has lost internet connectivity or is otherwise unable to access the remote connection due to issues on that person's end.

The board **may reconvene with audio-only communication** if the visual link cannot be restored, **provided that the board has provided reasonable notice** to the public as to how to access the reconvened meeting after an interruption. For remote meetings only, the law specifically **requires speakers to state their names before speaking**, if the meeting has been reconvened with audio-only communication.

Within 15 minutes of establishing audio-only communication, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation must be made available by posting on the internet or other means to all meeting participants (including those participating remotely), otherwise agenda items with unavailable visual aids cannot be acted upon at the reconvened meeting.

If the meeting cannot be reconvened within 30 minutes after interruption to communication, and reasonable notice has not been provided to the public of how the meeting will be continued to another date or time, then the meeting is **automatically terminated**. OIP recommends that board prepare in advance for the possibility of technical difficulties and has provided tips in the next section.

What are some tips to provide reasonable notice to continue any Sunshine Law meeting, whether in person or connected by ICT?

Here are some tips for providing reasonable notice to continue any Sunshine Law meeting:

- The board's **notice may contain a contingency provision** stating that if the board loses online connection, then people should check the board's website (give address) for reconnection information. Alternatively, the notice could provide that if the connection is lost for more than 30 minutes, the meeting will be continued to a specific date and time, with the new link for the continued meeting either on the agenda itself or to be provided on the board's website.
- **At the start of the online meeting, the board could announce audibly** that if online connection is lost, information on reconvening or continuing the meeting will be posted on its website and give the website address.
- If the audio and video have gone down but there is still a chat function or something similar available, the board should also **post a visual notice** of the continuation of a meeting in that way.
- If visual connection has been lost during a meeting using ICT, the board could **audibly announce** that the meeting will be continued and direct people to its website where the relevant information has been posted.
- If time permits, the board can **email** people on its email list with a notice of continuation of the meeting. *See* the appendix or OIP's website for a form notice of continuation.

May a board hold an in-person multi-site meeting via telephone?

Yes. Section 92-3.5, HRS, continues to allow board members to

participate at an in-person meeting held at multiple meeting sites connected by ICT that provides for audio or audiovisual interaction among all board members and meeting participants. Unless the disability provisions of section 92-3.5, HRS, apply as described below, board members may participate only from the official, physical meeting sites noticed. Therefore, while the multiple sites may be connected only via telephone, board members must be at one of the in-person locations that was identified on the meeting notice as being open to the public.

If copies of visual aids are brought to such a meeting by board members or members of the public, they must be available to all meeting participants at all locations. Therefore, if audio-only interactive conference technology (*e.g.*, teleconference) is being used, all visual aids must be available within 15 minutes to all participants, or those agenda items for which visual aids are not available cannot be acted upon at the meeting.

If audio communication cannot be maintained at all noticed locations, then the meeting is automatically recessed for up to 30 minutes to restore communication. The meeting may reconvene if either audio or audiovisual communication is restored within 30 minutes. If it is not possible to timely reconvene the meeting, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated. Note that the failure to maintain at least audio communication at all noticed locations will require termination of the meeting, even if all or a quorum of board members are physically present in one location.

May a sick or disabled board member participate in a meeting from home or another private location?

Yes. If it is a remote meeting, that member can participate via the remote meeting link from a private location in the same way that other members and the general public can. Even for an in-person meeting, under the provisions for in-person multi-site meetings “a board member **with a disability** that limits or impairs the member’s ability to physically attend the meeting” may attend a meeting via a connection by **audio and video** means (*e.g.*, by videoconference, Skype, or Zoom) from a **private** location not open to the public, such as a home or hospital room. HRS § 92-3.5. The disability need not be permanent, so for example, a board member that has the flu or is hospitalized may participate via videoconference from home or a hospital room. A disabled board member attending from a private location must identify

the location and any persons who are present at that location with the member. To protect the disabled member's privacy interests and because members of the public are not able to participate from the private location, the disabled member's location during a meeting may be generally identified, such as "home" or "hospital," without providing an exact address.

Because members of the public are not able to participate from the private location, the filed notice does not have to state that a disabled board member will be participating from home, a hospital, or other location. It is sufficient for the disabled board member to announce at the meeting that he or she is participating from a stated location, without providing an exact address, and to state the names of any person that are present at the location with the member.

Must a board provide additional in-person meeting sites to allow the public to more easily participate?

No. The Sunshine Law does not require a board to provide more than the one in-person meeting site for any meeting. For an in-person meeting, it also does not require accommodating requests to remotely participate. At the same time, the Sunshine Law does not restrict remote participation in an in-person meeting by people who are not board members. However, it is **up to the board to decide** whether or not to allow testifiers, presenters, and other members of the public to watch, testify, or otherwise participate in an in-person meeting from places other than the official meeting site(s) by:

- Allowing testifiers to call in from home;
- Allowing their participation via audio or videoconferencing from a location not listed on the notice; or
- Setting up audio or videoconferencing at a location where no board member will be present, such as an additional location listed as such on the notice and not guaranteed to remain open for the whole meeting.

Boards are not required by the Sunshine Law to provide additional locations or accommodate requests from testifiers to testify remotely by telephone or other means. Boards may be required, however, to reasonably accommodate individuals with disabilities under the Americans with Disabilities Act (ADA), and should consult with their own attorneys or the State Disability and Communication Access Board at (808) 586-8121 (Voice) or (808) 586-8162 (TTY), email dcab@doh.hawaii.gov, or go to DCAB's website at health.hawaii.gov/dcab/ for advice on how to comply with the ADA.

OIP does not have authority to provide legal advice on the ADA.

If the notice lists one or more additional locations for the convenience of members of the public who cannot make it to the official in-person meeting location(s), the notice must make clear the distinction between the noticed official meeting location(s) and the listed additional location. An additional location may be cancelled or shut down early while the meeting continues at the public meeting locations listed on the filed notice. Moreover, in most cases, board members themselves cannot attend an in-person meeting from an additional location or another non-noticed location, which also means that they cannot call in, cannot participate or just listen in by phone, and cannot vote or be counted toward quorum for an in-person meeting if they are at an additional location or other non-noticed location. The only exception to this rule is for disabled board members, as described above.

BOARD PACKETS

What is a board packet?

A board packet consists of the documents that are compiled by the board or its staff and distributed to board members before a public meeting for use at that meeting. Not all boards create and distribute board packets, and the requirements relating to board packets only apply to those boards that actually distribute board packets.

Must board packets be made available to the public?

Yes, but documents may be redacted or withheld as discussed below. Any board packet prepared for a meeting must be made available for public inspection in the board's office at the time it is distributed to board members, **but no later than two business days before the meeting**. However, that deadline does not apply to written testimony, which can be distributed to members at any time before the meeting. Although the board is not required to automatically mail or email the packet itself to people on its notification list, it must notify them that the board packet is available for inspection in the board's office and list the documents in the packet, and must provide "reasonably prompt" access to the packet to any person upon request. As soon as practicable, the board must put a copy of the board packet on its website and accommodate requests for electronic access to the board packet.

What board packet documents may be withheld or redacted from public inspection?

The public disclosure requirement for board packets only applies to information that would be disclosable under the UIPA; in other words, non-public information within board packets can be redacted. In addition, the law allows the board to potentially withhold more records in creating the public version of the board packet than could have been withheld in response to a formal UIPA record request. Specifically, the public version of a board packet is not required to include executive meeting minutes, license applications, and other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the meeting. In this way, the board packet provision recognizes the challenge facing a board when it must both put together a board packet and create a public version of the board packet in the short time before a meeting, when the board packet may include materials from third parties that the board has not previously reviewed, or materials with public information and nonpublic information mixed together.

For example, if a board packet includes a long document with confidential information embedded throughout it, which would make redaction unreasonable or overly time-consuming in the days before the board meeting, the board could withhold the entire record from the public board packet. On the other hand, if a similarly long document is made up of several distinct sections, only some of which are confidential, then it may be relatively straightforward for the board to separate them and include only the non-confidential sections in the public board packet. If a document includes some confidential information but is only a few pages long, then the confidential information can readily be redacted before the record is included in the public board packet. If a document of any length is fully public, then it should be included in an unredacted form in the public board packet.

If a board has made a public board packet available, does it still need to respond to a UIPA request for the original packet?

Yes. The UIPA has separate and different requirements from the Sunshine Law, and **the Sunshine Law's board packet disclosure requirement does not replace the right of a member of the public to request a board packet under the UIPA.** In responding to such a request, a board would follow the UIPA's deadlines, standards for what may be redacted, and fees. For most members of the public, however, free access to the public version of the board packet prior to the meeting under the Sunshine Law will be preferable to waiting two weeks or more to receive what may be a slightly less redacted version for which review and segregation fees may be assessed under the UIPA.

Do you have any practice tips for boards to prepare public board packets?

- When compiling a board packet, prepare the public version at the same time. As each document comes in, determine whether it must be included in the public packet and prepare a redacted version if necessary.
- Have a copy of the public board packet available in the board's office by the time the packet goes out to board members. If the public board packet is available for public inspection only in electronic format, have equipment available for the public to be able to view the packet.
- Have a PDF version of the public packet ready to post to the board's website and to email or fax upon request.

TESTIMONY

Must a board accept testimony at its meetings?

Yes. Boards are required to accept both oral and written testimony from the public on any item listed on the meeting agenda. Boards can decline to accept public testimony that is unrelated to a matter listed on the agenda.

Can the public provide testimony from a remote location by telephone, videoconference, or using other interactive technology?

If a board is holding a remote meeting via ICT, the public has a right to attend and testify at the meeting from a remote location using the ICT link(s) provided by the board.

If a board is conducting an in-person meeting, however, the law does NOT require a board to allow public testimony or participation from a location that was not listed on the notice as a meeting site, such as a person's home. Thus, unless the board is conducting a remote meeting, the **board may choose, but is not required** by the Sunshine Law, to hear testimony online or via telephone from members of the public who are not physically present at a meeting location.

Note, however, that a board may choose to establish additional locations to allow the public to testify remotely when holding an in-person meeting. See the discussion on additional locations in the earlier section for Multi-Site and Remote Meetings.

Is a board required to read aloud the written testimony during its meeting?

No. There is no requirement that a board read aloud each piece of written testimony during its meeting for the benefit of those attending the meeting. A board, however, must ensure that written testimony is distributed to each board member for that member's consideration before the board's action. Moreover, upon request, any member of the public is entitled to receive copies of the written testimony submitted to the board.

Is written communication received by only one board member regarding a matter on the board's meeting agenda considered written testimony?

Possibly. For instance, on occasion, the board chair or individual board members may receive email or other written correspondence regarding a matter on the board's agenda. If a written communication is received prior to the meeting and reasonably appears to be testimony relating to an agenda item (as opposed to correspondence directed only to the recipient), irrespective of whether the writing is specifically identified as "testimony," the board member receiving the communication must make reasonable efforts to cause the testimony to be distributed to the

other members of the board by the board's staff. The receiving board member should not directly distribute the testimony to other board members as it may be considered a serial communication or discussion outside of a meeting, which are prohibited by the Sunshine Law.

How can a board avoid the possible problem of only one board member receiving testimony intended for the entire board?

The Sunshine Law requires that the posted notice for a meeting provide the board's electronic and postal contact information for submission of testimony before the meeting. This requirement avoids possible confusion as to whether an email or other written communication received by only one board member is intended to be "testimony" to the entire board, because the public will know the mailing address and email address written testimony should be directed to.

Providing the board's contact information does not completely relieve individual board members of their obligation to consider whether written communication that they individually receive was intended by the sender to be "testimony" for consideration by the entire board. Nonetheless, it reduces the likelihood of written testimony being sent to individual board members and may excuse a board member's reasonable failure to recognize that a written communication was intended to be "testimony."

How must a board distribute written testimony to its members?

As a general rule, a board is empowered to determine how to best and most efficiently distribute the testimony to its members, *e.g.*, whether to transmit it electronically or to circulate copies in paper format, and whether to distribute it in advance of the meeting or at the beginning of the meeting, so long as the testimony is distributed in a way that is reasonably calculated to be received by each board member. However, distribution of testimony to members prior to the meeting is subject to the board packet requirements discussed above. Additionally, any distribution of testimony before the meeting should be done by the board's staff, not members, to avoid improper discussion of board business outside a meeting.

May a board limit the length of each person's oral testimony offered at its meetings?

Yes. Boards are authorized to adopt rules regarding oral testimony, including, among other things, rules setting limits on the amount of time that a member of the public may testify. For instance, a council could adopt rules limiting each person's oral testimony to three minutes per item. Boards also are not required to accept oral testimony unrelated to items on the agenda for the meeting.

To what extent can a board decide when to take oral testimony during its meeting?

Within certain limits, a board can choose when to hear oral testimony on agenda items. However, a board cannot hear all the oral testimony only at the beginning of the meeting, and it must hear the testimony on a given agenda item prior to its consideration of that agenda item. Beyond those restrictions, a board can choose when to hear testimony. For instance, a board could allow a limited testimony period at the beginning of the meeting to accommodate members of the public who prefer not to wait, and then continue to hear testimony immediately before each agenda item from those who have not testified earlier on that item. A board could also choose to hear testimony on several agenda items together (in which case it should still allow people testifying on multiple items a full opportunity to testify on each of those items).

May a board set a deadline for the public to submit written testimony or register for oral testimony?

No. The Sunshine Law does not authorize boards to set deadlines or require registration as a condition of giving oral testimony, and doing so would be inconsistent with the requirement to allow all interested persons the opportunity to provide written and oral testimony. However, a board may still request that the public submit written testimony by a set time or sign up in advance for oral testimony, so long as it **makes clear that the request is not a requirement, accepts written testimony submitted at a later time, and offers all public attendees the chance to present oral testimony even without prior registration.**

RECESSING, CONTINUING, CANCELLING, OR RELOCATING MEETINGS

Can a board recess and later reconvene a meeting?

Yes, as a general rule, boards are authorized to recess both public and executive meetings, and to reconvene at another date and time to continue and/or complete public testimony, discussion, deliberation, and decision-making relating to the items listed on the agenda. Meeting continuances were extensively discussed by the Hawaii Supreme Court in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (Kanahele) (2013). The Court recognized that section 92-7(d), HRS, requires items of reasonably major importance, which are not decided at a scheduled meeting, to “be considered only at a meeting continued to a reasonable date and time.” The Court also found that a board is not limited by this statute to only one continuance of a meeting and is not required to post a new agenda or accept oral testimony at a continued meeting.

There are specific procedures that boards must follow if the ICT connection to a remote or multi-site meeting has been interrupted or lost. See the previous sections on In-Person, Multi-Site, and Remote Meetings.

What kind of notice should a board provide for a meeting that will be continued?

Although the Sunshine Law contains no specific requirements for a written public notice or oral announcement for continued meetings, the Hawaii Supreme Court stated in Kanahele, discussed above, that “the means chosen to notify the public of the continued meeting must be sufficient to ensure that meetings are conducted “as openly as possible; and in a manner that ‘protect[s] the people’s right to know.’” Id. at 1198. When a meeting is being recessed for longer than 24 hours, the board should provide, if practicable, both oral and written (including, if possible, electronic) notice of the date, time, and place of a continuance. The date, time, and location of the reconvened meeting generally should be orally announced at the time that the meeting is recessed.

Based on the Court’s guidance and examples in Kanahele, OIP has prepared a “Notice of Continuance of Meeting” form, which is available on the [Forms page at oip.hawaii.gov](#) and as an appendix to this Guide. This notice may be used to continue an ongoing meeting that had been originally posted as required under section 92-7, HRS. Consequently,

the continuance notice is not subject to the same requirements of the original notice under section 92-7, HRS. Rather than post a new agenda for a continued meeting, a board should attach the agenda of the meeting being continued to a “Notice of Continuance of Meeting,” on which the board should type, hand write, or otherwise note the agenda item(s) being continued.

Can the meeting be reconvened at a different location?

Yes. A board may reconvene a meeting at a location different from where the meeting was initially convened, as long as the board announces the location where the meeting is to be reconvened at the time when it recesses the meeting or otherwise notifies the public of the new location. The new location should be included in all announcements and other such publications, if any, regarding the reconvened meeting.

Must the continuance notice be posted?

Yes. A board should physically post in the board’s office and, if practicable, at the physical meeting site, a “Notice of Continuance of a Meeting,” with the agenda from the continued meeting attached thereto. Additionally, if possible and time permits, the Notice and agenda should be electronically posted on the board’s website or the State or county electronic calendar, as appropriate, and emailed to persons on the board’s email list.

Keep in mind that because the meeting notice requirements of section 92-7, HRS, do not apply to the notice of continuance, the failure to electronically post the continuance notice on the State or county electronic calendar or to give six days’ advance notice would not require the cancellation of the continued meeting. State boards are also able to post a notice of a meeting being continued within six days by contacting Tyler Tech (not OIP) at Hawaiicalendar@ehawaii.gov from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays).

Does a board have to re-hear testimony or accept new testimony at a continuation of a meeting?

No. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting.

Must a notice be posted online when cancelling a meeting?

Boards are not required by the Sunshine Law to electronically file a notice when cancelling a meeting. A board's mere failure to be present at a noticed meeting automatically cancels the meeting. However, as a courtesy to the public, OIP recommends posting notification of a cancelled meeting at the board's office and at the meeting location, taking down the original meeting notice from the online calendar, and informing those people who have asked to receive notice by email.

What notice must be provided if a physical meeting location must be changed?

If a board must change the physical location of a meeting on the day of the meeting (for example, the room loses power or air conditioning), it may call the meeting to order at the noticed location and announce that it will be recessed and then reconvened shortly thereafter in the new location. A written notification of the new meeting location should be posted at the originally noticed physical location.

What happens if the link to a remote meeting provided in the meeting notice has changed or does not work?

The meeting notice for a remote meeting must include the remote meeting location, typically a link for an online meeting platform. If a board must change the online location of a meeting on the day of the meeting, perhaps because the original link is not working, it may do so if its meeting notice also provided the alternative online location in its meeting notice as a back-up link in case of connection problems with the first. If a board cannot use its noticed remote meeting location and it has not previously provided an alternative, it would be unable to convene the meeting in the first place, and thus would not have the option to convene it and announce its continuation at a different online location.

**DISCUSSIONS BETWEEN BOARD MEMBERS
OUTSIDE OF A MEETING**

**Can board members discuss board business
outside of a meeting?**

The Sunshine Law generally prohibits discussions about board business between board members outside of a properly noticed meeting, with

certain statutory exceptions. While the Sunshine Law authorizes interactions between board members outside of a meeting in specified circumstances, the statute expressly cautions that such interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

In practical terms, this means that board members cannot “caucus” or meet privately before, during, or after a meeting to discuss business that is before the board or that is reasonably likely to come before the board in the foreseeable future.

The statute, however, does not prohibit discussion between board members outside of a properly noticed meeting about matters over which the board does not have supervision, control, jurisdiction, or advisory power. For instance, where the chair of a board has the sole discretion to set the agenda, the board has no “power” over that decision and, therefore, board members may request the addition of possible agenda items outside of a properly noticed meeting, so long as they do not discuss the substance of items. Similarly, logistical issues, such as when members are available to meet, are typically not “board business” and thus may be discussed in an email sent to all board members.

Does the Sunshine Law also prohibit board members from communicating between themselves about board business by telephone, memo, fax, or email outside of a meeting?

Yes. Board members cannot discuss board business between themselves outside of a properly noticed meeting by way of the telephone or by memoranda, fax, email, or social media, such as Facebook. As a general rule, if the statute prohibits board members from discussing board business face-to-face, board members cannot have that same discussion through other media.

Can board members discuss board business with non-board members outside of a meeting?

Generally, yes. The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. Because the Sunshine Law does not apply to **non**-board members, a board member may discuss board business with **non**-board members outside of a meeting.

Board members should not discuss with non-board members any matters discussed during a closed executive meeting, or the members could risk waiving the board's ability to keep the matters confidential.

SOCIAL EVENTS

What about social and ceremonial events attended by board members?

The Sunshine Law does not apply to social or ceremonial gatherings where board business is not discussed. Therefore, board members can attend functions such as Christmas parties, dinners, inaugurations, orientations, and ceremonial events without posting notice or allowing public participation, so long as they do not discuss official business that is pending or that is reasonably likely to come before the board in the foreseeable future.

If I am a board member, what should I do if another board member starts talking about board business at a social event?

The Sunshine Law is, for the most part, self-policing. It is heavily dependent upon board members understanding what they can and cannot do under the law. In the situation where a board member raises board business with other board members outside of a meeting, board members should remind each other that such discussion can only occur at a duly noticed meeting. If a board member persists in discussing the matter, the other board members should not participate in the discussion and should physically remove themselves from the discussion.

PERMITTED INTERACTIONS

What are “permitted interactions”?

Over the years, the Sunshine Law has been revised to recognize eight “permitted interactions,” which are designed to address instances when members of a board may discuss certain board matters outside of a meeting and without the procedural requirements, such as notice, that would otherwise be necessary. The statute specifically states that the “[c]ommunications, interactions, discussions, investigations, and presentations described in [the permitted interaction] section are not

meetings for purposes of [the Sunshine Law].” These permitted interactions are summarized below.

What are the types of “permitted interactions” allowed by the Sunshine Law?

- ***Two Board Members.*** Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board. Nevertheless, it would be a serial communication contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings.
- ***Investigations.*** A board can designate two or more board members, but less than the number of members that would constitute a quorum of the board, to investigate matters concerning board business. The board members designated by the board are required to report their resulting findings and recommendations to the entire board at a properly noticed meeting. This permitted interaction can be used by a board to allow some of its members (numbering less than a quorum) to participate in, for instance, a site inspection outside of a meeting or to gather information relevant to a matter before the board.
- ***Presentations/Negotiations/Discussion.*** The board can assign two or more of its members, but less than the number of members that would constitute a quorum of the board, to present, discuss, or negotiate any position that the board has adopted.
- ***Selection of Board Officers.*** Two or more board members, but less than the number of members that would constitute a quorum of the board, can discuss between themselves the selection of the board’s officers.
- ***Acceptance of Testimony at Cancelled Meetings.*** If a board meeting must be cancelled due to lack of quorum or conference technology problems, the board members present may still receive testimony and presentations on agenda items from members of the public and may question them, so long as there is no deliberation or decision-making at the cancelled meeting. The members present must create a record of the oral testimony or presentations. At the next duly noticed meeting of the board, the members who were present at the cancelled meeting must provide the record and copies of the testimony or presentations received at the cancelled meeting. Deliberation and

decision-making on any item, for which testimony or presentation were received at the cancelled meeting, can only occur at a subsequent duly noticed meeting of the board.

- ***Discussions with the Governor.*** Discussions between one or more board members and the Governor are authorized to be conducted in private, provided that the discussion does not cover a matter over which a board is exercising its adjudicatory function. This permitted interaction does not allow discussions with county mayors.

- ***Administrative Matters.*** Certain routine administrative matters, such as board budget or employment matters, can be discussed between two or more members of a board and the head of a department to which the board is administratively assigned.

- ***Attendance at Informational Meetings or Presentations.*** The Sunshine Law allows two or more members of a board, but less than a quorum, to attend an informational meeting. The board members may participate in discussions, even among themselves, so long as the discussions occur as part of the informational meeting or presentation and no commitment relating to a vote on the matter is made or sought. At the next duly noticed meeting of the board, the members who attended the informational meeting or presentation must report their attendance and the matters presented and discussed that related to official board business.

This informational meeting provision thus allows less than a quorum of board members to attend, for example, neighborhood board meetings, legislative hearings, and seminars, at which official board business is discussed, so long as no commitment to vote is made and the subsequent reporting requirements are met. The law is intended to improve communication between the public and board members and to enable board members to gain a fuller understanding of the issues and various perspectives. As with the rest of the law, this permitted interaction will be interpreted to prevent circumvention of the spirit of the Sunshine Law and its open meeting requirements.

- ***Circulation of proposed testimony.*** A board that has previously adopted a position on a legislative measure may circulate its proposed testimony among board members for review and written comment to meet a tight legislative deadline, so long as all proposed testimony drafts and board member communications about the testimony are publicly posted online within 48 hours of the statement's circulation to the board. This permitted interaction is best used for proposed testimony drafted by board staff or a single member, as

discussed in OIP's Quick Review on Sunshine Law Options to Address State Legislative Issues and Measures, which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

For a more detailed discussion, please see OIP's three-part "Quick Review: Who Board Members Can Talk to and When," which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

BOARD DISCUSSION OF LEGISLATIVE ISSUES

How can a Sunshine Law board keep up with the fast-paced legislative calendar and submit timely testimony on legislative issues?

When dealing with legislative matters, one major hurdle that boards face is the Sunshine Law's six-day notice requirement prior to conducting a meeting to discuss a legislative measure, even though legislative committees often give less than six days' notice of their hearings. Since most boards typically meet on a monthly or less frequent basis, their meeting schedule together with the notice requirement leave them with limited options to timely notice a meeting and discuss the adoption of its legislative testimony or position prior to the legislative hearing.

The Sunshine Law, however, allows board members to discuss board business outside a meeting in limited circumstances, as set forth in the "permitted interactions" section of the law, as discussed above. The permitted interactions that are most useful in developing or adopting positions on legislative measures are the ones allowing: (1) two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board; (2) a board to assign less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting; (3) less than a quorum of board members to attend a legislative hearing (or other "informational meeting") and report their attendance at the next board meeting; and (4) a board to circulate draft testimony for members' review and written comment.

Besides permitted interactions, other options for a board to address legislative matters are through emergency or limited meetings or delegation to staff.

The various options or practical approaches that a board could take to

discuss and submit timely testimony on legislative issues or measures are discussed in more detail in OIP's "Quick Review: Sunshine Law Options to Address State Legislative Issues and Measures," which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

DISCUSSIONS BETWEEN MULTIPLE BOARDS

When members of multiple Sunshine Law boards hold a joint meeting, roundtable discussion or similar event, how can they do so without violating the Sunshine Law?

When planning an event that will bring together members of multiple Sunshine Law boards, every attendee who is a member of a Sunshine Law board must be able to justify his or her presence under the Sunshine Law with respect to his or her own board. The justification could be that no one else from that particular board was present, so there was no discussion of board business among that board's members; or it could be that one of the Sunshine Law's permitted interactions applied to the particular board's members who attended; or it could be that the event was noticed as a meeting of the members' own board (or a joint meeting of multiple boards including theirs). The justification does not have to be the same for all the boards with members attending, but all members of each board should have a Sunshine Law justification before attending and participating in the discussion of their board's business during the roundtable meeting.

For a more detailed discussion, please see OIP's "Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law," which is posted on OIP's [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

3

EXECUTIVE MEETINGS

What is an executive meeting?

An executive meeting (also called an executive session) is a meeting of the board that is closed to the public. Because an executive meeting is a narrowly construed exception to the Sunshine Law's presumption that all government board meetings will be open to the public, board members are advised to carefully weigh the interests at stake before voting to exercise their discretion to close a meeting. Because the "final action" taken by the board in an executive meeting may be voided by the courts if the board has violated the procedural requirements for going into such a closed meeting, boards must be careful to follow all requirements.

Must a board give notice that it intends to convene an executive meeting?

Yes, if the executive meeting is anticipated in advance.

What must the agenda contain when the board anticipates convening an executive meeting?

In addition to listing the topic the board will be considering (as is required for all items the board will consider whether in public or executive session), the agenda for the open meeting generally must indicate that an executive meeting is anticipated and should cite the statutory authority for convening the anticipated executive meeting. For an executive meeting, the listing of the topic should describe the subject of the executive meeting with as much detail as possible without compromising the closed meeting's purpose. For instance, if the board is to consider a proposed settlement of a lawsuit in an executive meeting, the agenda would note that the purpose of the executive session was consulting with the board's attorney on questions or issues regarding the board's powers, duties, privileges, immunities, and liabilities, and cite section 92-5(a)(4), HRS. The agenda in such a case should also describe the topic of the meeting as, at a minimum, the lawsuit identified by case name and civil number, and unless such description would compromise the purpose of closing the meeting from the public, that the board would consider a proposed settlement.

Can a board convene an executive meeting when it is not anticipated in advance?

With significant restrictions, the Sunshine Law allows the board to convene an executive meeting when the need for excluding the general public from the meeting was not anticipated in advance. If, for example, during the discussion of an open meeting agenda item, the board determines that there are legal issues that need to be addressed by its attorney, the board may announce and vote to immediately convene an executive meeting to discuss those matters pursuant to section 92-5(a)(4), HRS.

The board, however, cannot convene an executive meeting to discuss an item that is not already on its meeting agenda without first amending the agenda to add the item in accordance with the Sunshine Law's requirements. No item can be added to an agenda if it is of reasonably major importance and the board's action will affect a significant number of persons. At least two-thirds of the board's total members (present or absent) must vote in favor of amending the agenda.

How does a board convene an executive meeting?

To convene an executive meeting, a board must vote to do so in an open meeting and must publicly announce the purpose of the executive meeting. The minutes of the open meeting must reflect the vote of each board member on the question of closing the meeting to the public. Two-thirds of the board members present must vote in favor of holding the executive meeting, and the members voting in favor must also make up a majority of all board members, including members not present at the meeting and vacant membership position. Note that the 2/3 vote of all members present that is required to convene an executive meeting is different from the 2/3 vote of a board's total membership (including vacant positions) that is required to amend an agenda.

Is a board required to report to the public on what happened in an executive meeting?

When a board reconvenes in public session, it must report, in general terms, its discussion and any final action it took during the executive session. The board is not required to disclose any information that would be inconsistent with the purpose of the executive session. If disclosure would frustrate the purpose of the executive session, the board can keep the information confidential for as long as that continues to be true. Instead, a board should briefly summarize what happened in the

executive session, without disclosing any sensitive details, and give the public an idea of what topic the board discussed during the session. In the limited instances where a board can and did properly vote during an executive session, it must also inform the public what action it took.

What are the eight purposes for which an executive meeting can be convened?

Section 92-5(a), HRS, gives the board the discretion to go into an executive meeting only for the following eight specific reasons:

(1) ***Licensee Information.*** A board is authorized to meet in an executive meeting to evaluate personal information of applicants for professional and vocational licenses.

(2) ***Personnel Decisions.*** A board may hold an executive meeting to “consider the hire, evaluation, dismissal or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved.” However, if the person who is the subject of the board’s meeting requests that the board conduct its business about him or her in an open meeting, the request must be granted and an open meeting must be held.

(3) ***Labor Negotiations/Public Property Acquisition.*** A board is allowed to deliberate in an executive meeting concerning the authority of people designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations.

(4) ***Consult with Board’s Attorney.*** A board is authorized to consult in an executive meeting with its attorneys concerning the board’s powers, duties, immunities, privileges, and liabilities.

(5) ***Investigate Criminal Misconduct.*** A board with the power to investigate criminal misconduct is authorized to do so in an executive meeting.

(6) ***Public Safety/Security.*** A board may hold an executive meeting to consider sensitive matters related to public safety or security.

(7) ***Private Donations.*** A board may consider matters relating to the solicitation and acceptance of private donations in executive meetings.

(8) ***State/Federal Law or Court Order.*** A board may hold an

executive meeting to consider information that a State or federal law or a court order requires be kept confidential.

Does “embarrassing” or “highly personal” information allow a board to hold an executive meeting?

A board may not hold such discussions in an executive meeting unless the discussion falls within one of the eight circumstances listed in the statute for which an executive meeting is allowed.

Can confidential or proprietary information be considered in a closed-door meeting?

Again, unless there is an exception that permits the board to convene in an executive meeting, no matter how sensitive the information may be, a board cannot consider such information in a closed meeting. In such a case, a board may be better off using an applicable permitted interaction in section 92-2.5, HRS, to allow less than a quorum of board members to take a close look at the sensitive information so that it can be discussed in more general terms at the board’s meeting.

Does the Sunshine Law require a closed meeting when one of the eight purposes is applicable?

No. A board may, but is not required to, enter an executive meeting closed to the public when one of the eight purposes listed above is applicable.

Is a board subject to the Sunshine Law’s criminal penalties for holding an open meeting, even if one of the eight purposes is applicable?

No. Although section 92-13, HRS, provides for the criminal prosecution of board members who willfully violate the Sunshine Law, the Hawaii Supreme Court has held that holding an open meeting does not violate the Sunshine Law. Consequently, board members are not subject to criminal prosecution under section 92-13, HRS, for holding an open meeting.

When personnel matters concerning an individual will be discussed, can an open meeting be held only upon the subject employee’s request?

No. Section 92-5(a)(2), HRS, gives the subject employee the right to

request an open meeting, but does not require the employee's consent to hold an open meeting. Because the Sunshine Law presumptively requires open meetings, the board may choose to discuss personnel matters in the open. Meetings related to personnel matters are not required to be closed to the public.

Must all personnel matters be discussed in a closed executive meeting?

No. Certain personnel matters must be discussed in an open meeting. Under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), certain types of government employment information must be disclosed upon request, such as employee names, job titles, and salary information. HRS § 92F-12(a)(4). Consequently, government employees do not have a legitimate expectation of privacy in such information, and the board cannot justify closing a meeting simply to discuss those types of personnel matters. Additionally, if the discussion is about personnel policies, and not about an individual, then there is no legitimate expectation of privacy at stake, so the meeting cannot be closed to discuss such policies. To the extent possible, policy-making must be conducted in public meetings.

The personnel matters that may be discussed in a closed meeting under section 92-5(a)(2), HRS, must relate to “the hire, evaluation, dismissal or discipline” of an individual officer or employee, or to “charges brought against” such an individual, and also requires a showing that “consideration of matters affecting privacy will be involved.” Just because a matter involves an employee's personnel status does not necessarily mean that a legitimate privacy interest will be impacted. If no legitimate privacy interest will be involved in the board's discussion, then the board cannot properly close the meeting to the public.

How do you determine if there is a legitimate privacy interest under the personnel exception allowing closed executive meetings?

Unlike the test balancing private interests against the public interest that is set forth in the UIPA at section 92F-14(a), HRS, to determine if disclosure of a record would constitute a clearly unwarranted invasion of personal privacy, the Sunshine Law requires a case-by-case analysis of the specific person and information at issue to see whether the person being discussed has a legitimate expectation of privacy. Only people, not companies or entities, can have an expectation of privacy. There is a legitimate expectation of privacy in “highly personal and intimate” information, which may include medical, financial, education, or

employment records. Some circumstances, however, may reduce or entirely defeat the legitimacy of a person's expectation of privacy, as in the case of government officials with high levels of discretionary and fiscal authority, like the University's president or a head coach. Moreover, if the information must be disclosed by law, rule or regulation, or if it has already been disclosed, then there is no legitimate expectation of privacy that would warrant holding a closed executive meeting to discuss such information.

May a board vote in an executive meeting?

Generally, no. In most instances, the board must vote in an open meeting on the matters considered in an executive meeting. In rare instances, the Sunshine Law allows the board to vote in the executive meeting when the vote itself, if conducted in an open meeting, would defeat the purpose of the executive meeting, such as by revealing the matter for which confidentiality may be needed. In those rare instances where a board can and does vote in an executive meeting, it must report any action taken when it returns to public session and summarize in general terms what happened in the executive session without disclosing information that would frustrate the reason for going into executive session in the first place.

Can non-board members participate in an executive meeting?

The board is entitled to invite into an executive meeting any non-board member whose presence is either necessary or helpful to the board in its discussion, deliberation, and decision-making regarding the topic of the executive meeting. Once the non-board member's presence is no longer needed, however, the non-board member must be excused from the executive meeting. Because the meeting is closed to the general public, the board should allow the non-board members to be present during the executive meeting only for the portions of the meeting for which their presence is necessary or helpful, such as when a board staff member, attorney, or applicant is there to address a particular issue. Non-board members who may be needed throughout an executive session may include those providing technical or production support, or who are taking the minutes of the meeting. All persons attending an executive meeting, however, would be required to maintain the confidentiality of what was discussed in the meeting.

There are additional requirements for an executive meeting held as part of a remote meeting, which are discussed next.

What are the requirements for an executive meeting when the meeting is held remotely?

During a remotely held meeting when board members go into an executive session closed to the public, they can participate via telephone or audio only, without being visible online as is generally required for the public portion of a remote meeting. Because participants may not be visible during an online executive session, and to preserve the executive nature of any portion of a meeting closed to the public, the presiding officer must **publicly state the names and titles of all authorized participants**. Upon convening the executive session, **all participants must confirm that no unauthorized person is present or able to hear them** at their remote locations or via another audio or audiovisual connection. Additionally, if the remote meeting platform allows doing so, **the person organizing the ICT must look at the listed participants and confirm that no unauthorized person has access to the executive session**.

These statutory requirements are intended to prevent the executive session from being breached by or remotely transmitted to unauthorized persons during remote meetings. The “authorized participants” that the presiding officer must identify at the start of an executive session would generally be anyone properly included in the closed portion of the meeting, such as board members, staff members necessary to running the meeting (*e.g.*, technical or production staff), and in some cases, third parties whose presence is necessary to the closed meeting (*e.g.*, applicant, witness, or attorney).

For additional discussion of executive session issues, see OIP’s **Quick Review: Executive Meetings Closed to the Public**.

4

OTHER TYPES OF MEETINGS

EMERGENCY MEETINGS

Where public health, safety, or welfare requires a board to take action on a matter, can a board convene a meeting with less than six days' notice?

A board may hold an emergency meeting with less notice than required by the statute or, in certain circumstances, no notice when there is “an imminent peril to the public health, safety, or welfare.” When the board finds that an emergency meeting is appropriate, (1) the board must state its reasons in writing; (2) two-thirds of all members to which the board is entitled must agree that an emergency exists; (3) the board must electronically file an emergency agenda and the board’s reasons in the same way it would file its regular notice and agenda, except for the usual six-days’ advance notice deadline; and (4) persons requesting notification on a regular basis must be contacted by postal or electronic mail or telephone as soon as practicable.

UNANTICIPATED EVENTS

When an unanticipated event requires a board to take immediate action, can a board convene a meeting with less than six days' notice?

A board may convene a special meeting with less than six calendar days’ notice because of an unanticipated event when a board must take action on a matter over which it has supervision, control, jurisdiction, or advisory power. The law defines an unanticipated event to mean (1) an event that the board did not have sufficient advance knowledge of or reasonably could not have known about; (2) a deadline beyond the board’s control established by a legislative body, a court, or an agency; and (3) the consequence of an event for which the board could not have reasonably taken all necessary action.

The usual rule is that a State or county board may deliberate and decide whether and how to respond to the unanticipated event as long as (1) the board states, in writing, its reasons for finding that an unanticipated

event has occurred and that an emergency meeting is necessary; (2) the attorney general and two-thirds of all members to which the board is entitled concur with the board's finding; (3) the board's findings and the agenda for the emergency meeting are electronically filed in the same way it would file its regular notice and agenda, except for the usual six-days' advance notice deadline; and (4) persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable. At an emergency meeting, the board can only take those actions that need to be immediately taken.

LIMITED MEETINGS

If a board finds it necessary to inspect a location that is dangerous or impracticable for public attendance, may the board hold a meeting that is not open to the public?

Yes. A board may hold a "limited meeting" that is not open to the public when either (1) the meeting location is dangerous to health or safety, or (2) an on-site inspection of the meeting location is necessary and public attendance at that location is impracticable. Prior to the limited meeting, the board must publicly deliberate in a regular meeting on the need for the limited meeting, two-thirds of all members to which the board is entitled must vote to adopt the determination that it is necessary to hold a limited meeting for one of the reasons specified above, and the board must obtain the OIP Director's concurrence in its determination. Note that the board may be unable to meet the two-thirds voting requirement due to board vacancies or absences; for example, if a board should have five members but only four are appointed, then it would need all four members to vote to adopt the determination and would not be able to do so if one of the members is absent.

Public notice of a limited meeting must still be provided, and a videotape of the meeting must be made available at the next regular board meeting, unless the OIP Director waives the videotape requirement. No decision-making can occur during the limited meeting.

See the Sunshine Law forms section of OIP's website at <https://oip.hawaii.gov/forms/> for a fillable checklist to use when requesting the OIP Director's concurrence for a limited meeting or to request a waiver of the videotaping requirement.

Can county councils have limited meetings to attend other boards' or community groups' meetings, such as candidate forums?

Yes. County councils have a special limited meeting provision that allows an unlimited number of councilmembers to be the guests of a board or community group holding its own meeting, such as for candidate forums or neighborhood board meetings. To qualify for this “guest meeting,” the council must follow the requirements to hold a limited meeting, as described above. But unlike the regular limited meetings described above, the guest meeting must be open to the public. The council need not file an agenda. However, if the host organization itself is a board which must follow the Sunshine Law requirements, then that board must file an agenda. The council can have no more than one guest meeting per month for any one board or community group, and no guest meetings can be held outside of Hawaii.

See the appendices to this Guide for a checklist to use when requesting the OIP Director’s concurrence for a council to attend a meeting as guests of another board or community group meeting or to request a waiver of the videotaping requirement.

5

PROCEDURAL REQUIREMENTS

NOTICE AND AGENDA

What are the Sunshine Law's requirements for giving notice of meetings?

With the exception of emergency meetings, **a board must give at least six calendar days' advance notice** of any regular, special, or rescheduled meeting or any anticipated executive meeting. Meetings held by interactive conference technology (section 92-3.5, HRS), and limited meetings (section 92-3.1, HRS) are subject to the following provisions on notice as well as other conditions set forth in the applicable sections of the Sunshine Law. Emergency meetings (section 92-8, HRS) must also be noticed, but notice may be filed within a shorter time period than the normal six days, and there are additional conditions.

Sunshine Law meeting notices must be posted on State and county electronic calendars as the official notice of the meeting.

If there is a dispute as to whether an agenda was electronically filed at least six calendar days prior to the meeting, a printout of the electronic time-stamped agenda is conclusive evidence of the posting date.

A board must also file the notice with the Lt. Governor's office or the county clerk's office, and retain proof of filing it there. The electronic calendar, however, will provide the official notice required by the Sunshine Law. Therefore, the failure to file timely copies of notices with the Lt. Governor's office or county clerks does not require cancellation of the meeting. Moreover, the Lt. Governor or county clerks have the discretion to determine whether they want paper documents to be provided to them, or if electronic copies can be faxed to them or emailed to an email address designated by them.

The notice must also be posted at the meeting site, whenever feasible. Newspaper publication is not required for Sunshine Law meeting notices.

In addition to the date, time, and place of the meeting, the meeting notice must **include an agenda**, which lists all of the items to be considered at the forthcoming meeting. (The “guest meeting” form of limited meeting, discussed above, is an exception to this requirement.) The agenda requirements are discussed later herein.

If an executive meeting is anticipated, the notice must also state the **purpose of the executive meeting**. The Sunshine Law also requires all meeting notices to include the **board’s electronic and postal contact information for submission of testimony** before the meeting, and provide instructions on **how to request an auxiliary aid or service or an accommodation due to a disability**, which may include a reasonable deadline. Sample language is provided on page 44 of this Guide.

Does a board have to notify individual members of the public of every meeting?

The Sunshine Law requires the board to maintain a list of names and addresses of those persons who have requested notification of meetings and to mail or email a copy of the notice to those persons at the time that the notice is filed. A meeting must be cancelled if the board fails to send notice at least six days in advance of the meeting via postal mail (as determined by postmark date) or email to people on its notification list.

What happens if a board files its notice less than six days before the date of the meeting?

The State electronic calendar will not allow a board to file a regular meeting notice with less than six days’ notice, unless authorization is received after contacting Tyler Tech (not OIP) at hawaiicalendar@ehawaii.gov from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays). Unless the short notice is specifically allowed (such as for an emergency meeting), if a board files its notice less than six calendar days before the meeting, the meeting is cancelled as a matter of law and no meeting can be held. The board chair or the director of the department within which the board is established must ensure that a notice is posted at the meeting site to inform the public of the cancellation of the meeting.

Note that notices for emergency meetings may be posted on the State calendar with less than six days’ notice, but only after special permission is obtained from the calendar’s administrator (not OIP).

What happens if there is a joint meeting of two boards that are both subject to the Sunshine Law?

If there is a joint meeting with two or more boards, then each board is responsible for meeting the Sunshine Law's requirements, but they can coordinate to avoid duplicative actions. All boards must ensure that notices are timely mailed or emailed to persons on their own notification lists; but if a person is on more than one mailing list, then only one of the boards must send the notice to that person. If one board meets all Sunshine Law requirements, but the other board in a joint meeting fails to do so, then the first board can proceed with the meeting without the second board. The second board must cancel its meeting and cannot have a quorum or more of its members in attendance at what would have been a joint meeting with the first board.

Do you have any practice tips for boards to help them comply with the notice requirements?

- Be careful to keep accurate records of postal and email addresses of persons on the notification list, and any changes to those addresses, so that notices will be timely and properly sent to them, as the board's errors in an address that made a notice non-deliverable could potentially require the cancellation of a meeting.
- Reduce opportunities for clerical errors by board employees, particularly with email addresses. If possible, have requesters directly enter their own email or mailing addresses online to be added to the board's notification list, and keep a record of the addresses entered by the requesters so that any mistakes will be attributed to the correct source. Consider emailing an acknowledgement after requesters register for email notification, to ensure that the correct email address has been entered onto the board's email notification list.
- If mail is not deliverable, check the address to make sure that it was sent to the correct postal or email address. Keep a record of postal and email addresses that are returned as undeliverable and dates that they were sent to provide proof that the notification was timely sent to the address provided by the requester.
- Consider filing agendas well before the six-day requirement, so that any potential errors in postal or email addresses can be corrected and timely notices can be sent to people on the notification list.

- Use technology to automate the notification process, reduce duplicative requests to the boards themselves, and eliminate potential clerical errors by the board in entering email addresses. Check to see whether the State or county electronic calendars will automatically notify those persons who subscribe to certain meeting notices.
- Keep a time-stamped copy of the agenda to provide conclusive evidence of the date when the notice was filed. The State electronic calendar shows the date and time that a meeting notice was posted or last updated. If a county calendar does not have this feature, then the board could print out and time-stamp a copy of the electronically filed meeting notice to keep in its files as evidence of the date that the meeting notice was posted.

What must the agenda contain?

The agenda must list all of the business to be considered by the board at the meeting. It must be sufficiently detailed so as to provide the public with adequate notice of the matters that the board will consider so that the public can choose whether to participate.

For anticipated executive meetings, as noted above, the agenda must be as descriptive as possible without compromising the purpose of closing the meeting to the public and must identify the statutory basis that allows the board to convene an executive meeting regarding the particular matter.

To meet the Sunshine Law's requirement to include instructions on how to request an auxiliary aid or accommodation, the Disability and Communication Access Board recommends that boards include the following language on its agendas: "If you need an auxiliary aid/service or other accommodation due to a disability, contact [Name] at [phone number and email address] as soon as possible, preferably by [reply date]. If a response is received after [reply date], we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled. Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy."

For a more detailed discussion, please see OIP's "Agenda Guidance for Sunshine Law Boards," which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov).

Are general descriptions such as “Unfinished Business” or “Old Business” allowed?

No. The practice of listing general descriptions on agendas such as “Unfinished Business” or “Old Business” without any further description is insufficient and does not satisfy the agenda requirements.

Can a board amend its meeting agenda once it has been filed?

Adding an item to the agenda is **not** permitted if (1) the item to be added is **of reasonably major importance** and (2) action on the item by the board **will affect a significant number of persons**. Determination of whether a specific matter may be added to an agenda must be done on a case-by-case basis.

If the requirements above are met, boards may amend an agenda during a meeting to add items for consideration, but only after the affirmative vote of two-thirds of **all** board members to which the board is entitled, which **includes members not present at the meeting and vacant membership positions**. For example, if a board is entitled to 9 members, but only 5 are appointed and present, then it does not have the 6 votes needed to meet the 2/3 requirement to amend an agenda during the meeting.

Note that the voting requirement for amending an agenda **is not the same** as, and is typically harder to obtain than, the vote of two-thirds of members present and a majority of the total membership that is needed to go into an executive meeting.

MINUTES

Is a board required to keep minutes of its meetings?

Yes. Boards must either keep written minutes, or recorded minutes with a written summary. If a board chooses to keep written minutes, those minutes must include:

- The date, time, and place of the meeting;
- The members recorded as either present or absent;
- The substance of all matters proposed, discussed, or decided;
- A record by individual member of votes taken;

- If a recording of the meeting is available online, a link to the recording placed at the beginning of the minutes; and
- Any information that a board member specifically asks at the meeting to have included.

Boards are not required to create a transcript of or (except for remote meetings) to electronically record a meeting. But a board may choose to keep a recording of the entire meeting with a **written summary** instead of doing **written minutes**. If a board chooses to keep **recorded minutes with a written summary**, those minutes must include an audio or audiovisual recording of the meeting accompanied by a written summary, which must include:

- The date, time, and place of the meeting;
- The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- A record, by individual members, of motions and votes made by the board; and
- A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

The written summary requirements will allow the public to quickly find key information about a meeting and skip to the point in the recording where an item of interest was discussed, without having to listen to the entire recording which may be hours long. Although a board does have the choice to record its minutes in either digital (e.g., audio or video computer file) or analog (e.g., a magnetic tape recording) format, OIP recommends that boards record in a digital format to avoid having to convert an analog recording into digital format to be able to place the recording online.

The option to create recorded minutes does not impose any general requirement to record meetings for boards that prefer using written minutes. Moreover, if a board is recording a meeting solely to help it prepare written minutes and plans to delete or record over the recording once those minutes are prepared, the temporary recording need not be posted online and typically need not be retained once the board no longer needs it.

However, **for one specific type of meeting — a remote meeting held using ICT — boards are required to record the meeting**

“when practicable.” The remote meeting recording provision recognizes that it is usually easy to record an online meeting, but still allows boards to skip doing so in those unusual circumstances where recording an online meeting presents a more significant challenge. **A board must make the recording of a remote meeting electronically available to the public as soon as practicable after the meeting** and until the board’s actual minutes (whether written or recorded) are posted on the board’s website. **Even after minutes are posted, the law explicitly encourages a board to keep the recording online, and requires that a copy of the recording be sent to the State Archives before removing it from a board’s website.**

For a more detailed discussion of what must be included in minutes, please see OIP’s “Quick Review: Sunshine Law Requirements for Public Meeting Minutes,” which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

Must the minutes of a board’s meeting be posted online?

Yes. The Sunshine Law requires all boards to post their written or recorded minutes online within 40 days after the meeting. If the board chooses to post a recording of its meeting, it still needs to also post a written summary within 40 days after its meeting, because the written summary is part of the recorded minutes.

A board that is preparing written minutes for an in-person meeting does not need to post a recording, even if it has one – for instance, temporary recordings intended to be used for note-taking to prepare written minutes do not need to be posted online, since the written minutes will be posted online instead. However, if a board is preparing written minutes for a meeting for which a recording is available online, a link to that recording must be included at the beginning of the written minutes. Additionally, for a remote meeting held via ICT, a board is required to record the meeting “when practicable” and make that recording available to the public until its actual minutes are posted online, at which point it is encouraged to keep the recording online but permitted to take it down so long as it first sends a copy to the State Archives.

Must draft minutes be posted online within 40 days after a meeting, even if they have not yet been approved by the board?

Yes. The Sunshine Law does not require boards to approve minutes. If a board does approve its minutes as a usual practice but has not had the opportunity to approve minutes for a meeting, minutes that satisfy the Sunshine Law's requirements must nevertheless be posted online within 40 days after the meeting, because there is no exception to the posting requirement when a board has not approved its minutes. The board can post its draft minutes online, marked as a "draft," and replace them with the board-approved minutes when those are ready, so long as it has minutes that satisfy the Sunshine Law's requirements posted within the required 40 days.

If the board does not have its own website, where must its minutes be posted?

A board that has its own website will most likely prefer to post its minutes there, but a board that does not have its own website may post its minutes on an appropriate State or county website instead, such as the website for the department to which the board is administratively attached.

To provide enough time for an IT office or website administrator to post minutes online after they have been prepared by the board, the deadline for posting is 40 days after a meeting.

Must executive meeting minutes be posted online?

No. Minutes of an executive meeting closed to the public need not be posted online if the disclosure would defeat the purpose of going into executive meeting.

Keep in mind, however, that the Sunshine Law is different from the UIPA. The Sunshine Law permits boards to delay publication of executive meeting minutes for so long as publication would defeat the lawful purpose of the executive meeting. At some point in the future, the minutes may have to be disclosed in response to a UIPA request, when disclosure would no longer compromise the purpose for going into the executive meeting. For example, minutes of an executive meeting to discuss a property's acquisition should be disclosed after the property has been acquired. Thus, boards must review the minutes to determine if the need for confidentiality has passed, and may be required to

disclose all or part of the executive meeting minutes in response to a UIPA request for the minutes.

RECORDINGS BY THE PUBLIC

Must a board allow a member of the public to record the meeting?

The board must allow the public to record any portion or all of an open meeting, as long as the recording does not actively interfere with the meeting.

6

COURT REMEDIES

Can a member of the public file a lawsuit for an alleged Sunshine Law violation?

Yes. Within two years of the alleged violation, any person can bring a lawsuit against a board to require compliance with the Sunshine Law, or prevent future violations. A person can also file a lawsuit to void a board's action in violation of the open meetings and the notice provisions of the Sunshine Law, within 90 days of the allegedly improper board action. An OIP determination of wrongdoing is not necessary for a lawsuit to be filed. If a person appeals to OIP first and OIP determines that the board did not violate the Sunshine Law, the person can still appeal OIP's decision by filing a lawsuit against the board, which will be heard *de novo*.

A lawsuit for enforcement should be filed in the circuit court of the circuit in which the prohibited act occurred, and the person bringing it must notify OIP of the suit in writing. Under certain circumstances, the judge may grant an injunction, but the filing of a lawsuit challenging a board's action does not stay enforcement of the action. Attorneys' fees and costs may be awarded to the prevailing party.

What is the penalty for an intentional violation of the statute?

A willful violation of the Sunshine Law is a misdemeanor and, upon conviction, may result in the person being removed from the board. The Attorney General and the county prosecutor have the power to enforce any violations of the statute.

Can a board appeal an OIP decision regarding the Sunshine Law?

Yes. OIP issues decisions in response to complaints that a board violated the Sunshine Law, and also on the question of whether a particular body is a board subject to the Sunshine Law. A board may appeal an OIP decision to the courts in accordance with section 92F-43, HRS. For more information, see OIP's Guide to Appeals to the Office of Information

Practices, available on the Training page at OIP's website at oip.hawaii.gov.

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OFFICE OF INFORMATION PRACTICES

If I have additional questions about the Sunshine Law, where can I go?

For general information on the Sunshine Law, please visit OIP's website at oip.hawaii.gov, call OIP at (808) 586-1400, or email oiip@hawaii.gov. The full text of the Sunshine Law, as well as OIP's opinions relating to various open meeting issues, are posted on the website.

Office of Information Practices
(September 2022)

Sunshine Law:
PUBLIC MEETING NOTICE CHECKLIST

1. Notice Includes:

- Date:** In addition to the date itself, if the notice also specifies the day of the week, make sure it matches the date.
- Time:** While the starting time must be provided, an ending time is not required.
- Location: All notices must list at least one physical location** for the meeting. For an in-person meeting, the notice must list all locations where board members will be physically present and must state that the public can attend the meeting at any of those locations.
- For a **remote meeting using interactive conference technology (ICT)**, the link(s) allowing the public to contemporaneously view and hear the meeting and provide remote oral testimony.
- If **additional locations** (formerly known as “courtesy” locations) are being provided for the public’s convenience, specify whether the meeting will continue without the additional location if the ICT connection between the additional location and the public meeting site(s) is lost, or will be automatically recessed to restore communication.
- Board’s **electronic and postal contact information** for submission of testimony before the meeting.
- Instructions** on how to request an auxiliary aid or service or an accommodation due to a **disability**. The Sunshine Law allows these instructions to include a reasonable response deadline; however, the requirements of other laws may differ on this point and current guidance from the State Disability and Communication Access Board (DCAB) advises against setting a firm response deadline. As explained in section 7 below, OIP does not have the authority to advise on reasonable accommodations and such questions should be directed to DCAB or a board’s own attorney.

- Agenda** describing with reasonable specificity all matters to be considered.
- If an **executive meeting** is anticipated, the agenda describes the purpose and statutory authority in section 92-5(a), HRS, or other laws applicable to your board that allow the executive meeting. Use as much detail as possible without compromising the executive meeting's purpose.
- Optional: For a meeting **using ICT**, information about what will happen in the event of a connection failure, such as where to find **reconnection information and any necessary visual aids** online or an alternative date, time, and place for **continuation** of the meeting if the ICT connection cannot be restored.

2. Filing Notice:

- 6 calendar days prior to meeting:

Electronically post on:

- State Calendar: <http://calendar.ehawaii.gov/calendar/html/event> (State only)
- County Calendar (counties only)
- Board's website (unlike the above, this is not a legal requirement)

Physically post for public inspection in:

- Board's Office
- Site of meeting (when feasible or if meeting is canceled)

File (and keep proof of filing) with:

- Lieutenant Governor's Office (State)
- County Clerk (counties)

Mail or email to persons who requested notification of meetings (MUST be postmarked/emailed no later than 6 calendar days before the meeting):

- Postal mailing list
- Email list

3. Meeting Canceled for Late Filing of Notice:

It is suggested but not required that the board post a notice canceling the meeting at:

- Meeting site
- State Calendar: <http://calendar.ehawaii.gov/calendar/html/event> (State only)

- County Calendar (counties only)
- Anywhere else notice was previously posted, mailed, or filed such as county or board website (not a legal requirement)

4. Special Instructions for Emergency Meetings

(held less than 6 calendar days prior to meeting):

- Board must first decide to hold emergency meeting by vote of two-thirds of members to which board is entitled (include authorized but vacant positions)
 - Must meet criteria in section 92-8, HRS, either:
 - when “imminent peril to the public health, safety, or welfare,” or
 - because of an “unanticipated event” and board must take action.
 - For an unanticipated event, the Attorney General must concur (even for county boards).
- File board’s findings justifying emergency meeting with emergency agenda as set forth in section 2 above (but without the 6-day notice requirement).

5. Special Instructions for Limited Meetings

- Limited meetings not open to the public may be held when a board determines it necessary to inspect a location that is dangerous or that is impracticable for public attendance.
 - Must obtain concurrence from OIP’s Director.
See OIP’s Request for the Office of Information Practices’ Concurrence for a Limited Meeting form at www.oip.hawaii.gov/forms/.
 - For county councils only: *See OIP’s Checklist and County Council’s Request to Waive Videotaping of a Meeting as Guests of a Board or Community Group form at www.oip.hawaii.gov/forms/.*
 - Notice must be filed 6 days before limited meeting.
- File board’s limited meeting agenda as set forth in section 2 above.

6. Special Instructions for In-Person Meetings Involving Board Members with a Disability

- Notwithstanding the general requirements for multi-site in-person meetings in section 1 above, a “board member with a disability that limits or impairs the member’s ability to physically attend the meeting” may attend an in-person meeting via a connection by **audio and video** means from a private location (*e.g.*, home or hospital room). The specific address of the private location need not be listed on the notice, but a board member with a disability attending from a private location must generally identify the location (*e.g.*, home; hospital) and all persons present with the member.
- See OIP’s *Quick Review: Sunshine Law Requirements for In-Person Meetings held at Multiple Sites* on OIP’s [Training Page at oip.hawaii.gov](#).

7. Other Considerations

There are matters outside of OIP’s jurisdiction that you may wish to consider when preparing a meeting notice, such as:

- Although the Sunshine Law requires a notice to include instructions for requesting a reasonable accommodation for disabled persons (for example, provision of sign language interpreters for individuals who are deaf or hard of hearing), OIP does not have authority to advise as to what constitutes a reasonable accommodation. If you have questions about what accommodations or auxiliary aids must be provided in response to a request, you may wish to contact your board’s attorney or DCAB: website <https://health.hawaii.gov/dcab/>, telephone (808) 586-8121 (Voice or TTY), or email dcab@doh.hawaii.gov for assistance.
- Applicable statutes or administrative rules related to your board.
- For county boards, your County’s applicable charter, ordinances, or other provisions.
- Your board’s own procedural rules or policies; or instructions for the public regarding, among other things, your board’s preferred method for submission of written testimony and opportunity to provide oral testimony at the meeting (but note that the Sunshine Law does not allow all testimony to be taken at the beginning of a meeting and does not authorize setting a deadline for

submission of testimony or requiring people to register for oral testimony: a board can **request, but not require**, pre-registration or submission by a specified date).

- Whether the public can find and get into the meeting site. For example, is the meeting site large enough that someone might have trouble finding the right room? Are there improper barriers to public access such as a security checkpoint requiring attendees to show identification?

BOARD:

ADDRESS:

WEBSITE:

E-MAIL:

TELEPHONE:

FAX:

NOTICE OF CONTINUANCE OF MEETING

ORIGINALLY CONVENED ON _____, 20__, AT _____ .M.

See attached agenda for original meeting

TO BE CONTINUED TO:

DATE: _____

TIME: _____ .M.

PLACE: _____

___ Public testimony will be allowed in the manner described and on the items shown on the attached agenda as being continued.

___ Public testimony has concluded and no further testimony will be allowed on the items described in the attached agenda. The board will discuss, deliberate, decide, and/or act upon the items described in the attached agenda.

This notice has been physically posted at the following location(s):

___ Board Office

___ Meeting Site

(Optional) This notice has been electronically posted at _____

(This notice is not subject to the filing requirements of HRS Sec. 92-7.)

OIP Form 1/2014

Chapter 92, Hawaii Revised Statutes
PUBLIC AGENCY MEETINGS AND RECORDS

The following is an unofficial copy of Part I of chapter 92, Hawaii Revised Statutes, which is current through the 2024 legislative session, including new provisions enacted by Acts 011, 012, 013, 160 and 166, SLH 2024.

PART I. MEETINGS

Section

- 92-1 Declaration of Policy and Intent**
- 92-1.5 Administration of This Part**
- 92-2 Definitions**
- 92-2.5 Permitted Interactions of Members**
- 92-3 Open Meetings**
- 92-3.1 Limited Meetings**
- 92-3.5 Meeting by Interactive Conference Technology;
Notice; Quorum**
- 92-3.7 Remote meeting by Interactive Conference
Technology; Notice; Quorum.**
- 92-4 Executive Meetings**
- 92-5 Exceptions**
- 92-6 Judicial Branch, Quasi-Judicial Boards and Investigatory
Functions; Applicability**
- 92-7 Notice**
- 92-7.5 Board Packet; Filing; Public Inspection; Notice**
- 92-8 Emergency Meetings**
- 92-9 Minutes**
- 92-10 Legislative Branch; Applicability**
- 92-11 Voidability**
- 92-12 Enforcements**
- 92-13 Penalties**

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
 - (2) The provisions requiring open meetings shall be liberally construed;
- and

- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

§92-1.5 Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

§92-2 Definitions. As used in this part:

“Board” means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

"Board business" means specific matters over which a board has supervision, control, jurisdiction, or advisory power, that are actually pending before the board, or that can be reasonably anticipated to arise before the board in the foreseeable future.

"Informal gathering" means a social or informal assemblage of two or more board members at which matters relating to board business are not discussed.

“Interactive conference technology” means any form of audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

“Meeting” means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1; am L 2021, c 220, §3; am L 2022, c 264, §2]

§92-2.5 Permitted interactions of members.

- (a) Two members of a board may discuss between themselves matters relating to board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.
- (b) Two or more members of a board, but less than the number of members that would constitute a quorum for the board, may be assigned to:
 - (1) Investigate a matter relating to board business; provided that:
 - (A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;
 - (B) All resulting findings and recommendations are presented to

- the board at a meeting of the board; and
- (C) Deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held no less than six business days after the meeting at which the findings and recommendations of the investigation were presented to the board; or
- (2) Present, discuss, or negotiate any position that the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board before the presentation, discussion, or negotiation.
- (c) Discussions between two or more members of a board, but less than the number of members that would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.
- (d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:
- (1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;
- (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
- (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:
- (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
- (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.
- (e) Two or more members of a board, but less than the number of members that would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to board business at the informational meeting or presentation.

- (f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.
- (g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.
- (h) Where notice of the deadline to submit testimony to the legislature is less than the notice requirements in this section, a board may circulate for approval a statement regarding a position previously adopted by the board; provided that the position previously adopted by the board, the statement to be submitted as testimony, and communications among board members about the statement, including drafts, shall be in writing and accessible to the public, within forty-eight hours of the statement's circulation to the board, on the board's website, or, if the board does not have a website, on an appropriate state or county website.
- (i) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1; am L 2022, c 264, §3; am L 2024, c 13, §2]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the state constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item; provided that the oral testimonies of interested persons shall not be limited to the beginning of a board's agenda or meeting. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of § 1; am L 1985, c 278, §1; am L 2022, c 264, §4]

§92-3.1 Limited meetings.

- (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
 - (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
 - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

- (3) Notice of the limited meeting is provided in accordance with section 92-7.
- (b) A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:
 - (1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;
 - (2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;
 - (3) No more than one limited meeting per month shall be held by a county council for any one board or community group;
 - (4) No limited meetings shall be held outside the State; and
 - (5) Limited meetings shall not be used to circumvent the purpose of part I, chapter 92.
- (c) At all limited meetings, the board shall:
 - (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
 - (2) Make the videotape available at the next regular meeting; and
 - (3) Make no decisions at the meeting.
- (d) Each county council shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the effectiveness and application of limited meeting procedures provided in subsection (b), including any recommendations or proposed legislation. [L 1995, c 212, §1; am L 2008, c20, §1; am L 2014, c 221, §2; am L 2016, c 56, §1, 2]

§92-3.5 In-person meeting at multiple sites by interactive conference technology; notice; quorum.

- (a) A board may hold an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the

meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

- (b) Any board member participating in a meeting by interactive conference technology under this section shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.
- (c) A meeting held by interactive conference technology under this section shall be automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive technology is being held, even if a quorum of the board is physically present in one location. The meeting may reconvene when either audio or audiovisual communication is restored. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.
- (d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2; am L 2021, c 220, §4]

§92-3.7 Remote meeting by interactive conference technology; notice; quorum.

- (a) A board may hold a remote meeting by interactive conference technology; provided that the interactive conference technology used by the board allows audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided under this section; provided further that there is at least one meeting location that is open to the public and has an audiovisual connection. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at nonpublic locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall state the name of any person eighteen years of age or older who is present at the nonpublic location with the member; provided further that the name of a person under the age of eighteen years shall be stated if the person has a personal business, property, or financial interest on any issue before the board at the

meeting. The notice required by section 92-7 shall:

- (1) List at least one meeting location that is open to the public that shall have an audiovisual connection; and
- (2) Inform members of the public how to contemporaneously:
 - (A) Remotely view the video and audio of the meeting through internet streaming or other means; and
 - (B) Provide remote oral testimony in a manner that allows:
 - (i) Board members and other meeting participants to hear the testimony; and
 - (ii) The testifier to be visible to board members and other meeting participants upon request by the testifier.

The board may provide additional locations open for public participation. The notice required by section 92-7 shall list any additional locations open for public participation and specify, in the event an additional location loses its audiovisual connection to the remote meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

- (b) For a remote meeting held by interactive conference technology pursuant to this section:
 - (1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;
 - (2) Except as provided in subsections (c) and (d), a quorum of board members participating in the meeting shall be visible and audible to other members and the public during the meeting; provided that no other meeting participants shall be required to be visible during the meeting;
 - (3) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board;
 - (4) At the start of the meeting the presiding officer shall announce the names of the participating members;
 - (5) All votes shall be conducted by roll call unless unanimous; and
 - (6) Boards shall record meetings open to the public, when practicable, and make the recording of any meeting electronically available to the public as soon as practicable after a meeting and until a time as the minutes required by section 92-9 are electronically posted on the board's website. Boards are encouraged to keep recordings available on their website.
- (c) A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). This subsection shall not apply based on the inability of a member of the public to maintain an audiovisual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audiovisual

link to the meeting. The meeting may reconvene when either audiovisual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audiovisual communication, but only if the board has provided reasonable notice to the public as to how to access the reconvened meeting after an interruption to communication. If audio-only communication is established, then each speaker shall be required to state their name before making their remarks. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

- (d) During executive meetings from which the public has been excluded, board members shall be audible to other authorized participants but shall not be required to be visible. To preserve the executive nature of any portion of a meeting closed to the public, the presiding officer shall publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection. The person organizing the interactive conference technology shall confirm that no unauthorized person has access to the executive meeting as indicated on the control panels of the interactive conference technology being used for the meeting, if applicable.
- (e) Nothing in this section shall prohibit a board from removing or blocking any person who wilfully disrupts or compromises the conduct of a meeting. [L 2021, c 220, §2; am L 2022, c 177, § 2; am L 2023, c 125, § 1; am L 2024, c 012, §2]

§92-4 Executive meetings.

- (a) A board may hold an executive meeting that is closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting.
- (b) Any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held; provided that in describing the discussion or final action taken by the board:
 - (1) The information reported shall not be inconsistent with the purpose for which the executive meeting was convened pursuant to section 92-5, including matters affecting the privacy of individuals; and

- (2) The board may maintain confidentiality for the information described in paragraph (1) for as long as disclosure would defeat the purpose of convening the executive meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2; am L 2023, c 019, § 1]

§92-5 Exceptions.

- (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:
 - (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
 - (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
 - (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
 - (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
 - (5) To investigate proceedings regarding criminal misconduct;
 - (6) To consider sensitive matters related to public safety or security;
 - (7) To consider matters relating to the solicitation and acceptance of private donations; and
 - (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.
- (b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No informal gathering, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1; am L 2022, c 264, §5]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.

- (a) This part shall not apply:
 - (1) To the judicial branch.
 - (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards

exercising adjudicatory functions include, but are not limited to, the following:

- (A) Hawaii labor relations board, chapters 89 and 377;
 - (B) Labor and industrial relations appeals board, chapter 371;
 - (C) Hawaii paroling authority, chapter 353;
 - (D) Civil service commission, chapter 26;
 - (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
 - (F) Crime victim compensation commission, chapter 351; and
 - (G) State ethics commission, chapter 84.
- (b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11; am L 1998, c 240, §6]

§92-7 Notice.

- (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board's electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.
- (b) No less than six calendar days before the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall ensure access to paper or electronic copies of all meeting notices; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.
- (c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall

ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.

- (d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.
- (e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2; am L 2012, c 177, §2; am L 2014, c 68, §1; am L 2017, c 64, §2; am L 2018, c 63, §1; am L 2019, c 244, §2; am L 2021, c 220, §5; am L 2024, c 166, §1]

§92-7.5 Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, but no later than two business days before the meeting, the board shall also make the board packet available for public inspection in the board's office; provided that nothing in this section shall require creation of a board packet; provided further that nothing in this section shall prohibit the distribution of public testimony to board members before the meeting. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that includes a list of the documents that were compiled by the board and distributed to board members before a meeting for use at that meeting and that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet and shall post the board packet on its website.

For purposes of this section:

"Board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section.

"Business day" shall have the same meaning as in section 11-1. [L 2017, c 64, §1; am L 2022, c 264, §6; am L 2024, c 011, §2]

§92-8 Emergency meetings.

- (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
 - (1) The board states in writing the reasons for its findings;
 - (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
 - (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.
- (b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, with less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:
 - (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
 - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
 - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and
 - (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- (c) For purposes of this part, an "unanticipated event" means:
 - (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
 - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
 - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64 §3; am L 2019, c 244 §3]

§92-9 Minutes.

- (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Before the removal of a recording that was maintained on a board's website pursuant to section 92-3.7(b)(6), the board shall provide the state archives with a copy of the recording. Written minutes shall include at a minimum:
- (1) The date, time, and place of the meeting;
 - (2) The members of the board recorded as either present or absent;
 - (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken;
 - (4) If an electronic audio or video recording of the meeting is available online, a link to the electronic audio or video recording of the meeting, to be placed at the beginning of the minutes; and
 - (5) Any other information that any member of the board requests be included or reflected in the minutes.
- (b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:
- (1) The date, time, and place of the meeting;
 - (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
 - (3) A record, by individual member, of motions and votes made by the board; and
 - (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.
- (c) All or any part of a meeting, of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1; am L 2017, c 64, §4; am L 2023, c 125, § 2]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

§92-12 Enforcement.

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.
- (c) Any person may commence a suit against a board or alleged board in the circuit court of the circuit in which a prohibited act occurs for the purpose of:
 - (1) Requiring compliance with or preventing violations of this part;
 - (2) Determining the applicability of this part to discussions or decisions of the public body; or
 - (3) Challenging an opinion or ruling of the office of information practices concerning a complaint by that person.

The person may bring the action within two years of a prohibited act; provided that a decision to appeal to the office of information practices for review shall not prejudice the person's right to appeal to the circuit court after a decision is made by the office of information practices. If the person prevails, the court may order payment of reasonable attorney's fees and costs by the board in a suit brought under this section.

- (d) In an action under this section, the circuit court shall hear the matter de novo. Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous; provided that in an action under this section challenging an opinion or ruling of the office of information practices concerning a complaint by the plaintiff, the circuit court shall hear the challenged adverse determination de novo. Except as provided in section 92F-43, a board or alleged board shall not challenge an opinion or ruling of the office of information practices about the board or alleged board.
- (e) When filing a suit that is under, related to, or affected by this part, a person shall notify the office of information practices in writing at the time of the filing. The office of information practices may intervene in the action.
- (f) Except as to cases the circuit court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom, shall take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way when the suit seeks to void any final action pursuant to section 92-11.
- (g) The proceedings for review shall not stay the enforcement of any agency decisions; provided that the reviewing court may order a stay if the following criteria have been met:
 - (1) There is likelihood that the party bringing the action will prevail on the merits;
 - (2) Irreparable damage will result if a stay is not ordered;
 - (3) No irreparable damage to the public will result from the stay order;and

(4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5; am L 2012, c 176, §3; am L 2024, c 160, § 2]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

Quick Review: Sunshine Law Requirements for Remote Meetings

(Revised August 2024)

The Sunshine Law allows boards to hold remote meetings where board members and the public participate from various non-public locations as well as at least one physical meeting site, all connected via a remote meeting platform such as Zoom, WebEx or other interactive conference technology (ICT), subject to requirements listed in section 92-3.7, Hawaii Revised Statutes (HRS). This Quick Review discusses the requirements for holding a remote meeting.

Note that OIP has created a separate Quick Review for In-Person Meetings Held at Multiple Sites, which generally require board member attendance in person and are not considered to be “remote” meetings even if the various sites are connected using ICT.

Access to the Remote Meeting

Whatever remote meeting platform or ICT is used for a meeting must generally allow audio-visual interaction between board members and the public. Board members and the public can attend and participate from anywhere via an online connection to the meeting platform, or in some cases by a phone connection to the meeting platform. Even though a board must still provide a physical public location connected to the meeting as further discussed below, there is no requirement for either board members or members of the public to go to the public location to participate in the meeting. Similarly, there is no requirement for board members to allow the public to join them at their homes, offices, or other private locations where they are physically located while participating in the remote meeting.

The notice for a remote meeting must inform the public how to remotely participate in the meeting, including how to view and testify at the meeting. This will typically take the form of a link to the scheduled remote meeting on whatever platform is being used, but the law does allow the board to provide separate connections for the public to view the meeting and to provide oral testimony. For instance, a board might choose to have board members, staff, and testifiers access the meeting via a WebEx link, while general public access to view the meeting is via a live one-way YouTube stream. Regardless of how the board provides public access to view and testify, the connection(s) must be contemporaneous with the meeting and allow members and the public to see and hear the public testimony.

Physical Location Open to Public

Even for a remote meeting, the meeting notice must list at least one physical meeting location that will be open to the public and connected via ICT to the remote meeting. However, unlike an in-person meeting, there is no requirement for board members to appear in-person at the physical meeting location to participate in the remote meeting; the physical location is simply a convenience for members and the public, allowing those without the ability or inclination to use their own connection to an online meeting the option to attend where the board has set up and will maintain the remote meeting connection. If the connection to the remote meeting fails at the requisite physical location, then the meeting will be recessed or terminated, as discussed below.

While the board is required to provide at least one physical location that is guaranteed to remain connected to the remote meeting, the board also has the option to provide one or more “additional” physical locations without a guarantee that those locations will remain connected to the remote meeting. To be considered an “additional” location, the notice must specify that in the event that location is disconnected from the remote meeting, the meeting will not be terminated or interrupted to restore connectivity.

Conducting the Meeting

At the beginning of a remote meeting, the chair must list the members present, and members attending from a private location must state who else is present with them (minors under 18 years old need not be named, unless they have a personal business, property, or financial interest on any issue before the board). A quorum of members must be visible throughout the public portion of the meeting, but so long as that requirement is met, additional members not needed to maintain the quorum visibility requirement can participate via audio only, such as by turning the camera off or calling in by phone. In this way, a member with a poor internet connection or other difficulties in maintaining a visual connection can still participate, so long as a quorum of members are visibly present throughout the remote meeting. All participating members must maintain an audio connection at all times.

Votes during a remote meeting must be done by roll call unless the vote is unanimous. In practice this means the chair can ask if there are any objections or abstentions and call the roll only when members object or abstain.

Dealing with a Lost Connection

When a remote meeting is interrupted by a dropped connection to one of its required components – for example, the whole meeting goes down due to a problem with the meeting platform or the host’s connection to it, the public location is cut off, the public livestream or testimony connection listed in the notice goes down, or the board cannot keep a quorum of members visible – the meeting cannot continue even if a quorum of board members remain connected to one another. (Note that an individual member of the public’s inability to stay connected does not require recessing the meeting, unless the problem is actually with the public meeting link itself.) The meeting must be recessed for up to 30 minutes to restore the connection, and it can reconvene once the connection is restored. If the full audiovisual connection cannot be restored but the board can manage at least an audio connection for all the required components of the remote meeting, the board can proceed with the meeting that way, with each speaker required to state his or her name and visual aids required to be made available to all participants (perhaps by posting on the board’s website). The board should advise the public how to join a reconvened meeting, preferably through its original notice, such as to keep trying the original link, to use a backup link given in the notice, or to look at the board’s website for a new link.

If the board is unable to restore even an audio connection after 30 minutes, the meeting must terminate unless the board has reasonably informed the public how a disconnected meeting would be continued at a later date and time (such as in the notice). With proper notice of continuation, the meeting can be considered in recess and continued at the specified date and time, rather than terminated. If the meeting must be terminated, the only way to finish the intended agenda is to notice a new meeting at least six days in advance.

Executive Meeting Requirements

Executive meetings (also called executive sessions) during remote meetings have slightly different requirements than those applicable to the public meetings. Members are not required to be visible during an executive session, just audible. However, all participants – board members, staff running the meeting, the board’s attorney, anyone properly present during the executive session – must confirm to the chair that no unauthorized person is with them or linked into the meeting, and the meeting host must also confirm that no unauthorized person is participating if able to do so.

Recording the Meeting

Online meeting platforms typically offer a straightforward option to record a meeting. Boards using such platforms are required to use that option and make the recorded meeting available for public viewers who may not have been able to watch the live meeting. Thus, a board must record a remote meeting, but only when doing so is practicable. In a situation where recording is not practicable, the board will not violate the law by its failure to do so. A board must also post the recording online until the meeting minutes are posted. The law encourages keeping the recording online even after that time, but does allow a board to remove it after first sending a copy to the State Archives.

A board may choose to use the recording, with the addition of a written summary, as its recorded minutes under section 92-9, HRS. Alternatively, if a board prefers to keep written minutes and wants to delete the recording despite the statutory encouragement to keep it online, a board can do so after its written minutes are posted online and it has sent a copy of the recording to the State Archives. If a recording is available online, a board must include a link to it at the beginning of its written minutes.

**QUICK REVIEW: CONTINUANCE OF A MEETING
UNDER THE SUNSHINE LAW
(August 2024)**

The state Office of Information Practices (OIP) has a ***Quick Review: Sunshine Law Meeting Notice Requirements*** on the Training Page of its website at oip.hawaii.gov/training/, which summarizes the Sunshine Law’s notice requirements for public meetings under section 92-7, HRS. While the Sunshine Law has various procedural requirements for new meeting notices, there are no statutory procedures to provide notice that a board has continued an unfinished meeting to a later date and time to allow the board to finish its agenda. This Quick Review fills the gap by providing guidance on how to reasonably provide notice that a meeting is being continued beyond its originally noticed date and time to allow the board to finish hearing public testimony, finish its consideration of agenda items, or for some other reason. It also provides updated guidance on how to continue online meetings that have lost their internet connectivity or experienced other technical difficulties.

Meeting continuances were extensively discussed by the Hawaii Supreme Court (Court) in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (2013). The Court recognized that section 92-7(d), HRS, requires items of reasonably major importance, which are not decided at a scheduled meeting, to “be considered only at a meeting continued to a reasonable day and time.” A board is not limited by this statute to only one continuance of a meeting and is not required to post a new agenda or accept oral testimony at a continued meeting, but the Court concluded that a board is “constrained at all times by the spirit and purpose of the Sunshine Law, as stated in HRS § 92-1.” Kanahele, 307 P.3d at 1194-95. Although the Sunshine Law contains no specific requirements for a written public notice or oral announcement for continued meetings, the Court stated that “the means chosen to notify the public of the continued meeting must be sufficient to ensure that meetings are conducted ‘as openly as possible’ and in a manner that ‘protect[s] the people’s right to know.’” Id. at 1198.

For a remote or multi-site meeting, the Sunshine Law requires that when an interruption to the meeting’s interactive conference technology (ICT) connection lasts for 30 minutes or longer, the meeting must be automatically terminated, unless reasonable notice has been provided to the public of how the meeting will be continued to another date and time.

Based on the Court’s guidance and examples in Kanahele, OIP has tips for continuing a meeting in this Quick Review. OIP also has a [“Notice of Continuance of Meeting” form](#) that boards can continue to use. Depending on the circumstances, boards can follow the most appropriate of the “Practice Tips” described below to ensure that notices of continuances are disseminated as widely as practicable to protect the public’s right to know. Please note that the term “notice” is used herein to describe the notice recommended to continue an ongoing meeting that had been originally posted as required under section 92-7, HRS. The Notice of Continuance is not subject to the same requirements of section 92-7, HRS, as the original meeting notice.

Practice Tips:

- When the meeting is being recessed for longer than 24 hours, a board should provide, if practicable, both **oral and written** (including electronic) notice of the date, time, and place of a continuance.
- Rather than post a new agenda for a continued meeting, a board should attach the agenda of the meeting being continued to a “Notice of Continuance of Meeting,” which can be found on OIP’s [Forms page at oip.hawaii.gov](https://oip.hawaii.gov/forms/). On the attached agenda, the board should type, hand write, or otherwise note the agenda item(s) being continued.
- A Notice of Continuance of Meeting, with the agenda from the continued meeting attached thereto, should be physically posted in the board’s office and at the meeting site, if practicable. Additionally, if possible and time permits, the Notice of Continuance and agenda should be electronically posted on the board’s website or the state or county electronic calendar, and emailed to persons on the board’s email list.
- OIP anticipates that continuances will normally be held within six days of the originally scheduled meeting, and thus recognizes that there may not be sufficient time to mail notices to interested persons on the board’s mailing list. Depending on the circumstances, mailed notices and/or a new agenda filed as required by section 92-7, HRS may be advisable if continuances are held more than six days after the originally scheduled meeting.
- If a board anticipates that a single meeting will be insufficient for consideration of an agenda item and expects extensive testimony or board deliberation, then it could include anticipated dates, times, and places of continuances on its original agenda filed pursuant to section 92-7, HRS. The filed agenda can make clear that the continuances **will only occur if necessary**, so as to not require the delay of board action if testimony or deliberations take less time than anticipated.
- In the case of controversial or complex matters, a board may choose to convene separate meetings with separate agendas on different aspects of the same proposal or case. Testimony can be limited to specific subject matters within a single proposal or case, which would enable the public to testify on the issues of concern to them and to listen to the board’s discussion, deliberations, and actions on those issues.
- If new issues develop during the deliberation process for continued agenda items, a board may consider permitting periodic oral testimony by the public on such issues. If the new issues **do not fall within the scope** of the items described in the agenda, then to discuss those issues the board **must file a new agenda and meeting notice** as required under section 92-7, HRS, and

identify the new issue as an agenda item. Only if the new issues are still within the scope of the items described in the original agenda does the board have the option to continue the original meeting, with sufficient notice of continuance, for further deliberation and/or additional testimony.

- Note that a continuance of a meeting is a reconvening of the same meeting previously noticed in an agenda, and thus, does not require a new agenda to be filed. But if new matters unrelated to the previously posted agenda items are to be discussed at a continuance, then it should be instead treated as a new meeting and a new agenda must be filed in accordance with section 92-7, HRS.

When the interactive conference technology (ICT) being used during a meeting has been interrupted the meeting is automatically terminated unless the board has provided reasonable notice to the public of how the meeting will be continued to another date and time. What follows are tips on how to provide reasonable notice of continuation of a meeting when the ICT has been interrupted.

- The board's original notice of the meeting may contain a contingency provision stating that if the board loses online connection, then people should check the board's website (give address) for reconnection information. Alternatively, the notice could provide that if the connection is lost for more than 30 minutes, the meeting will be continued to a specified date and time, with the new link for the continued meeting either on the agenda itself or to be provided on the board's website.
- At the start of the online meeting, the board could announce that if online connection is lost, information on reconvening or continuing the meeting will be posted on its website and give the website address.
- If the audio and video have gone down but there is still a chat function or similar means of communication available, the board should also post a visual notice of the continuation of a meeting through the chat function.
- If visual connection has been lost during a meeting using ICT, the board could audibly announce that the meeting will be continued and direct people to its website where the relevant information has been posted.
- If time permits, the board can email people on its email list with a Notice of Continuance of Meeting.

Quick Review: Who Board Members Can Talk To and When (Part 1) (Revised July 2018)

OIP often is asked whether board members can talk to the board's staff, members of the public, or one another in various situations when not in a meeting. To help board members understand what they can talk about outside a meeting, and with whom, OIP has put together a three-part Quick Review.

1. Topics that Are Not 'Board Business'

The Sunshine Law applies whenever board members are discussing board business, i.e., specific matters within the board's authority that are on a board's upcoming agenda or reasonably likely to appear on an agenda in the foreseeable future. When board members are discussing matters that are **not board business**, the **Sunshine Law does not apply** to restrict the discussion. Thus, board members could discuss with one another, or with anyone else:

- Matters **unrelated** to what the board does, such as the weather, sports teams, personal news, vacation plans, world events, or similar topics beyond the scope of the board's responsibilities;
- Matters related to what the board does, but that are **not being considered by the board** as a whole or a committee of the board at a meeting because they are ministerial (i.e., handled by staff) or within the Chair's sole purview, such as scheduling of meetings, including which items will appear on which meeting's agenda, members' travel arrangements, logistical arrangements for an award ceremony, or similar topics; or
- Matters that the board considered in the past but **does not expect to reconsider** in the foreseeable future because the **matter has concluded**, such as dedication of a completed baseball field that the board gave approval to at an earlier stage, or a report that the board was required to and did submit to a legislative body by a now-past date.

These sorts of matters can be discussed by board members in any number, and need not be discussed in a meeting, because they are **not board business** at the time they are being discussed and, thus, the discussion is not controlled by the Sunshine Law.

Board members may also attend lunches, social and ceremonial events, or board retreats, without violating the Sunshine Law, **so long as board business is not discussed, deliberated, or decided upon.**

2. Staff, Lobbyists, and the General Public

The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. Because the Sunshine Law does not apply to a board member's communications with people who are not members of the covered board, **a member may discuss board business with people who are not board members** outside of a meeting, without needing to fall into one of the permitted interactions. Board members, therefore, can freely talk or otherwise communicate with:

- Citizens concerned about a particular issue
- Reporters
- Lobbyists
- Board or agency staff
- Other government officials, and
- The general public.

It is possible that in some of those cases, the information from one board member will be transmitted to other board members. For instance, a lobbyist may be going from one county council member's office to the next to talk about a piece of board business and may carry information over, as in, "Councilmember A said she'd be willing to support us on this if the bill is amended to cover frogs as well. Could you support that?" However, this would not be considered a discussion directly between the council members. Similarly, a reporter might speak to multiple council members and say something like, "Member B told me that the Board expects to reconsider the motion next month. Can you confirm that?" Again, even though information was passed on, **because the actual communication was through a third party, it would not be considered a discussion between the board members.**

Note: If board members would like to discuss board business with individuals who are not board members, **members should be mindful not to improperly disclose information that was part of an executive meeting closed to the public**, and may wish to consult with the board's attorney in such situations.

Information and materials provided by members to the staff may be incorporated into the staff's own analysis or report on a board matter and may be distributed by staff to the board members in advance of a meeting. The staff's report should not identify individual board members' positions on an issue, but can recognize and discuss the various viewpoints in general and provide recommendations for actions.

Board members should also refrain from using staffers as mere go-betweens to carry messages between board members, as that could be found to be a discussion directly between board members, depending on the circumstances. Telling a staffer, "I have concerns about the direction we're taking on this issue and I'd like you to do some research on this aspect of it," is fine, even if the staffer tells other members, "Member C asked me to research this topic because of her concerns about the way the board is handling the issue." But telling a staffer, "Please go tell Members D and E that I have

concerns about the way we're handling this issue," would be inadvisable, as it could be construed as a serial communication with members D and E.

3. Other Board Members

As discussed above, the Sunshine Law applies whenever board members are discussing board business. **When board members communicate to one another about board business, they need to do so either in (1) a properly noticed meeting, or (2) in circumstances where the discussion is specifically permitted by one of the Sunshine Law's exceptions.** When board members are prohibited by the Sunshine Law from discussing or communicating about board business face to face, they also cannot do so by telephone, e-mail, letters or memoranda, social media such as Facebook and Twitter, or any other means of communication.

Before communicating with other board members outside a meeting, a board member should check whether one of the Sunshine Law's permitted interactions applies. **Permitted interactions are specific circumstances in which the law permits board members to discuss board business outside a meeting, so long as the statutory requirements are met.**

The most frequently used permitted interaction, section 92-2.5(a), HRS, allows **two board members to discuss any board business, without limitation, so long as they do not make or seek a commitment to vote and do not constitute a quorum of their board.** This limitation on making a commitment to vote does allow discussion of the two board members' views and inclinations on an issue, but prohibits, for example, horse-trading of votes such as, "If you'll agree to vote my way on this issue, I'll give you my vote on your pet project next month."

The two-person permitted interaction does not require any prior arrangement on the part of the two members using it; they can run into each other on the street, e-mail each other, or telephone each other, so long as only two members are part of the discussion. Other people who are not members of the board can be present, as their discussions with board members are not regulated by the Sunshine Law.

Permitted interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. Specifically, where two members have discussed an issue using the two-person permitted interaction, they cannot then extend the discussion out to other board members through **serial use** of the permitted interaction. If Member X called Member Y to talk about the feral cat issue on the upcoming agenda, Member Y cannot then stop in the hallway to talk to Member Z about it, as there would then be three members who were privy to the discussion. Both Member X and Member Y must refrain from discussing the feral cat issue with other members until after the board has next discussed it at a meeting, which essentially clears the slate as to members' previous discussions.

The other permitted interactions listed in section 92-2.5, HRS, generally require prior planning, or apply only in certain circumstances, or both. OIP will discuss them in the forthcoming Parts 2 and 3 of this Quick Review series.

Quick Review: Who Board Members Can Talk To and When (Part 2) (Revised August 2022)

Hawaii's Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), generally requires board members to discuss all board business in open meetings that have been properly noticed to allow for public participation. OIP often is asked whether board members can talk to one another in various situations when not in a meeting. To help board members understand when they can talk to each other outside a meeting, OIP put together a three-part Quick Review. This Quick Review is the second in the series. Part 1 concerned discussions of matters that are not board business, and Part 3 will follow and explain "permitted interaction groups" ("PIGs"). The entire series, along with other educational materials, is posted on the [training page](#) of OIP's website at oip.hawaii.gov.

What constitutes board business was discussed in Part I. There are, however, a number of exceptions and "permitted interactions" that allow board members to have discussions outside of a meeting, even on matters that constitute board business. A few of these exceptions and permitted interactions are described below.

Members should note that the **Sunshine Law expressly states that no permitted interaction shall be used to circumvent the spirit or requirements of the Sunshine Law** to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. For this reason, permitted interactions generally may not be mixed and matched or used serially, as doing so can result in a discussion of board business outside a meeting that does not fit within the limits of any one of the permitted interactions and thus is not authorized under the Sunshine Law.

1. Selection of Board Officers (HRS § 92-2.5(c))

The selection of the board's officers may be discussed between two or more board members, but less than a quorum, in private without limitation or subsequent reporting.

2. Members May Continue to Accept Testimony When a Multi-site Meeting Must be Cancelled or Terminated (HRS §§ 92-2.5(d) and 92-3.5(c))

The Sunshine Law defines a "meeting" at HRS § 92-2 as the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. When a meeting must be **cancelled for lack of quorum or terminated when quorum is lost** during the meeting, the board members present may

nevertheless receive testimony and presentations on agenda items and may question testifiers or presenters under HRS § 92-2.5(d).

Under HRS § 92-3.5(c), when a board is holding a **multi-site meeting by interactive conference technology (ICT) and an audio connection to all meeting locations is interrupted for more than 30 minutes, the meeting must be terminated**, even if a quorum of the board is physically present in one location. However, under HRS § 92-2.5(d), members present at one location may continue to receive testimony and presentations on agenda items and may question testifiers or presenters, but cannot discuss, deliberate, or decide such matters. **Note that the permitted interaction under HRS § 92-2.5(d) specifically applies to HRS § 92-3.5(c) regarding multi-site meetings, and not when remote meetings held by ICT under HRS § 92-3.7 lose their audio or video connection.** Also note that this permitted interaction does not address Sunshine Law requirements to **continue** a meeting, instead of terminating it, which are addressed in a different training document posted on OIP's website at oip.hawaii.gov/training, "[Quick Review: Continuance of a Meeting Under the Sunshine Law.](#)"

For both cancelled and terminated meetings, HRS § 92-2.5(d) requires that board members' discussion, deliberation and decision-making on agenda items for which testimony or presentations are received must occur only at a subsequent, properly noticed meeting held after the cancelled or terminated meeting at which the testimony and presentations were received.

And, members who received the testimony at a cancelled or terminated meeting are required to create a record of the oral testimony or presentations in the same manner as would be required for testimony or presentations heard during a meeting of the board. In other words, the members must keep notes of the receipt of testimony and presentations in the same manner that the board would keep minutes of testimony and presentations received at a meeting.

Before deliberation or decision-making at a subsequent meeting, the board must provide copies of the testimony and presentations received at the cancelled meeting to all members. The members who were present at the cancelled or terminated meeting must also report about the testimony and presentations received.

3. Informational Meetings (HRS § 92-2.5(e))

Two or more members of a board, but less than a quorum, may attend an **informational meeting or presentation** on matters relating to official board business, **including a meeting of another entity, legislative hearing, convention, seminar, or community meeting**; provided that the meeting or presentation is **not specifically and exclusively organized for or directed toward members** of the board.

The board members in attendance may participate in discussions, including discussions among themselves, provided that the discussions occur during and as part of the informational meeting or presentation and that no commitment relating to a vote on the matter is made or sought.

At the next board meeting, the members who attended the informational meeting are required to report their attendance and the matters presented and discussed that related to official board business at the informational meeting.

4. Circulation of Proposed Legislative Testimony (HRS § 92-2.5(h))

A board that has previously adopted a position on a legislative measure may circulate its proposed testimony among board members for review and written comment when it does not have enough time to notice a meeting before a legislative deadline, so long as all proposed testimony drafts and board member communications about the testimony are publicly posted online within 48 hours of the testimony's circulation to the board. This permitted interaction is best used for proposed testimony drafted by board staff or a single member, rather than by multiple board members using another permitted interaction to confer, in order to avoid conflicts with other permitted interactions as discussed in OIP's Quick Review on Sunshine Law Options to Address State Legislative Issues and Measures, which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov).

5. Discussions with the Governor (HRS § 92-2.5(f))

Discussions between the Governor and one or more board members may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

Some boards that have adjudicatory powers include the: Hawaii Labor Relations Board; Labor and Industrial Relations Board; Hawaii Paroling Authority; Civil Service Commission; Employees' Retirement System Board of Trustees; Crime Victim Compensation; and State Ethics Commission.

6. Discussions with Department Head (HRS § 92-2.5(g))

Discussions between two or more members of a board and the head of a department to which the board is administratively attached may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35, HRS.

Section 26-35, HRS, provides that:

- department heads shall represent attached boards in communications with the Governor and the Legislature, unless otherwise requested by the Legislature;
- a board's financial requirements from state funds shall be submitted through the department head and included in the department's budget;
- rules adopted by the board are subject to approval of the Governor;
- employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of officers and employees of or under a board must be determined by the board subject to approval of the department head, and subject to applicable personnel laws;
- purchases of supplies, equipment, or furniture by a board are subject to approval by the department head;
- the department head has the power to allocate the spaces available for the board to occupy;
- quasi-judicial functions of a board are not be subject to the approval, review, or control of the department head; and
- the department head shall not have the power to supervise or control the board in the exercise of its functions, duties, and powers.

OFFICE OF HAWAIIAN AFFAIRS; ESTABLISHMENT OF BOARD OF TRUSTEES

Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members. [Add Const Con 1978 and election Nov 7, 1978]

Cross References

Statutory provisions, see chapters 10 and 13D.

Attorney General Opinions

A voter must qualify as a Hawaiian in his or her own right, not on the basis of the racial descent of the adoptive parents. Att. Gen. Op. 80-6.

The requirement that trustees be Hawaiians is not violative of the equal protection clauses; also the restriction to Hawaiians of the right to vote for trustees is not impermissible. Att. Gen. Op. 80-8.

Law Journals and Reviews

To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai'i. V HBJ No. 13, at pg. 15.

Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts. 14 UH L. Rev. 519.

Native Hawaiian Entitlement to Sovereignty: An Overview. 17 UH L. Rev. 427.

The California Civil Rights Initiative: Why It's Here, Its Far Reaching Effects, and the Unique Situation in Hawai`i. 22 UH L. Rev. 279.

Matters of Trust: Unanswered Questions After Rice v. Cayetano. 23 UH L. Rev. 363.

The Akaka Bill: The Native Hawaiians' Race For Federal Recognition. 23 UH L. Rev. 857.

Akaka Bill: Native Hawaiians, Legal Realities, and Politics as Usual. 24 UH L. Rev. 693.

Doe v. Kamehameha Schools: A "Discrete and Insular Minority" in Hawai`i Seventy Years After Carolene Products? 30 UH L. Rev. 295.

Ensuring Our Future by Protecting Our Past: An Indigenous Reconciliation Approach to Improving Native Hawaiian Burial Protection. 33 UH L. Rev. 321 (2010).

The Moon Court's Environmental Review Jurisprudence: Throwing Open the Courthouse Doors to Beneficial Public Participation. 33 UH L. Rev. 581 (2011).

Demolition of Native Rights and Self Determination: Act 55's Devastating Impact through the Development of Hawaii's Public Lands. 35 UH L. Rev. 297 (2013).

The Crown Lands Trust: Who Were, Who Are, the Beneficiaries? 38 UH L. Rev. 213 (2016).

A Collective Memory of Injustice: Reclaiming Hawai`i's Crown Lands Trust in Response to Judge James S. Burns. 39 UH L. Rev. 481 (2017).

(Re)Righting History: Deconstructing the Court's Narrative of Hawai`i's Past. 39 UH L. Rev. 631 (2017).

Case Notes

State's electoral restriction enacted a race-based voting qualification; Hawaii's denial of petitioner's right to vote, where petitioner was not a "Hawaiian", was a clear violation of the Fifteenth Amendment to the U.S. Constitution. 528 U.S. 495.

Does not violate §5 of the Admission Act. 921 F.2d 950.

Limitation of eligibility to be a candidate for office of Hawaiian affairs trustee to Hawaiians invalid under the Fifteenth Amendment and §2 of

the Voting Rights Act; plaintiffs lacked standing to challenge the restriction that appointed trustees be Hawaiian. 314 F.3d 1091.

Plaintiff challenging constitutionality of article XII, §§5 and 6 of state constitution and chapter 10, lacked standing, where plaintiff had not suffered any injury-in-fact. 188 F. Supp. 2d 1233.

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POWERS OF BOARD OF TRUSTEES

Section 6. The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board. [Add Const Con 1978 and election Nov 7, 1978]

Attorney General Opinions

Language expressly acknowledges the continued viability of the power to alienate ceded lands, first conferred upon State by §5(f) of Admission Act. Att. Gen. Op. 95-3.

Receipts derived from ceded lands apportioned for native Hawaiians pursuant to this section and §10-13.5 may be transmitted directly to office of Hawaiian affairs by agencies that collect them, without legislative appropriation. Att. Gen. Op. 03-4.

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Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts. 14 UH L. Rev. 519.

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(Re)Righting History: Deconstructing the Court's Narrative of Hawai'i's Past. 39 UH L. Rev. 631 (2017).

Case Notes

Plaintiff challenging constitutionality of article XII, §§5 and 6 of state constitution and chapter 10, lacked standing, where plaintiff had not suffered any injury-in-fact. 188 F. Supp. 2d 1233.

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PART I. GENERAL PROVISIONS

Note

Sections 10-1 to 10-16 designated as Part I by L 1994, c 283, §2(1).

[§10-1] Declaration of purpose. (a) The people of the State of Hawaii and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions for native Hawaiians. The people of the State of Hawaii reaffirmed their solemn trust obligation and responsibility to native Hawaiians and furthermore declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawaii.

(b) It shall be the duty and responsibility of all state departments and instrumentalities of state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs. [L 1979, c 196, pt of §2]

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§10-2 Definitions. In this chapter, if not inconsistent with the context:

"Administrator" means the administrator of the office of Hawaiian affairs.

"Beneficiary of the public trust entrusted upon the office" means native Hawaiians and Hawaiians.

"Board" means the board of trustees.

"Grant" means an award of funds by the office to a specified recipient to support the activities of the recipient for activities that are consistent with the purposes of this chapter.

"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii.

"Native Hawaiian" means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii.

"Office" means the office of Hawaiian affairs.

"Recipient" means any organization or person receiving a grant. [L 1979, c 196, pt of §2; am L 1990, c 304, §§3, 16; am L 1992, c 318, §2; am L 1997, c 350, §§14, 15; am L 2002, c 182, §2]

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A Collective Memory of Injustice: Reclaiming Hawai'i's Crown Lands Trust in Response to Judge James S. Burns. 39 UH L. Rev. 481 (2017).

Case Notes

Definition of "Hawaiian" does not violate equal protection. 631 F. Supp. 1153.

Act 304, L 1990, was invalidated by its own severability clause when amendment to this section by Act 304 was found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

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§10-3 Purpose of the office. The purposes of the office of Hawaiian affairs include:

- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations. [L 1979, c 196, pt of §2; am L 1990, c 304, §§4, 16]

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Ensuring Our Future by Protecting Our Past: An Indigenous Reconciliation Approach to Improving Native Hawaiian Burial Protection. 33 UH L. Rev. 321 (2010).

Case Notes

Trustees of the office of Hawaiian affairs established as a matter of law that each of the challenged expenditures constituted a "use" "for one or more of the [§5(f)] purposes" and that was sufficient to defeat plaintiffs' 42 U.S.C. §1983 claim under federal law for breach of the [Admission Act] §5(f) trust; district court's summary judgment in favor of the trustees, affirmed. 616 F.3d 918 (2010).

Determination of whether damages received by State from illegal sand mining operation was funds derived from a public land trust was a nonjudicial discretion; whether income from sales, leases, or other dispositions of lands surrounding harbors on all major islands, of land on Sand Island, of land on Airport, fell within section was a nonjudicial discretion. 69 H. 154, 737 P.2d 446.

Act 304, L 1990, was invalidated by its own severability clause when amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

Plaintiffs' complaint failed to state a breach of fiduciary duty claim under §10-16(c) where the complaint: (1) did not allege that the office of Hawaiian affairs trustees' spending decisions were made for any purpose other than benefiting native Hawaiians; (2) did not allege that the expenditures were in conflict with or adverse to the interests of native Hawaiians; and (3) lacked factual allegations that the expenditures were in furtherance of programs that do not benefit native Hawaiians. 131 H. 62, 315 P.3d 213 (2013).

§10-4 Office of Hawaiian affairs; established; general powers.

There shall be an office of Hawaiian affairs constituted as a body corporate which shall be a separate entity independent of the executive branch. The office, under the direction of the board of trustees, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;
- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose;
- (3) To determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the office;
- (4) To enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, or with the State, or with any political subdivision thereof, or with any person, firm, association, or corporation, as may be necessary in the conduct of its business and on such terms as it may deem appropriate;
- (5) To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers;
- (6) To issue revenue bonds pursuant to this chapter to finance the cost of an office project or to fund a loan program, and to provide for the security thereof, in the manner and pursuant to the procedure prescribed in part II;
- (7) To lend or otherwise apply the proceeds of the bonds issued for an office project or a loan program either directly or through a trustee or a qualified person for use and application in the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of an office project or the establishment, funding, and administration of a loan program, or agree with the qualified person whereby any of these activities shall be undertaken

- or supervised by that qualified person or by a person designated by the qualified person;
- (8) With or without terminating a project agreement or loan agreement, as applicable, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of an office project or enforce a loan agreement at any time or from time to time upon breach or default by a qualified person under a project agreement or loan agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or enforcing the loan agreement or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the office pursuant to the project agreement or loan agreement; and
- (9) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law. [L 1979, c 196, pt of §2; am L 1994, c 283, §3; am L 2009, c 146, §4; am L 2013, c 171, §2]

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[§10-4.5] Authority over disbursements. (a) Except as provided in subsection (b), and notwithstanding any other law to the contrary, the office shall have and exercise the power to make all necessary and appropriate disbursements of its moneys by issuing checks in its own name and by any other means.

(b) The office shall have and exercise the power to deposit any of its moneys in any banking institution within or outside the State, to the extent necessary to implement subsection (a).

(c) The department of accounting and general services, with the approval of the office of Hawaiian affairs, may continue to perform the payroll function of the office, including the issuance of salary checks for the office's employees. [L 2005, c 107, §1]

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§10-5 Board of trustees; powers and duties. The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated. [L 1979, c 196, pt of §2; am L 1990, c 304, §§5, 16; am L 1996, c 240, §1; am L 2002, c 182, §3]

Case Notes

Act 304, L 1990, was invalidated by its own severability clause when amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111

Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

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§10-6 General duties of the board. (a) The general duties of the board shall be:

- (1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
 - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities and alternatives for the office's program and service implementation; and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel;
- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
- (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
- (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;
- (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;
- (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;
- (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects;
- (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians; and
- (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.

(b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter. [L 1979, c 196, pt of §2; am L 2006, c 2, §1]

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[§10-7] Board of trustees. The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter 13D, with reference to sections 11-15, 11-25, 12-5, 12-6, and vacancies shall be filled in accordance with section 17-7. [L 1979, c 196, pt of §2]

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§10-8 Organization; quorum; meeting. The board, at its first meeting after an election, shall elect from its own membership a chairperson and a vice-chairperson who shall serve at the pleasure of the board. Their election shall be immediately certified by the board to the lieutenant governor.

A majority of all members to which the board is entitled shall constitute a quorum to do business. The concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall be given to all members.

Meetings shall be called and held at the call of the chair or by a quorum, as often as may be necessary for transaction of the board's business. The board shall meet at least once annually on each of the islands of Hawaii, Maui, Molokai, Lanai, Kauai, and Oahu. [L 1979, c 196, pt of §2; am L 1985, c 158, §1]

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§10-9 Salaries; benefit; expenses. Members of the board:

- (1) Shall receive an annual salary which shall be paid:
 - (A) Exclusively from revenue under section 10-13.5; and
 - (B) In equal amounts, beginning with the first pay period for state employees in November of the year the member of the board is elected.

Effective July 1, 1993, and until the salary commission makes recommendations for salary, the salary of the chairperson of the board shall be \$37,000 a year and the salary of other members of the board shall be \$32,000 a year. Any provision of law to the contrary notwithstanding, all members of the board shall be included in any benefit program generally applicable to officers and employees of the State;

- (2) Shall be allowed transportation fares between islands and abroad;
- (3) Shall be allowed personal expenses at the rates specified by the board while attending board meetings or while on official business as authorized by the chairperson, when those board meetings or official business shall require a member to leave the island upon which the member resides; and
- (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities. [L 1979, c 196, pt of §2; am L 1981, c 148, §1; am L 1989, c 290, §1; am L 1993, c 358, §3; am L 2002, c 148, §1 and c 183, §3]

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§10-9.5 Salary commission; established. (a) There is established a salary commission for the members of the board of trustees for the office of Hawaiian affairs. The salary commission shall consist of seven members appointed by the governor on or before August 31, 1999, and every four years thereafter. The members of the salary commission shall be selected from nominations submitted by native Hawaiian organizations as defined in section 673-2(c). The members shall serve without compensation, but shall be entitled to reimbursement for necessary expenses while in the discharge of their duties and responsibilities.

(b) Before the twentieth legislative day of the regular session of 2000 and every four years thereafter, the salary commission shall study and make recommendations for the salary of the members of the board of trustees for the office of Hawaiian affairs, and then shall be dissolved. The recommended salary shall be effective as of the date of the recommendations unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted. [L 1993, c 358, pt of §2; am L 1999, c 191, §2]

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[\$10-10] Administrator; appointment, tenure, removal. The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapter 76 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time. [L 1979, c 196, pt of §2; am L 2000, c 253, §150]

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§10-11 Salary of the administrator. The salary of the administrator shall be established by the board; provided that such salary shall not exceed the salary of department heads or executive officers established by law. The administrator shall be included in any benefit program generally applicable to officers and employees of the State. [L 1979, c 196, pt of §2; am L 1981, c 130, §2]

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§10-12 Assistant; staff. The administrator may employ and retain such officers and employees as may be necessary to carry out the functions of the office. Such officers and employees may be hired without regard to chapter 76, and shall serve at the pleasure of the administrator. Officers and employees of the office of Hawaiian affairs shall be included in any benefit program generally applicable to officers and employees of the State. [L 1979, c 196, pt of §2; am L 1990, c 231, §1; am L 2000, c 253, §150]

Case Notes

Where plaintiff, terminated OHA chief financial officer, claimed that defendants, OHA administrator and trustee, in individual capacities, unlawfully deprived plaintiff of plaintiff's property and liberty without due process of law, in violation of 42 U.S.C. §1983, defendants' motion for summary judgment granted with prejudice as to these claims. 120 F. Supp. 2d 1244.

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§10-13 Appropriations; accounts; reports. Moneys appropriated by the legislature for the office shall be payable by the director of finance, upon vouchers approved by the board, or by any officer elected or appointed by the board and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or on behalf of the board shall be deposited with the director of finance and kept separate from moneys in the state treasury; except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received; and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature, and moneys in trust or revolving funds administered by the office, shall be deposited in depositories other than the state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder.

Income derived from the sale of goods or services and income from lands and property as described in section 10-3, shall be credited to special or other funds; provided that upon the recommendation of the office, the comptroller shall establish such other separate accounts or special funds for other designated revenues as may be directed by the board or its authorized representative. [L 1979, c 196, pt of §2; am L 1981, c 37, §2; am L 1990, c 304, §§6, 16]

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Case Notes

Act 304, L 1990, was invalidated by its own severability clause when amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

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[§10-13.3] Interim revenue. Notwithstanding the definition of revenue contained in this chapter and the provisions of section 10-13.5, and notwithstanding any claimed invalidity of Act 304, Session Laws of Hawaii 1990, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6 of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each of fiscal year 1997-1998 and fiscal year 1998-1999 shall be \$15,100,000. [L 1997, c 329, §2]

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§10-13.5 Use of public land trust proceeds. Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of this chapter. [L 1980, c 273, §1; am L 1990, c 304, §§7, 16]

Attorney General Opinions

Legislature must again determine which income and proceeds from the public land trust lands are to go to the office of Hawaiian affairs (OHA). Until legislature reestablishes a funding mechanism for OHA, Executive Order No. 03-03 is the only mechanism in place for transferring receipts from the use of ceded lands to OHA; receipts from the sale or transfer of biogenetic resources do not qualify for transfer under the order. Att. Gen. Op. 03-3.

Receipts derived from ceded lands apportioned for native Hawaiians pursuant to article XII, §6 of the state constitution and this section may be transmitted directly to office of Hawaiian affairs by agencies that collect them, without legislative appropriation. Att. Gen. Op. 03-4.

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The Lum Court and Native Hawaiian Rights. 14 UH L. Rev. 377.

Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts. 14 UH L. Rev. 519.

Hawai`i's Justiciability Doctrine. 26 UH L. Rev. 537.

Biopiracy in Paradise?: Fulfilling the Legal Duty to Regulate Bioprospecting in Hawai`i. 28 UH L. Rev. 387.

Case Notes

Section contained no judicially discoverable or manageable standards that could be employed to resolve OHA's claims to twenty per cent of revenues. 69 H. 154, 737 P.2d 446.

Act 304, L 1990, was invalidated by its own severability clause when amendment to this section by Act 304 was found to conflict with the

federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448), leaving court with no judicially manageable standards to determine whether office of Hawaiian affairs was entitled to the specific revenues sought in the suit. 96 H. 388, 31 P.3d 901.

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§10-13.6 Public land trust conveyed for the development of housing projects. (a) This section applies to the revenue derived from land of the public land trust as designated in subsection (e) that is conveyed by the department of land and natural resources to the Hawaii housing finance and development corporation for the development of housing projects as defined under section 201H-1. The amount due to the office shall be determined by multiplying the fair market value of the land by twenty per cent. For the purpose of this section:

"Fair market value" means the amount of money that a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land.

"Highest and best use" means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the Hawaii housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department of land and natural resources and the office, respectively. If the land is of the public land trust and sugarcane lands, as defined by article XII, section 1 of the state constitution, the office and the department of Hawaiian home lands shall contract the services of one appraiser. The parties shall contract the services of the appraisers within thirty business days after the department of land and natural resources gives written notice to the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, of the proposed conveyance of the land to the Hawaii housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition the circuit court in the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable to agree on a fair market value, then within thirty days thereafter, the department of land and natural resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, shall contract for the services of a mutually agreed upon third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value of the land. If the department of land and natural

resources and the office, together with the department of Hawaiian home lands if the land is of the public land trust and sugarcane lands, are unable to agree on the selection of the third appraiser, any party may petition the circuit court in the county where the land is located to appoint the third appraiser.

(c) The amount due to the office shall be due and payable by the State on the date of conveyance of the land to the Hawaii housing finance and development corporation. Payment to the office may be in the form of public lands or moneys. If payment is to be in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the office, and shall be of value comparable to the amount due to the office. Any monetary payment shall be an obligation of the Hawaii housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the office.

(d) Twenty per cent of the revenue received by the Hawaii housing finance and development corporation from commercial, industrial, or other nonresidential use of the land shall be paid annually to the office; provided that:

- (1) The office shall not receive payment under this subsection until the Hawaii housing finance and development corporation recovers all moneys previously paid to the office for that portion of land used for commercial, industrial, or other nonresidential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other nonresidential purposes, annual payments due to the office under this subsection shall be made pursuant to the following order of priority:
 - (A) The Hawaii housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the debt) of its total debt service on the borrowed moneys;
 - (B) The Hawaii housing finance and development corporation satisfies as a second priority its operating expense obligations directly incurred from the development and operation of land used for commercial, industrial, or other nonresidential purposes in an amount not exceeding one per cent of the revenues for the project; and

- (C) After the first and second priorities are satisfied, the Hawaii housing finance and development corporation shall make annual payments due to the office under this subsection from any remaining revenues; and
- (3) In the event of a sale of land used for commercial, industrial, or other nonresidential purposes, the office shall receive twenty per cent of the revenue received by the Hawaii housing finance and development corporation.
- (e) This section shall only apply to the Hawaii housing finance and development corporation's developments known as the villages of Leali`i, Maui, and villages of La`i`opua, Hawaii. [L 1992, c 318, §1; am L 1997, c 350, §§14, 15; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2007, c 249, §2]

Law Journals and Reviews

(Re)Righting History: Deconstructing the Court's Narrative of Hawai`i's Past. 39 UH L. Rev. 631 (2017).

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§10-14 REPEALED. L 1990, c 221, §4.

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[§10-14.5] Budget preparation and submission; auditing. (a)

The budget, six-year program and financial plan, and the variance report of the office of Hawaiian affairs shall be submitted by the board to the legislature and to each member thereof in accordance with the budget submission schedule specified for the governor in chapter 37 and shall contain the program information specified in that chapter that is applicable to the office of Hawaiian affairs. Not less than twenty days prior to the convening of each regular session of the legislature, the office of Hawaiian affairs shall submit to the legislature an accounting of the expenditures made in the prior fiscal year, by account code and budget program. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the board shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of the office of Hawaiian affairs for each fiscal year of the next fiscal biennium.

(b) The board shall provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of the office of Hawaiian affairs. These opportunities shall include an accounting by trustees of the funds expended and of the effectiveness of programs undertaken.

(c) The office shall be subject to governmental audit. [L 1990, c 221, pt of §2]

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[§10-14.55] Audit and report. The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session. The first audit report shall be submitted no later than January 15, 1996. [L 1993, c 358, pt of §2]

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[§10-14.6] Legislative review. The legislature shall consider the board's proposed program and financial plan; evaluate alternatives to the board's recommendations; and appropriate any general fund portion of the budget and any matching special fund appropriations. [L 1990, c 221, pt of §2]

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§10-15 Annual report. The board shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report for the previous fiscal year shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature. The board shall prepare and submit special reports as may be required by the legislature. [L 1979, c 196, pt of §2; am L 1990, c 221, §3]

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§10-15.5 REPEALED. L 1990, c 304, §§14, 16.**Note**

Act 304, Session Laws of Hawaii 1990, was invalidated by its own severability clause because amendments made to §§10-2 and 10-13.5 by Act 304 were found to conflict with the federal Forgiveness Act (Pub. L. No. 105-66, §340, 111 Stat. at 1448); thus, §14 of Act 304, codified as §10-15.5, is repealed.

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[§10-16] Suits. (a) The office may sue and be sued in its corporate name. The State shall not be liable for any acts or omissions of the office, its officers, employees, and the members of the board of trustees, except as provided under subsection (b).

(b) In matters of tort, the office, its officers and employees, and the members of the board shall be subject to suit only in the manner provided for suits against the State under chapter 662.

(c) In matters of misapplication of funds and resources in breach of fiduciary duty, board members shall be subject to suit brought by any beneficiary of the public trust entrusted upon the office, either through the office of the attorney general or through private counsel.

(d) In matters involving other forms of remedies, the office, its officers and employees, and the members of the board shall be subject to suit as provided by any other provision of law and by the common law. [L 1979, c 196, pt of §2]

Case Notes

Where plaintiff office of Hawaiian affairs brought suit in its own corporate name under this section, rather than as an agency of the State on behalf of the people of the State, §657-1.5 did not exempt plaintiff from the statute of limitations for bringing a suit under §673-10. 110 H. 338, 133 P.3d 767.

Plaintiffs' complaint failed to state a breach of fiduciary duty claim under subsection (c), where the complaint: (1) did not allege that the office of Hawaiian affairs trustees' spending decisions were made for any purpose other than benefiting native Hawaiians; (2) did not allege that the expenditures were in conflict with or adverse to the interests of native Hawaiians; and (3) lacked factual allegations that the expenditures were in furtherance of programs that do not benefit native Hawaiians. The conclusory allegations in the amended complaint, without more, were insufficient to state a claim. 131 H. 62, 315 P.3d 213 (2013).

§10-17 Grants; conditions and qualifications. (a) Applications for grants shall be made to the office and contain such information as the office shall require. At a minimum, the applicant shall show:

- (1) The name of the requesting organization or individual;
- (2) The purpose for the grant;
- (3) The service to be supported by the grant;
- (4) The target group to be benefited;
- (5) The cost of the grant; and
- (6) That the grant shall be used for activities that are consistent with the purposes of this chapter.

(b) Grants shall only be awarded if:

- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
- (2) The applicant agrees to comply with applicable federal, state, and county laws;
- (3) The grant shall not be used for purposes of entertainment or perquisites;
- (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
- (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.

(c) To receive a grant, an applicant shall:

- (1) Be:
 - (A) A for-profit subsidiary of a nonprofit organization incorporated under the law of the State;
 - (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service;
 - (C) A cooperative association; or
 - (D) An individual, who in the board's determination, is able to provide the services or activities proposed in the application for a grant;

- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies that describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree of consanguinity unless specifically permitted by the office;
 - (3) Agree to make available to the office all records the applicant may have relating to the operation of the applicant's activity, business, or enterprise, to allow the office to monitor the applicant's compliance with the purpose of this chapter; and
 - (4) Establish, to the satisfaction of the office, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded.
- (d) Every grant shall be:
- (1) Monitored by the office to ensure compliance with this chapter and the purposes and intent of the grant; and
 - (2) Evaluated annually to determine whether the grant attained the intended results in the manner contemplated.
- (e) Grants made by the office under this chapter may be made without regard to chapters 103D and 103F. [L 2002, c 182, §1; am L 2003, c 9, §2]

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[§10-18] Hui `Imi advisory council. (a) There is established a Hui `Imi advisory council, to be placed within the office of Hawaiian affairs for administrative purposes only. The advisory council shall consist of representatives from the following:

- (1) Office of Hawaiian affairs;
- (2) Department of education;
- (3) Department of Hawaiian home lands;
- (4) Department of health;
- (5) Department of human services;
- (6) Department of business, economic development, and tourism;
- (7) Department of land and natural resources;
- (8) University of Hawaii;
- (9) House of representatives standing committee with primary jurisdiction over Hawaiian affairs;
- (10) Senate standing committee with primary jurisdiction over Hawaiian affairs;
- (11) Alu Like, Inc.;
- (12) The Association of Hawaiian Civic Clubs;
- (13) E Ola Mau;
- (14) The Kamehameha Schools;
- (15) The Lunalilo Home;
- (16) The Native Hawaiian Culture and Arts Program of the Bernice Pauahi Bishop Museum;
- (17) The Native Hawaiian Legal Corporation;
- (18) Papa Ola Lokahi;
- (19) The Queen Lili`uokalani Children's Center;
- (20) Council for Native Hawaiian Advancement; and
- (21) Any other agency, organization, or entity that expresses interest to participate in fulfilling the advisory council's mandate.

The advisory council shall make a good faith effort to include as members other public and private agencies, organizations, or entities that express interest in fulfilling the advisory council's mandate.

(b) Each member shall be appointed by the director or other chief executive of the member's organization within forty-five days following July 1, 2003. The advisory council members shall select a chairperson and establish procedural rules for its internal administration. The rules shall be exempt from the public notice and hearing provisions of chapter 91. Administrative expenses of the advisory council, such as photocopying, postage, stationery, and office supplies incidental to the performance of members' duties may be reimbursed out of appropriations made to the advisory council, but members of the

advisory council shall otherwise serve without compensation and without reimbursement for travel expenses.

(c) The Hui `Imi advisory council shall:

- (1) Serve as a liaison between public and private entities serving the Hawaiian community in the planning and development of collaborative public and private endeavors;
- (2) Investigate the issues described in the Hui `Imi task force report volumes I and II and such other issues affecting Hawaiians as the advisory council shall designate; and
- (3) Submit a report of its findings and recommendations, which report shall include an action plan for the implementation of the Hui `Imi task force report volumes I and II, with a view toward incorporating the action plan into the state general plan. The report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of the regular session of 2005. [L 2003, c 42, §2]

Revision Note

"July 1, 2003" substituted for "the effective date of this Act".

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[§10-19] Hawaiian registry. The office shall establish and maintain a registry of all Hawaiians wherever such persons may reside. Inclusion of persons in the Hawaiian registry shall be based upon genealogical records sufficient to establish the person's descent from the aboriginal peoples inhabiting the Hawaiian Islands in 1778. [L 2003, c 217, §1]

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[§10-20] Taro security; funding. (a) The office may seek available federal, state, county, or private funding to restore taro and lo`i cultivation. The office shall cooperate with other public and private agencies, as appropriate, in applying for funds pursuant to this section.

(b) The office may use and distribute funds received pursuant to subsection (a) for projects that use taro for:

- (1) Flood control;
- (2) Wetland restoration and preservation;
- (3) Food security;
- (4) Community economic development;
- (5) Job creation;
- (6) Education; and
- (7) Water-quality protection. [L 2010, c 196, §2]

Cross References

Hand-pounded poi, see §321-4.7.

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Below is a comparative overview of the Office of Hawaiian Affairs (OHA) Trustees, State of Hawaii Legislature, and elected officials from the counties of Honolulu, Maui, Kauai, and Hawaii. The table includes their most recent salaries, number of constituents served, geographic areas served, and primary responsibilities.

Position	Salary (Annual)	Number of Constituents Served	Geographic Area Served	Primary Responsibilities
Office of Hawaiian Affairs (OHA) Trustees				
Trustees	\$58,560	Approximately 298,000 Native Hawaiians	State of Hawaii	Oversee OHA's policies and programs aimed at improving the well-being of Native Hawaiians, manage trust assets, and advocate for Native Hawaiian rights and interests. (ballotpedia.org)
State of Hawaii Legislature				
State Senator	\$74,160	Approximately 58,405 per district	State of Hawaii (25 districts)	Draft, debate, and enact state laws; approve the state budget; represent constituents' interests at the state level. (ballotpedia.org)
State Representative	\$74,160	Approximately 28,630 per district	State of Hawaii (51 districts)	Similar to State Senators, with a focus on representing smaller districts; initiate revenue bills. (ballotpedia.org)
County Officials				
Honolulu City Council Member	\$113,304	Approximately 100,000 per district	City & County of Honolulu (9 districts)	Enact ordinances, approve the city budget, and oversee city services and programs. (hnl.doc.ehawaii.gov)
Maui County Council Member	\$76,475	Approximately 20,000 to 35,000 per district	Maui County (9 districts)	Similar to Honolulu, with additional focus on rural and agricultural issues pertinent to Maui County. (mauicounty.gov)
Kauai County Council Member	\$71,888	Approximately 10,000 to 15,000 per district	Kauai County (7 districts)	Address local ordinances, budget approvals, and community services specific to Kauai. (ballotpedia.org)
Hawaii County Council Member	\$70,008	Approximately 20,000 to 25,000 per district	Hawaii County (9 districts)	Focus on legislation affecting Hawaii Island, including land use, public safety, and infrastructure. (ballotpedia.org)

Notes:

- **OHA Trustees:** Salaries are determined by the OHA Salary Commission, which reviews and recommends compensation every four years.
- **State Legislature:** Salaries for State Senators and Representatives are set by the Commission on Salaries, which convenes every six years to review and recommend adjustments.
- **County Officials:** Salaries are established by respective county salary commissions, which periodically assess and recommend compensation based on factors like cost of living and responsibilities.

2008 OHA Salary Commission

P.O. Box 2433
Ewa Beach, Hawai'i 96706

February 11, 2008

The Honorable Linda Lingle
Governor, State of Hawai'i
Executive Chambers
415 South Beretania Street
Honolulu, Hawai'i 96813

The Honorable Colleen Hanabusa
Senate President
Room 409, State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

The Honorable Calvin Say
Speaker of the House
Room 431, State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Subject: Final Report and Recommendations of the 2008 OHA Salary Commission

Aloha Governor Lingle, President Hanabusa, and Speaker Say:


The 2008 Salary Commission for the Board of Trustees for the Office of Hawaiian Affairs (OHA) would like to extend its appreciation for the opportunity to participate on this important commission. We have completed our statutory responsibility to study and propose recommendations regarding the salary for the OHA Trustees. On February 11, 2008, the Commission voted to approve the Final Report and Recommendations on the Salary for the Trustees of the Office of Hawaiian Affairs (attached).


The process and deliberations of the 2008 Salary Commission were open and thoughtful. The Commission carefully reviewed the duties and responsibilities of the OHA Trustees, their current compensation and benefit package, the recommendations of past OHA Salary Commissions, the compensation of comparable state and county elected officials, as well as economic indicators for cost of living. In December 2007, the Commission prepared a draft report and recommendations and solicited public comment for a 30-day period. In January 2008, the Commission considered the input received and made appropriate revisions prior to finalizing its recommendations.

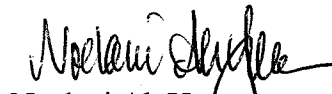
The 2008 Salary Commission would also like to extend its gratitude to the Office of Hawaiian Affairs for providing staff and assistance to administer the Commission's research, meetings, deliberations, and findings. OHA staff maintained objectivity and provided unbiased information that allowed the Commission to effectively reach its recommendations.

In sum, we believe that the new salaries established by the 2008 Salary Commission for the OHA Board of Trustees are fair, equitable and reflective of their important duties and fiduciary responsibilities to the OHA Trust and its beneficiaries.

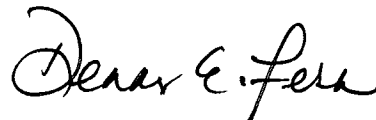
Mahalo nui loa,



Dale Bachman,
Chair


Ben Henderson,
Vice-Chair


Noelani Ah Yuen,
Commissioner


Lulani Arquette,
Commissioner


Dennis Fern,
Commissioner

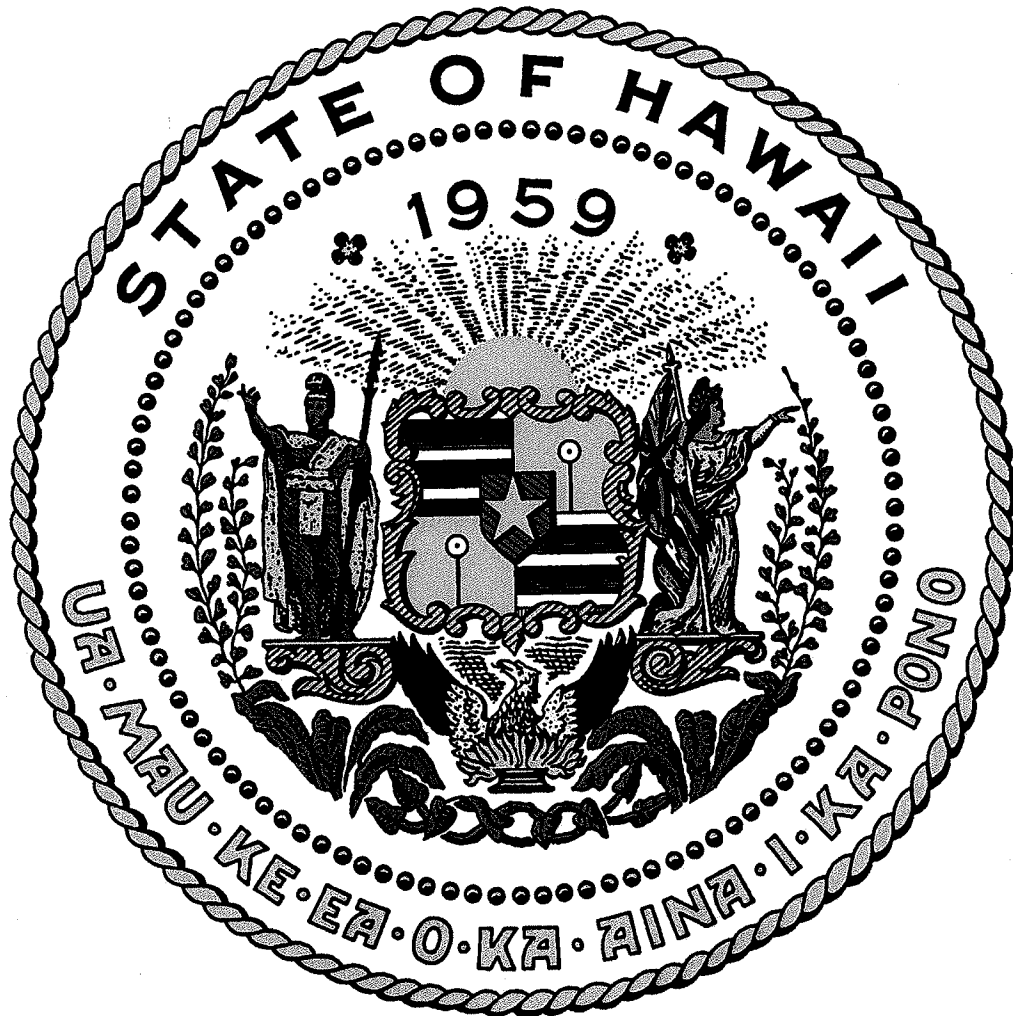

Ka'onohi Lee,
Commissioner


Michael Loo,
Commissioner

Attachment – Report and Recommendations of the 2008 OHA Salary Commission

- c: S. Haunani Apoliona, Chairperson Office of Hawaiian Affairs
- Walter Heen, Vice-Chairperson, Office of Hawaiian Affairs
- Rowena Akana, Trustee, Office of Hawaiian Affairs
- Donald Cataluna, Trustee, Office of Hawaiian Affairs
- Robert Lindsey, Trustee, Office of Hawaiian Affairs
- Colette Machado, Trustee, Office of Hawaiian Affairs
- Boyd Mossman, Trustee, Office of Hawaiian Affairs
- Oswald Stender, Trustee, Office of Hawaiian Affairs
- John Waihe'e IV, Trustee, Office of Hawaiian Affairs
- Clyde Nāmu'o, Administrator, Office of Hawaiian Affairs

**FINAL REPORT AND RECOMMENDATIONS
REGARDING THE SALARY OF THE
BOARD OF TRUSTEES FOR THE
OFFICE OF HAWAIIAN AFFAIRS**



Prepared by:

**2008 SALARY COMMISSION
FOR THE TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS**

FEBRUARY 11, 2008

**2008 OHA Salary Commission
Final Report and Recommendations
Regarding the Salary of the
Board of Trustees for the Office of Hawaiian Affairs**

February 11, 2008

I. Salary Recommendations:

The 2008 Office of Hawaiian Affairs (OHA) Salary Commission (Commission) has completed its analysis, discussion and findings, and on February 11, 2008 approved the final recommendations regarding the salary of the OHA Trustees.

These recommendations include a base or starting annual salary of \$57,000 for the Chairperson and \$50,004 for the Trustee. The Commission further recommends an annual cost of living increase of approximately 3.5% to be effective at the start (July 1) of the 2009, 2010 and 2011 fiscal years. Per these recommendations, the specific salaries are set forth in Table 1 below:

Starting	Ending	Chairperson	Trustees
February 11, 2008	June 30, 2009	\$57,000	\$50,004
July 1, 2009	June 30, 2010	\$59,004	\$51,756
July 1, 2010	June 30, 2011	\$61,068	\$53,568
July 1, 2011	Effective Date*	\$63,204	\$55,440

* This is the date the 2012 OHA Salary Commission recommendations go into effect.

In accordance with Hawai'i Revised Statutes (HRS) Chapter 10-9.5, these salary recommendations are effective immediately, unless the Hawai'i State Legislature disapproves through the passage of a concurrent resolution prior to the adjournment sine die in May 2008.

The details of the Commission's study and the basis for their recommendations are provided in the report below.

II. Introduction:

The Commission has publicly noticed and convened five (5) meetings on November 20, December 4, December 18, 2007, January 29, 2008, and February 11, 2008.

During the course of these meetings, the Commission reviewed their statutory mandate, the history and recommendations of previous commissions, the duties and responsibilities of the OHA Trustees and their current

compensation and benefits, conducted research and analysis of comparable elected officials and OHA staff, and deliberated the findings of these analyses. Additionally, the Commission established the framework or principles that would guide the preparation of their recommendations.

III. The 2008 OHA Salary Commission and its Statutory Responsibilities

The Commission was established pursuant to HRS Chapter 10-9.5 to study and make recommendations to the State Legislature on appropriate salary for the Board of Trustees of OHA. The Commission is formed every four years and consists of seven members appointed by the Governor from nominations submitted by Native Hawaiian organizations.

On October 31, 2007, Governor Linda Lingle appointed the following seven members to the Commission:

1. Michael Loo, Kamehameha Schools
2. Ben Henderson, Department of Hawaiian Home Lands
3. Dennis Fern, Queen Lili'uokalani Children's Center
4. Ray Kalā Enos, Kaho'olawe Island Reserve Commission
5. Kippen de Alba Chu, Friends of 'Iolani Palace
6. Dale Bachman, Daughters of Hawai'i
7. Lulani Arquette, Native Hawaiian Hospitality Association

Subsequent to this appointment, two members, Kippen de Alba Chu and Ray Enos resigned their seats due to an apparent conflict with HRS §78-4(a) that states, no person shall be allowed to serve on more than one state board or commission. In their stead, the Governor appointed Noelani Ah Yuen (Friends of 'Iolani Palace) and Carol Ka'onohi Lee (Kaho'olawe Island Reserve Commission) to the Commission on November 16 and December 3, 2007, respectively.

The salary recommendations of the Commission are due before the twentieth legislative day of the 2008 Legislative Session (February 14, 2008) and become effective as of the date of the recommendations unless the Legislature disapproves the recommendations by adoption of a concurrent resolution prior to adjournment sine die of the Legislative Session. The Commission is dissolved upon the completion and submission of their recommendations.

IV. Past OHA Salary Commissions

The first Advisory Commission on OHA Trustees' Compensation was appointed in 1992 and provided recommendations to the State Legislature in 1993. The 1993 Legislature set the OHA Trustees' salaries at \$32,000 per year, with the Chairperson receiving an additional \$5,000, and made provision for regular adjustment of the salaries every four years by a salary commission.

In 1996, no appointments were made. In 1999, the Legislature amended the HRS Chapter 10-9.5 in order that the next duly appointed Salary Commission would submit recommendations to the 2000 Legislature. The Salary Commission appointed in 2000 recommended no salary adjustment.

The Salary Commission formed in 2004 recommended that the Trustees annual salary be established at \$41,000 and \$47,000 for the Chairperson. The Commission recommended that this salary remain constant for the statutorily mandated, four-year period.

V. Guiding Principles and Considerations:

Prior to conducting the review and analysis of various salary options, the Commission, per their meetings on November 20, December 4 and December 18, 2007, requested that several considerations or guiding principles be included:

- a. The salary of OHA Trustees needs to be fair and equitable.
- b. The recommendations of the Commission are for the position of OHA Trustee and not reflective of the OHA Trustee currently in office.
- c. The recommendations of the Commission are solely for the salary of the OHA Trustees as expressed in statute.
- d. The compensation needs to adequately reflect the fiduciary responsibility maintained by the OHA Trustees.
- e. Compensation needs to be sufficient to attract (or at least, not discourage) candidates from seeking the elected office of OHA Trustee.
- f. Annual cost-of-living increases should be considered.

VI. Duties and Responsibilities of OHA Trustees:

Pursuant to State law (HRS §10-5 and §10-6), the Trustees for the Office of Hawaiian Affairs are charged with broad powers, duties and responsibilities, among which include:

- Managing the income and proceeds from the pro rata portion of the Public Land Trust;
- Controlling real property held by OHA;
- Formulating policies related to Hawaiians;

- Providing grants and technical and financial assistance to individuals, organizations, and agencies;
- Developing and continually updating a strategic plan for OHA;
- Assisting in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
- Advising and coordinating with Federal, State, and County officials regarding Hawaiians and Hawaiian programs; and
- Promoting and assisting the establishment of agencies to serve native Hawaiians and Hawaiians.

In carrying out their fiduciary responsibilities, Trustees serve in a year round capacity. In addition to regular Board of Trustee meetings, there are two standing committees of the whole: 1) Beneficiary Advocacy and Empowerment and 2) Asset and Resource Management. Further, the two committees will periodically hold joint meetings.

The Commission assessed the calendar for OHA Trustees over the past 24 months and determined that there were 51 Board of Trustee meetings, 43 BAE meetings, 41 ARM meetings and 21 joint committee meetings for a total of 156 meetings. This averages 6.5 meetings a month.

In addition to regular internal meetings, OHA Trustees are also called upon by the Executive and Legislative Branches to serve on various Boards and Commissions, such as the Temporary Commission on Bio-prospecting, or more recently, the Superferry Oversight Commission.

VII. Trustee Current Salary and Fringe Benefit Package:

In 2004, the OHA Salary Commission recommended that the Board of Trustees receive an annual salary of \$41,000 and \$47,000 for the Chairperson. The 2004 Commission recommended that this salary remain constant for a four-year period and therefore reflects the current salary of the OHA Trustees.

In addition to the salary, OHA Trustees also receive a cash fringe in the form of an allowance and, for the Chairperson, a protocol fund. Both the allowance and protocol fund are intended to assist the Trustees in the functions of their office and are not considered as part of their annual salary.

In addition to their salary, OHA Trustees receive a fringe benefit package comparable to OHA employees and other State government officials. These benefits are described in Table 2 below.

Table 2 – Summary of OHA Trustee Salary and Fringe Benefits			
	Annual Amount		
Current Entitlements	Chair	Trustee	Authority
Wage/Salary	47,000	41,000	HRS §10-9(a)
Cash Fringe			
Trustee Allowance	7,200	7,200	HRS §10-9(c)
Protocol Fund	6,000	0	HRS §10-9(c)
Total Cash	60,200	48,200	
Non-Cash Fringe	See Notes Below		
State Health Fund (EUTH)	Yes ⁽¹⁾	Yes ⁽¹⁾	HRS Chapter 87A
State Retirement Plan (ERS)	Yes ⁽²⁾	Yes ⁽²⁾	HRS §§88-54.5
Group Term Life Ins.	Yes ⁽³⁾	Yes ⁽³⁾	HRS § 10-9(b)
Paid Holidays	Yes ⁽⁴⁾	Yes ⁽⁴⁾	HRS §8-1
Workers Compensation	Yes ⁽⁵⁾	Yes ⁽⁵⁾	HRS Chapter 386
Temporary Disability Insurance (TDI)	Yes ⁽⁶⁾	Yes ⁽⁶⁾	HRS § 10-9(b), and §§ 392-5, 392-27
Island Saving Plan (Deferred compensation)	Yes ⁽⁷⁾	Yes ⁽⁷⁾	HRS § 10-9(b)
Mileage reimbursement	Yes ⁽⁸⁾	Yes ⁽⁸⁾	HRS § 10-9(b)
Vacation and Sick Leave	No ⁽⁹⁾	No ⁽⁹⁾	HRS §78-23

Notes:

- (1) State contribution toward premiums depends on the type of plan selected by Trustee. A wide range of health care plans is offered to eligible employees and their families. Plans include Medical, Prescription Drug, Vision, and Dental. There is no enrollment waiting period, coverage is immediate.
- (2) State contribution toward a plan depends on the type of plan in which Trustee is enrolled. Premiums are pre-tax contributions. The benefits Trustees receive are identical to those received by other State elected officials (i.e., State Legislature). Additionally, Trustees who were in office prior to being included in the Employee Retirement System have been allowed to “buy back” into the system. Upon retirement, medical coverage is identical to any other State retiree if eligibility requirements are met.
- (3) Trustees are provided group term life insurance at no cost. Benefit amount is dependent upon the age. Portability is also offered with this plan.
- (4) Trustees receive 13 days paid holidays in a non-election year and 14 days in an election year.
- (5) Trustees are covered by OHA self-insurance workers compensation plan.
- (6) Trustees are covered by TDI law and subject to eligibility requirements.

- (7) Trustees can decide how much of their salary they wish to contribute to the savings plan (pre-tax basis) and how to invest their contribution.
- (8) Trustees receive 48.5 cents per mile for reimbursement.
- (9) Unlike other State employees, Trustees do not receive 21 days of vacation and 21 days of sick leave.

Given the general similarities between the fringe benefit packages for OHA Trustees and that of OHA staff and other State employees, it is difficult to make a monetized distinction between the differences, particularly with regard to the Employee Retirement System or in calculating vacation and sick leave credits. Subsequently, and for the purpose of developing salary recommendations, fringe benefits were not further considered.

VIII. Analysis Methodology:

Based on the guiding principles outlined by the Commission, a two-step analysis was conducted: 1) establishing a “base” or starting salary for 2008 by comparison with comparable elected officials; and 2) establishing an annual adjustment for cost-of-living. The methodologies used for these two analyses are summarized below:

a. Establishing the “Base” Salary for 2008

In this analysis, the four Hawai‘i county councils and the Hawai‘i State Legislature were evaluated. Reviews of the Salary Commissions for each county and the State were conducted and an understanding of the recommendations they put forth were obtained.

The State Legislature was considered for comparison because the State Salary Commission (March 2007) had reasoned that the Legislature, in their function, duties, and responsibilities is equivalent to those of the four county councils, with the exception that the calendar and agenda are compressed into a four-month period. As a result, the State Salary Commission recommended that the salary of the Legislators should be comparable to those of county council members.

It should be noted that there are marked differences in the salaries, annual adjustments (if any), and timing of the salary increases between each county and the State Legislature. For example, Hawai‘i County considers duration in office (seniority) in calculating salary; whereas, the other three counties and State Legislature do not. Further, effective January 2009, the State Legislature and Kaua‘i County Council are scheduled to receive a salary increase.

Despite these differences however, there is a general consistency between the salaries established for leadership and remaining members. The chair to member differential is approximately 12 percent. Past OHA Salary Commissions as well as the State Legislature have maintained similar chair to member differentials.

For the purposes of conducting analyses, the salaries of the four county councils and State Legislature were reviewed and average calculations conducted. A total of four averaging analyses were performed:

- All four counties plus the Legislature at their current salary;
- All four counties plus the Legislature at their current salary with the high and low salaries deleted;
- All four counties plus the Legislature with the January 2009 increase; and
- All four counties plus the Legislature with the January 2009 increase with the high and low salaries deleted.

b. Establishing a Cost of Living Increase:

In reviewing and researching cost of living for Hawai'i, estimate values have ranged over time as well as geographic location (i.e., island). County and State Salary Commissions, collective bargaining agreements, and other agencies, like OHA, have varied interpretations of a cost of living and the application to annual pay increases. These estimates have typically ranged from three to five percent.

Consequently, various cost of living percentages (3, 4, and 5 percent) were applied to the "base" salaries derived from the above analyses to provide several scenarios for consideration.

IX. Analysis Results

Given the methodology outlined above, the results are presented in two categories: 1) 2008 Base Salary; and 2) Total Salary with an Annual Cost of Living Increase.

a. 2008 Base Salary:

The comparison of elected officials reveals average salaries for the chair/leadership ranging between \$57,200 and \$47,331; and for the remaining members between \$51,352 and \$41,462. These results are shown in Table 3 below.

TABLE 3: ANALYSIS OF ELECTED OFFICIALS		
	Current Annual Salary	Salary Effective Jan. 2009
State Legislature		
Senate President/House Speaker	\$43,400	\$56,208
Senators/Representatives	\$35,900	\$48,708
Honolulu City Council		
Chair	\$55,020	\$55,020
Council Members	\$49,245	\$49,245
Maui County Council		
Chair	\$71,500	\$71,500
Council Members	\$66,500	\$66,500
Hawai'i County Council		
Chair	\$43,574	\$43,574
Council Members	\$39,240	\$39,240
Kaua'i County Council		
Chair	\$39,500	\$59,699
Council Members	\$35,100	\$53,066
Averages:	Option 1	Option 2
Chair/Leadership	\$50,599	\$57,200
Members	\$45,197	\$51,352
Averages without High & Low:	Option 3	Option 4
Chair/Leadership	\$47,331	\$56,976
Members	\$41,462	\$50,340

b. Total Salary with Annual Cost of Living Increase:

Given the four analyses used to calculate the 2008 Base Salary options, multiple salary variations are created when applying the three cost of living increases. The details are provided in Tables 4, 5, and 6 on the following page:

TABLE 4: SALARY COMPARISONS WITH A 3% ANNUAL COST OF LIVING INCREASE									
Salary Time Period		Comparison of Elected Officials							
		Averages				Averages without High & Low			
Salary Time Period		Option 1 - Current		Option 2 - Eff. 1/1/09		Option 3 - Current		Option 4 - Eff. 1/1/09	
Start	End	Chair	Trustees	Chair	Trustees	Chair	Trustees	Chair	Trustees
2/08	6/09	\$50,599	\$45,197	\$57,200	\$51,352	\$47,331	\$41,462	\$56,976	\$50,340
7/09	6/10	\$52,117	\$46,553	\$58,916	\$52,893	\$48,751	\$42,706	\$58,685	\$51,850
7/10	6/11	\$53,680	\$47,950	\$60,683	\$54,479	\$50,213	\$43,987	\$60,446	\$53,406
7/11	2/12	\$55,291	\$49,388	\$62,504	\$56,114	\$51,720	\$45,307	\$62,259	\$55,008

TABLE 5: SALARY COMPARISONS WITH A 4% ANNUAL COST OF LIVING INCREASE									
Salary Time Period		Comparison of Elected Officials							
		Averages				Averages without High & Low			
Salary Time Period		Option 1 - Current		Option 2 - Eff. 1/1/09		Option 3 - Current		Option 4 - Eff. 1/1/09	
Start	End	Chair	Trustees	Chair	Trustees	Chair	Trustees	Chair	Trustees
2/08	6/09	\$50,599	\$45,197	\$57,200	\$51,352	\$47,331	\$41,462	\$56,976	\$50,340
7/09	6/10	\$52,623	\$47,005	\$59,488	\$53,406	\$49,224	\$43,120	\$59,255	\$52,353
7/10	6/11	\$54,728	\$48,885	\$61,868	\$55,542	\$51,193	\$44,845	\$61,625	\$54,448
7/11	2/12	\$56,917	\$50,840	\$64,342	\$57,764	\$53,241	\$46,639	\$64,090	\$56,626

TABLE 6: SALARY COMPARISONS WITH A 5% ANNUAL COST OF LIVING INCREASE									
Salary Time Period		Comparison of Elected Officials							
		Averages				Averages without High & Low			
Salary Time Period		Option 1 - Current		Option 2 - Eff. 1/1/09		Option 3 - Current		Option 4 - Eff. 1/1/09	
Start	End	Chair	Trustees	Chair	Trustees	Chair	Trustees	Chair	Trustees
2/08	6/09	\$50,599	\$45,197	\$57,200	\$51,352	\$47,331	\$41,462	\$56,976	\$50,340
7/09	6/10	\$53,129	\$47,457	\$60,060	\$53,920	\$49,698	\$43,535	\$59,825	\$51,850
7/10	6/11	\$55,785	\$49,830	\$63,063	\$56,616	\$52,182	\$45,712	\$62,816	\$53,406
7/11	2/12	\$58,575	\$52,321	\$66,216	\$59,446	\$54,792	\$47,997	\$65,957	\$55,008

X. Discussion of Analysis Results

In review of the data regarding the 2008 Base Salary, several characteristics have emerged:

- a. The lowest 2008 Base Salary (Option 3) was derived from the average of elected officials with the highest and lowest values deleted.

- b. The highest 2008 Base Salary (Option 2) was derived from the average of elected officials effective January 2009.
- c. The salary increases approved by the State Salary Commission and the Kauai County Salary Commission (effective January 2009) had a notable effect (12-18%) on the average calculations.
- d. Deleting the high and low salaries from the averaging analyses had a smaller affect (1-7%) on the average calculations.

XI. Findings

In review of the various options for calculating a 2008 base salary, the Commission considered the following:

- a. Given that the Kaua'i County Council and the State Legislature were approved to receive salary increases in January 2009, the Commission believed that utilizing the current salaries to calculate the 2008 Base Salary for the OHA Trustees (Options 1 and 3) did not reflect accurate comparison. Therefore, the Commission concentrated its review on the salary averages that are to become effective in January 2009 (Options 2 and 4).
- b. For the purpose of reviewing the salary averages effective in January 2009 (Options 2 and 4), the Commission believes that the salaries received by the Maui County Council and the Hawai'i County Council represented outliers in the data set and preferred to use the averaging analysis with the highest and lowest salaries removed.

Subsequently, the Commission favored Option 4 as the preferred method of calculating the 2008 base salary for the OHA Trustees.

For the purposes of establishing an annual cost of living increase, the Commission reviewed the Tables 4-6 and specifically assessed Option 4 with a 3%, 4% and 5% annual increases. Based on the Commission's current understanding of the cost of living, an annual increase of 3.5% was believed to be appropriate.

XII. Draft Salary Recommendations and Solicitation of Public Comments

As a result of the above analysis, discussion and findings, the OHA Salary Commission, on December 18, 2007 approved draft recommendations for the salary of the OHA Trustees. These recommendations include a base or starting annual salary of \$57,000 for the Chairperson and \$50,000 for the

Trustee. Additionally, the Commission recommends a 3.5% annual increase effective at the start (July 1) of the 2009, 2010 and 2011 fiscal years.

The Commission also directed that the draft recommendations be made available for public review and comment. A public notice of the availability of the Draft Report and Recommendations was released on December 31, 2007. In the notice, interested persons were invited to submit their comments via email, mail or in person at the Commission's meeting on January 29, 2008. The Draft Report and Recommendations was also featured in two major daily newspapers, the OHA website, and in the OHA Newsletter.

XIII. Review of Draft Salary Recommendations and Public Comments

On January 29, 2008, the Salary Commission convened its fourth meeting to review the Draft Report and Recommendations and consider the comments and testimony submitted. Between December 31, 2007 and January 29, 2008, comments were received from ten (10) individuals: three letters and seven emailed comments. Additionally, a video commentary was posted on the internet. The comments received ranged from being in support, to opposing a salary increase, while others provided specific input or general commentary on OHA. The Commission, upon review of the comments received, noted the following:

- a. The comments in support of the draft salary recommendations were largely based upon the recognition of the substantial duties and responsibilities of the OHA Trustees. Therefore, the commenters felt that a salary increase would be appropriate and would also serve to attract candidates to seek elected office.
- b. The comments in opposition to the draft salary recommendations were based on one or more of the following objections:
 1. Opposition to the organizational purpose of OHA to serve Native Hawaiians;
 2. The perception that OHA is ineffective in serving its beneficiaries;
 3. The belief that the OHA Trustees themselves are ineffective in fulfilling their statutory duties and responsibilities;
 4. The belief that salaries for the Trustees should not be derived from taxpayer dollars; and
 5. The salary of the Chairperson should be equivalent to the other Trustees.

In discussion of the comments, the Commission found general agreement with those in support of the draft recommendations. With regard to the comments in opposition, the Commission disagreed with items 1 and 2 above and noted the importance of OHA as an organization to represent the interests of Native Hawaiians and the valuable services and assistance provided to its beneficiaries.

With regard to the criticism of the current Trustees (item 3 above), the Commission referred to its Guiding Principles (Section V. b. above) that the recommendations of the Commission are for the position of OHA Trustee and not reflective of any individual OHA Trustee currently in office. The Commission emphasized that it is the responsibility of the voting population to evaluate the performance of an individual Trustee by monitoring their actions while in office and in the polling booth should they seek re-election. The Commission further encouraged OHA to provide as much information as possible and in an accessible manner (i.e., website posting, etc.) regarding the positions, actions, and attendance of each Trustee such that the voting public can make informed decisions.

With regard to item 4 above, the Commission further clarified that the salaries of the Trustees are drawn in their entirety from the OHA trust fund. No legislative appropriations to OHA are used for Trustees' salaries.

The Commission also deliberated the notion of maintaining an equivalent salary for all Trustees and upon review of the duties and responsibilities of the Chairperson, the Commission felt that an increased salary was justified. Further, the Commission reasoned that an increased salary for the Chairperson was also consistent with other State and County elected officials.

After its discussion on the comments received, the Commission decided that significant amendments to their draft salary recommendations were not warranted. The Commission did however review changes in the Consumer Price Index (as an indicator of cost of living) since 2000 and reaffirmed that an annual increase of 3.5% was appropriate. The Commission also reviewed HRS Chapter 10-9(1)(b) which states that the Trustees salary must be paid in equal amounts over the course of the year. Consequently, the annual salaries with the 3.5% cost of living increase were reviewed to ensure that they were divisible by 12 and where necessary corrections were made.

XIV. Final Recommendations

As a result of the above analysis, discussion and findings, the OHA Salary Commission, on February 11, 2008 approved the final recommendations for the salary of the OHA Trustees. These recommendations include a base or starting annual salary of \$57,000 for the Chairperson and \$50,004 for the Trustee. The Commission further recommends an annual cost of living

increase of approximately 3.5% to be effective at the start (July 1) of the 2009, 2010 and 2011 fiscal years. Per these recommendations, the specific salaries are set forth in Table 7 below:

Table 7: Salary Recommendations for OHA Trustees			
Starting	Ending	Chairperson	Trustees
February 11, 2008	June 30, 2009	\$57,000	\$50,004
July 1, 2009	June 30, 2010	\$59,004	\$51,756
July 1, 2010	June 30, 2011	\$61,068	\$53,568
July 1, 2011	Effective Date*	\$63,204	\$55,440
* This is the date the 2012 OHA Salary Commission recommendations go into effect.			

In accordance with HRS Chapter 10-9.5, these salary recommendations are effective immediately, unless the Hawai'i State Legislature disapproves through the passage of a concurrent resolution prior to the adjournment sine die in May 2008.

With the approval of the salary recommendations, the 2008 OHA Salary Commission sunset and dissolved by unanimous vote at the adjournment of its meeting on February 11, 2008.

2012 Office of Hawaiian Affairs Salary Commission

February 15, 2012

The Honorable Neil Abercrombie
Governor, State of Hawai'i
Executive Chambers – State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

The Honorable Shan Tsutsui
Senate President
Room 409, State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

The Honorable Calvin Say
Speaker of the House
Room 431, State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Subject: Report and Recommendations of the 2012 OHA Salary Commission

Aloha Governor Abercrombie, President Tsutsui and Speaker Say:

The 2012 Salary Commission for the Board of Trustees for the Office of Hawaiian Affairs (OHA) would like to extend its appreciation for the opportunity to participate on this commission. We have completed our statutory responsibility to study and propose recommendations regarding the salary for the OHA Trustees. On February 15, 2012, the Commission voted to approve the Final Report and Recommendations on the Salary for the trustees of the Office of Hawaiian Affairs (attached).

Commissioners were appointed January 18, 2012 and our recommendations were due to the Legislature by February 16, 2012. Commissioners sought a time extension; however, legal counsel advised us that an extension was not allowable under the law. We would like to see more time for public comment, and therefore we strongly urge appointment of the 2016 OHA Salary Commission in 2015 as is allowable by law.

The process and deliberations of the 2012 Salary Commission were open and prudent. The Commission carefully reviewed the duties and responsibilities of the OHA Trustees, their current compensation and benefit package, the recommendations of past OHA Salary Commissions, the compensation of comparable state and county elected officials, the 2011 Hawai'i Employers Council Salary Survey, as well as economic indicators, including the consumer price index, the forecast of the Council on Revenues and Social Security cost of living adjustments. On February 3, 2012, Commissioners solicited public comment through notice of opportunity to submit written and oral testimony at meetings held February 7, 10 and 15, 2012, and via email at ohasalarycommission2012@gmail.com. February 10, 2012 the Commission prepared a draft report and recommendations and solicited public comment. The Commission considered the input received and made appropriate revisions prior to finalizing its recommendations.

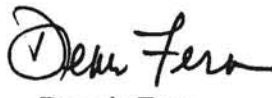
In sum, we believe that the salaries established by the 2012 Salary Commission for the OHA Board of Trustees are fair, equitable, and reflective of their important duties and fiduciary responsibilities to the OHA Trust and its beneficiaries; as well as prudent in consideration of the past, current and projected economic environment.

With the approval of the salary recommendations, the 2012 OHA Salary Commission sunset and dissolved by unanimous vote at the adjournment of its meeting on February 15, 2012.

Mahalo nui loa, 2012 Office of Hawaiian Affairs Salary Commission



Ray-nelle Cobb,
Commissioner



Dennis Fern,
Commissioner



Laurelle Lee,
Commissioner



Katrina-Ann Kapā Oliveira,
Commissioner

Diane Paloma,
Commissioner



Mele Spencer,
Commissioner

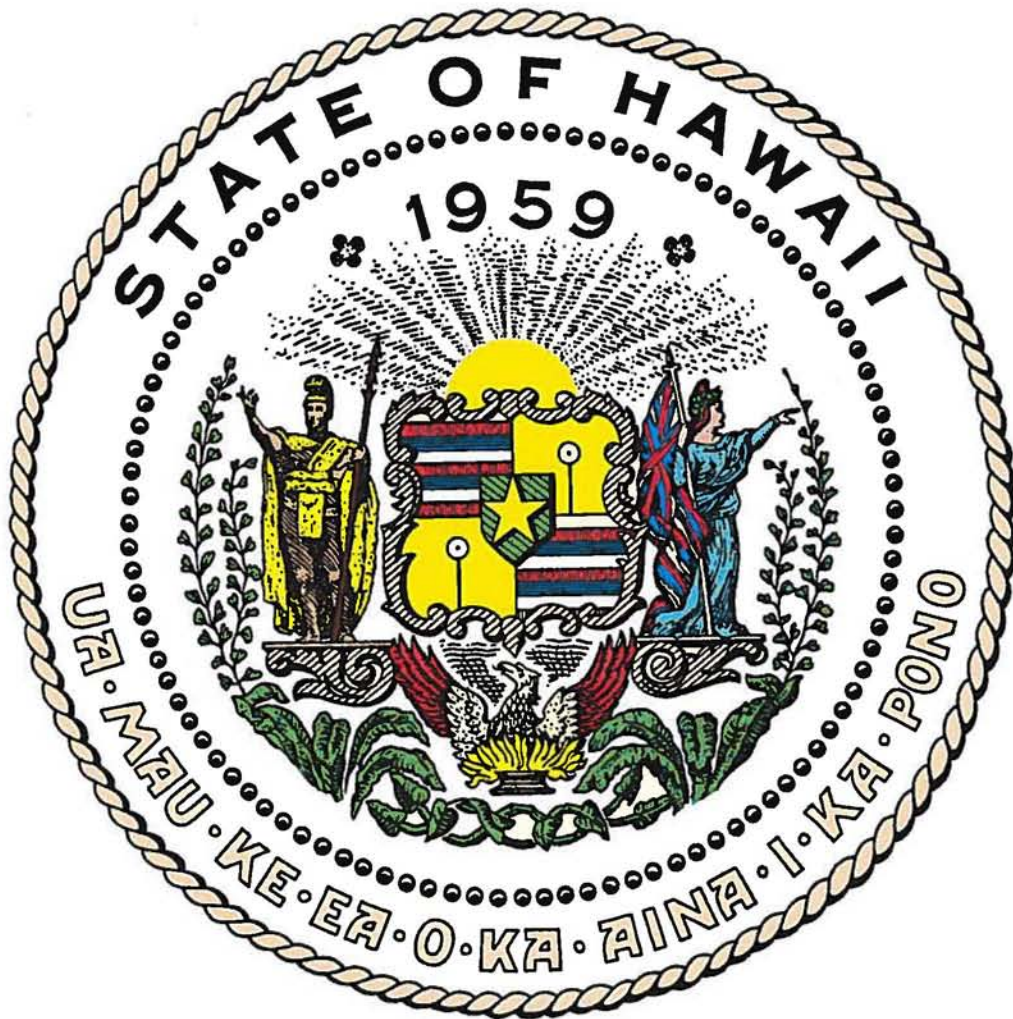


Edward Wendt,
Commissioner

Attachment – Report and Recommendations of the 2012 OHA Salary
Commission

- c: The Honorable Colette Machado, Chairperson, Office of Hawaiian Affairs
The Honorable Peter Apo, Vice-Chairperson, Office of Hawaiian Affairs
The Honorable Rowena Akana, Trustee, Office of Hawaiian Affairs
The Honorable Haunani Apoliona, Trustee, Office of Hawaiian Affairs
The Honorable Donald Cataluna, Trustee, Office of Hawaiian Affairs
The Honorable Hulu Lindsey, Trustee Office of Hawaiian Affairs
The Honorable Robert Lindsey, Trustee, Office of Hawaiian Affairs
The Honorable Oswald Stender, Trustee, Office of Hawaiian Affairs
The Honorable John Waihe'e IV, Trustee, Office of Hawaiian Affairs
Mr. Richard Pezzulo, Interim Chief Executive Officer, Office of Hawaiian Affairs
Dr. Kamana'opono Crabbe, Selected Chief Executive Officer, Office of Hawaiian Affairs

**REPORT AND RECOMMENDATIONS
REGARDING THE SALARY OF THE
BOARD OF TRUSTEES OF THE
OFFICE OF HAWAIIAN AFFAIRS**



Prepared by:

**2012 SALARY COMMISSION
FOR THE TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS
FEBRUARY 15, 2012**

**2012 OHA Salary Commission
Report and Recommendations
Regarding the Salary of the
Board of Trustees of the Office of Hawaiian Affairs**

February 15, 2012

I. Salary Recommendations:

The 2012 Office of Hawaiian Affairs (OHA) Salary Commission (Commission) has completed its analysis, discussion and findings, and on February 15, 2012 approved the recommendations regarding the salary of the OHA Trustees (Trustees).

These recommendations include:

Table 1: Salary Recommendations for OHA Trustees			
Starting	Ending	Chairperson	Trustees
July 1, 2011	June 30, 2012	\$63,204	\$55,440
July 1, 2012	June 30, 2013	\$63,204	\$55,440
July 1, 2013	June 30, 2014	\$63,204	\$55,440
July 1, 2014	June 30, 2015	\$(see formula below)	\$(see formula below)

Formula for Fiscal Year 2015. Regarding the Trustee salary for the period 7/1/2014 – 6/30/2015: Starting with the base of the \$63,204 for the Chairperson and \$55,440 for the other OHA Trustees, the Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2012 – 6/30/2015 or the annual Honolulu Consumer Price Index (CPI) for prior year ending 12/31/2013, but not less than zero.

Note: July 1, 2015 is the date the 2016 OHA Salary Commission recommendations go into effect.

In summary the recommendations maintain the current salary of \$63,204 for the OHA Chairperson and the current salary of \$55,440 for the other OHA Trustees, for Fiscal Year 2012, Fiscal Year 2013 and Fiscal Year 2014. For Fiscal Year 2015 the salary amount for the Chairperson and Trustees is determined by the above formula.

In accordance with Hawai'i Revised Statutes (HRS) Chapter 10-9.5, these salary recommendations are effective immediately, unless the Hawai'i State Legislature disapproves through the passage of a concurrent resolution prior to the adjournment sine die in May 2012.

The details of the Commission's study and the basis for their recommendations are provided in the report below.

II. Background:

The Governor appointed the 2012 OHA Salary Commission on January 18, 2012. The Commission urges the Governor to resume appointment of the OHA Salary Commission in August of the year prior to the date the Commission Report and Recommendations are due to the Legislature. Given the appointment date, and the date the Commission must make their recommendation is by the 20th legislative day, February 16, 2012, the turn-around time was extremely short, making the task more difficult and shortening the public comment period. The shortened time frame also made it difficult to find meeting dates that worked for all seven Commissioners. We set meeting dates that fit most Commissioners, and provided public notice consistent with the Sunshine Laws. One Commissioner who had to be away from O'ahu on the date of one of the meetings listened to the discussion by phone, but was not able to speak. The Commissioners planned their task and conducted their business prudently within the allotted time. The Commission publicly noticed and convened three (3) meetings on February 7, February 10, and February 15, 2012.

During the course of these meetings, the Commission reviewed their statutory mandate, the history and recommendations of previous commissions, Article XII of the Hawai'i Constitution, Hawai'i Revised States section 10-1 thru 10-9, the Bylaws of OHA Board of Trustees, the Trustee public meeting schedule and attendance for CY 2010 and 2011, 2011 OHA Annual and Grants and Sponsorships Report, the OHA Strategic Plan 2010 – 2018, the duties and responsibilities of the OHA Trustees and their current compensation and benefits, reviewed OHA budget as far as staffing numbers and salary changes, conducted research and analysis of comparable elected officials and OHA staff, reviewed economic indicators and forecasts and deliberated the findings of these analyses. The Commission adopted principles to guide the preparation of their recommendations.

OHA Salary Commissioners noted that beneficiaries hold their elected OHA Trustees to a high standard as leaders, and as such saw their kuleana as salary Commissioners demanded prudent and fair decision-making, with OHA's mission of betterment of conditions of Native Hawaiians always in mind.

Commissioners emphasized that they are not conducting a performance evaluation because the Salary Commission kuleana is to set the salary rate for the positions of Trustee and Chairperson, and not to evaluate the performance of an individual. It was noted that it was the kuleana of voters to evaluate the performance of individual trustees. There was discussion of the importance of

the position of Trustee to each and every beneficiary, and attendance at meetings, including arriving on time and not departing early should be a duty of any elected position.

In the discussion it was emphasized Trustees are elected to serve beneficiaries, and beneficiaries must have trust in their Trustees. Further, more than one Commissioner expressed the belief that they expected their leaders to lead, but they can't if they do not attend meetings, or routinely arrive late and leave early. There was consensus that OHA Trustees are leaders of our community, and we expect them to lead by example.

Commissioners noted that many Trustees are attending meetings fully, arriving on-time, and staying to the end of meetings.

There was a discussion that the next Commission might examine meeting attendance as a contingency of Trustee salary, or Commissioners in 2016 may want to recommend a statute change if needed to address this matter.

The Commission used the best available information at the time of decision-making, and Commissioners made recommendations. The four-year cycle between commission appointments has strengths and weaknesses. One strength is that it allows a long arms-length review on the basis of job duties and elected office and the economic forecast, as opposed to a review of an individual's performance which may be unlawful. The weakness is that it is designed to be an estimate of appropriateness based on the best available data at the time of the deliberations. The four-year cycle does allow the Commission to re-set salaries to appropriate levels, again, based on best available data at the time of deliberation.

Commissioners reviewed data, OHA's activities, OHA pay and staffing cuts, the 2004 and 2008 reports and recommendations from the respective OHA Salary Commissions and a treasure chest of factors. The current economic conditions and forecasts were considered. At this time a 3.5% annual increase is less appropriate given the actual economic conditions. However, in 2008 it was a reasonable approach based on the information at the time.

Commissioners examined pay cuts, freezes and future possibility of restoration in the government sector, the Hawai'i Legislature and County Councils. We considered the projected growth through 2018 forecasted by the Council on Revenues. We examined the Social Security Cost of Living Increase currently at 3.6%, the 2012 Honolulu Consumer Price Index currently at 2.8%, the Hawai'i Employers Council Survey and national articles anticipating a 2%, possibly 2-3% increase for 60% of positions in the private sector in 2012, and looked at impact retroactively and to the appointment of the 2016 OHA Salary Commission.

III. The 2012 OHA Salary Commission and its Statutory Responsibilities

The Commission was established pursuant to HRS Chapter 10-9.5 to study and make recommendations to the State Legislature on appropriate salary for the Board of Trustees of OHA. The Commission is formed every four years and consists of seven members appointed by the Governor from nominations submitted by Native Hawaiian organizations.

On January 18, 2012, Governor Neil Abercrombie appointed the following seven members to the Commission:

1. Ms. Ray-nelle Cobb, Queen Lili'uokalani Children's Center
2. Mr. Dennis Fern, Board of Directors, ALU LIKE INC.
3. Ms. Laurelle Lee, Papa Ola Lōkahi
4. Ms. Katrina Kapā Oliveira, Kawaihuelani Center for Hawaiian Language, University of Hawai'i at Mānoa
5. Ms. Diane Paloma, Native Hawaiian Health Program, The Queen's Health Systems
6. Ms. Mele Spencer, Keaukaha-Pana'ewa Farmers Association
7. Mr. Edward Wendt, Maui Taro Farmer

The salary recommendations of the Commission are due by the twentieth legislative day of the 2012 Legislative Session (February 16, 2012) and become effective as of the date of the recommendations unless the Legislature disapproves the recommendations by adoption of a concurrent resolution prior to adjournment sine die of the Legislative Session. The Commission is dissolved upon the completion and submission of their recommendations.

IV. Past OHA Salary Commissions

The first Advisory Commission on OHA Trustees' Compensation was appointed in 1992 and provided recommendations to the State Legislature in 1993. The 1993 Legislature set the OHA Trustees' salaries at \$32,000 per year, with the Chairperson receiving an additional \$5,000, and made provision for regular adjustment of the salaries every four years by a salary commission. In 1996, no appointments were made. In 1999, the Legislature amended the HRS Chapter 10-9.5 in order that the next duly appointed Salary Commission would submit recommendations to the 2000 Legislature. The Salary Commission appointed in 2000 recommended no salary adjustment.

The Salary Commission formed in 2004 recommended that the Trustees annual salary be established at \$41,000 and \$47,000 for the Chairperson. The Commission recommended that this salary remain constant for the statutorily mandated, four-year period.

The 2008 OHA Salary Commission recommendations included a base or starting annual salary of \$57,000 for the Chairperson and \$50,004 for the Trustee. Additionally, the Commission recommended a 3.5% annual increase effective at the start (July 1) of the 2009, 2010 and 2011 fiscal years. These salaries are specified in the Table 2 below:

Table 2: 2008 Salary Recommendations for OHA Trustees			
Starting	Ending	Chairperson	Trustees
February 11, 2008	June 30, 2009	\$57,000	\$50,004
July 1, 2009	June 30, 2010	\$59,004	\$51,756
July 1, 2010	June 30, 2011	\$61,068	\$53,568
July 1, 2011	Effective Date*	\$63,204	\$55,440
* This is the date the 2012 OHA Salary Commission recommendations go into effect.			

V. Guiding Principles and Considerations:

The Commission adopted the following guiding principles to conduct their work:

- a. The salary of OHA Trustees needs to be fair and equitable.
- b. The recommendations of the Commission are for the position of OHA Trustee and not reflective of the OHA Trustee currently in office.
- c. The recommendations of the Commission are solely for the salary of the OHA Trustees as expressed in statute.
- d. The compensation needs to adequately reflect the fiduciary responsibility maintained by the OHA Trustees.
- e. Compensation needs to be sufficient to attract (or at least, not discourage) candidates from seeking the elected office of OHA Trustee.
- f. Annual cost-of-living increases should be considered as a possibility.

VI. Duties and Responsibilities of OHA Trustees:

Pursuant to State law (HRS §10-5 and §10-6), the Trustees for the Office of Hawaiian Affairs are charged with broad powers, duties and responsibilities, among which include in part, and in summary:

- Managing the income and proceeds from the pro rata portion of the Public Land Trust;

- Controlling real property held by OHA;
- Formulating policies related to Hawaiians;
- Providing grants and technical and financial assistance to individuals, organizations, and agencies;
- Developing and continually updating a strategic plan for OHA;
- Assisting in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
- Advising and coordinating with Federal, State, and County officials regarding Hawaiians and Hawaiian programs; and
- Promoting and assisting the establishment of agencies to serve native Hawaiians and Hawaiians.

In carrying out their fiduciary responsibilities, Trustees serve in a year round capacity. In addition to regular Board of Trustee meetings, there are two standing committees of the whole: 1) Beneficiary Advocacy and Empowerment and 2) Asset and Resource Management. Further, the two committees periodically hold joint meetings.

The Commission assessed the meeting schedule for OHA Trustees in Calendar Years 2010 and 2011 and determined that there were 53 Board of Trustee meetings, 35 BAE meetings, 32 ARM meetings and 14 joint committee meetings for a total of 134 meetings. This averages 5-6 meetings a month.

In addition to regular internal meetings, OHA Trustees are also called upon by the Executive and Legislative Branches to serve on various Boards and Commissions.

Trustees convene and attend periodic community meetings on each island statewide, and travel to Washington, D.C. to advocate with Members of Congress and the Administration.

VII. Trustee Current Salary and Fringe Benefit Package:

In addition to the salary, OHA Trustees also receive a cash fringe in the form of an allowance and, for the Chairperson, a protocol fund. Both the allowance and protocol fund are intended to assist the Trustees in the functions of their office and are not considered as part of their annual salary.

OHA Trustees receive a fringe benefit package comparable to OHA employees and other State government officials. These benefits are described in Table 3 below.

	Annual Amount		
Categories	Chair	Trustee	Authority
Wage/Salary	63,204	55,440	HRS §10-9(a)
Cash Fringe			
Trustee Allowance	7,200	7,200	HRS §10-9(c)
Protocol Fund	5,200	0	HRS §10-9(c)
Total Cash	75,604	62,640	
Non-Cash Fringe	See Notes Below		
State Health Fund (EUTH)	Yes ⁽¹⁾	Yes ⁽¹⁾	HRS Chapter 87A
State Retirement Plan (ERS)	Yes ⁽²⁾	Yes ⁽²⁾	HRS §88-54.5
Group Term Life Ins.	Yes ⁽³⁾	Yes ⁽³⁾	HRS § 10-9(b)
Paid Holidays	Yes ⁽⁴⁾	Yes ⁽⁴⁾	HRS §8-1
Workers Compensation	Yes ⁽⁵⁾	Yes ⁽⁵⁾	HRS Chapter 386
Temporary Disability Insurance (TDI)	Yes ⁽⁶⁾	Yes ⁽⁶⁾	HRS § 10-9(b), and §§ 392-5, 392-27
Island Saving Plan (Deferred compensation)	Yes ⁽⁷⁾	Yes ⁽⁷⁾	HRS § 10-9(b)
Mileage reimbursement	Yes ⁽⁸⁾	Yes ⁽⁸⁾	HRS § 10-9(b)
Vacation and Sick Leave	No ⁽⁹⁾	No ⁽⁹⁾	HRS §78-23

Notes:

- (1) State contribution toward premiums depends on the type of plan selected by Trustee. A wide range of health care plans is offered to eligible employees

and their families. Plans include Medical, Prescription Drug, Vision, and Dental. There is no enrollment waiting period, coverage is immediate.

- (2) State contribution toward a plan depends on the type of plan in which Trustee is enrolled. Premiums are pre-tax contributions. The benefits Trustees receive are identical to those received by other State elected officials (i.e., State Legislature). Additionally, Trustees who were in office prior to being included in the Employee Retirement System have been allowed to “buy back” into the system. Upon retirement, medical coverage is identical to any other State retiree if eligibility requirements are met.
- (3) Trustees are provided group term life insurance at no cost. Benefit amount is dependent upon the age. Portability is also offered with this plan.
- (4) Trustees receive 13 days paid holidays in a non-election year and 14 days in an election year.
- (5) Trustees are covered by OHA self-insurance workers compensation plan.
- (6) Trustees are covered by TDI law and subject to eligibility requirements.
- (7) Trustees can decide how much of their salary they wish to contribute to the savings plan (pre-tax basis) and how to invest their contribution.
- (8) Trustees receive 55.5 cents per mile for reimbursement.
- (9) Unlike other State employees, Trustees do not receive 21 days of vacation and 21 days of sick leave.

Given the general similarities between the fringe benefit packages for OHA Trustees and that of OHA staff and other State employees, it is difficult to make a monetized distinction between the differences, particularly with regard to the Employee Retirement System or in calculating vacation and sick leave credits. Subsequently, and for the purpose of developing salary recommendations, fringe benefits were not further considered.

VIII. Analysis Methodology:

- a. Review of 2012 salaries of selected elected officials.

In this analysis, the four County Councils of Hawai‘i and the Hawai‘i State Legislature were evaluated.

The State Legislature was considered for comparison because the State Salary Commission (March 2007) had reasoned that the Legislature, in their function, duties, and responsibilities is equivalent to those of the four county councils, with the exception that the calendar and agenda are compressed into a four-month period. As a result, the State Salary

Commission recommended that the salary of the Legislators should be comparable to those of county council members.

It should be noted that there are differences in the salaries, annual adjustments (if any), and timing of the salary increases between each county and the State Legislature. For example, Hawai'i County formerly considered duration in office (seniority) in calculating salary, but a step freeze began in 2010; whereas, the other three counties and State Legislature do not consider seniority.

A review of the notes below Table 4 show the State Legislature took a 5% pay cut in 2009 remaining through December 31, 2013 pursuant to Act 57; the Honolulu Council took a 5% pay reduction effective 7/1/2011; the Maui County Council froze salaries since 2/14/2010, and in 11/13/2010 three Council Members volunteered to take about a 4.5% pay reduction; as of 2/17/2010, Hawaii County Council no longer has an annual step increase. Further it was learned that as a result of the enactment of Act 57 into law in 2011, it is anticipated that the salaries of the State Legislature leadership and members will be restored automatically to a higher salary rate in Calendar Year 2014, assuming no additional law change on salary.

Despite these differences however, there is a general consistency between the salaries established for leadership and remaining members. The chair to member differential is approximately 9 percent. Past OHA Salary Commissions as well as the State Legislature have maintained similar chair to member differentials.

For the purposes of conducting analyses, the salaries of the four county councils and State Legislature were reviewed and average calculations conducted. A total of two averaging analyses were performed:

- All four counties plus the Legislature at their current salary;
- All four counties plus the Legislature at their current salary with the high and low salaries deleted;

b. Analyzing the Concept of a Possible Annual Adjustment:

In reviewing and researching cost of living for Hawai'i, estimated values have ranged over time as well as geographic location (i.e., island). The Social Security Administration, County and State Salary Commissions, collective bargaining agreements, and other agencies, like OHA, have varied interpretations of a cost of living and the application to annual pay increases. These estimates have typically ranged from three to five percent. The annual Honolulu Consumer Price Index varies and could be applied. Also, the Hawai'i Employers Council Survey and national

business articles were reviewed suggesting 2% annual salary increases were a possibility in the up-coming year for the private sector.

Consequently, a cost of living percentage of 3.6, as could a 2.8 adjustment consistent with Honolulu CPI, could be applied to the base, and varied in future years as described in scenarios below. It is noted that these indicators change annually, with CPI possibly a negative.

It was noted that in terms of OHA budgeting, possibly a result of belt tightening, OHA staff has not had an annual across-the-board percentage increase since FY 2009. Beginning FY 2010, effective July 1, 2009 there have been no across-the-board staff salary increases. Prior to that point in time, staff received an annual across-the-board percentage increase consistent with some state employees. It was also reasoned that a significant reorganization triggered by approval of OHA's 2010 Strategic Plan resulted in fewer staff handling the same work load.

Upon inquiry of OHA Corporate Counsel, it was learned that the annual 3.5 increase in Trustee salary recommended by the 2008 OHA Salary Commission, and affirmed by the State Legislature, could not be rejected or refused by Trustees because it was a legislative decision and set by statute. In other words, neither individual Trustees nor the Board of Trustees as a body could reduce Trustee salaries by personal choice or vote because salary is set by statutory process with the legislature as final decision-maker.

The possibility of salary cuts or no annual adjustment was discussed given economic realities and belt-tightening that has occurred since at least 2009, and is anticipated to continue somewhat, at least through 2013.

IX. Analysis Discussion

Given the methodology outlined above, the analysis discussion is presented in two sections: a) Base Salary; and b) Base salary and the concept of a possible annual or periodic adjustment.

a. 2012 Base Salary:

The comparison of elected officials current salaries reveals a range for chair/leadership from \$71,500 to \$54,336 and remaining members from \$66,500 to \$48,708, and the average salaries for the chair/leadership ranging between \$60,317.82 and \$58,584.36; and for the remaining members between \$54,346.50 and 52,174.67. These results are shown in Table 4 below, Option 1 and 2.

TABLE 4: ANALYSIS OF ELECTED OFFICIALS			
	Annual Salary 2/11/08	Salary Effective Jan. 2009, as of 2/11/08	Current Annual Salary, as of 2/6/2012
State Legislature - 1			
Senate President/House Speaker	\$43,400	\$56,208	\$56,208
Senators/Representatives	\$35,900	\$48,708	\$48,708
Honolulu City Council - 2			
Chair	\$55,020	\$55,020	\$55,666.08
Council Members	\$49,245	\$49,245	\$49,823.52
Maui County Council - 3			
Chair	\$71,500	\$71,500	\$71,500
Council Members	\$66,500	\$66,500	\$66,500
Hawai'i County Council-4			
Chair	\$43,574	\$43,574	\$54,336
Council Members	\$39,240	\$39,240	\$47,928; \$48,924; \$49,920* options
Kaua'i County Council - 5			
Chair	\$39,500	\$59,699	\$63,879
Council Members	\$35,100	\$53,066	\$56,781
Averages:			Option 1*
Chair/Leadership			\$60,317.82
Members			\$54,346.50
Averages without High & Low:			Option 2*
Chair/Leadership			\$58,584.36
Members			\$52,174.67

Note 1: Legislators extended 5% pay reduction through 12/31/2013, Act 57

Note 2: Eff. 7/1/2011 took 5% less than Salary Commission approved

Note 3: Freeze since 2/14/2010, 11/13/2010 three volunteered about 4.5% pay reduction

Note 4: No step increases on 12/1 after elections, effective 2/17/2010

Note 5: Salary froze as is, eff. August 5, 2011 via County Salary Commission

Info: 1/12-HI Council on Revenues: revenue growth projection= 14.5 to 11% for FY 12;
1/23/12-SOH DOLIR – HNL CPI-W =2.8% Inc. CY 12; SSN COLA eff. 12/30/11=3.6%

- b. Base salary and the concept of a possible annual or periodic adjustment:

Various scenarios of adjustment were considered including annual Cost of Living Increase using Social Security amount, a temporary decrease, a one-time annual increase, flat or no change annually, an annual adjustment based on the Honolulu Consumer Price Index (CPI), and the 2% increase in salaries anticipated based on the Hawai'i Employers Council Survey and national business articles.

It was felt that care should be taken to view OHA as a whole organization. Trustees are elected leaders, who should lead by example. OHA is a whole organization with Trustees and staff. Beneficiaries depend on the work of OHA Trustees and the work of OHA staff, and salaries and budgeting parameters should be fair for all.

X. Findings

In reviewing the various options, the Commission decided it was fiscally prudent at this time, and fair, to maintain the current Trustee salary amount for the Chairperson and Trustees for Fiscal Year 2012, Fiscal Year 2013 and Fiscal Year 14. Regarding the Trustee salary for the period 7/1/2014 – 6/30/2015 a formula was used: Starting with the base of \$63,204 for the Chairperson and \$55,440 for the other OHA Trustees, the Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2012 – 6/30/2015 or the annual Honolulu Consumer Price Index (CPI) for prior year ending 12/31/2013, but not less than zero.

XI. Draft Salary Recommendations and Solicitation of Public Comments

As a result of the above analysis, discussion and findings, the OHA Salary Commission approved a draft report and draft recommendations for the salary of the OHA Trustees on February 10, 2012.

The Commission directed that the draft recommendations be made available for public review and comment. A public notice of the availability of the Draft Report and Recommendations was released on February 10, 2012. In the notice, interested persons were invited to submit their comments via email at ohasalarycommission2012@gmail.com, or in person at the Commission's meeting on February 15, 2012, at Noon at ALU LIKE INC. The Draft Report and Recommendations were uploaded to the OHA website, and the 2012 OHA Salary Commission sought public comments on the DRAFT report and recommendations in a press release dispersed by OHA staff to statewide media outlets on February 10, 2012.

XII. Review of Draft Salary Recommendations and Public Comments

On February 15, 2012, the Salary Commission convened its third meeting to review the Draft Report and Recommendations and consider the community comments and testimony submitted before finalizing the report and recommendations.

It should be noted that Commissioners worked intensively within the short time available for them to conduct review and analysis, seek and review public comments and complete their kuleana. Between February 3, 2012 and February 10, 2012 general input from the public was sought on Trustee salary. From February 10, 2012 and February 15, 2012, inclusive, comment was sought on the 2012 OHA Salary Commission DRAFT Trustee salary report and recommendations. No oral or written testimony was provided by the public at the three publicly noticed 2012 OHA Salary Commission meetings. Comments were received via email as follow:

Received on February 13, 2012,

No OHA Trustee Salary

Aloha mai kākou,

My kūpuna were lawai‘a and canoemakers from Kapalilua since 1777; however, I was born and raised in Niu Valley.

I am opposed to salaries for the Trustees of the Board of the Office of Hawaiian Affairs. The Trustees, like many Directors on non-profit Boards, should have a passion to help Kanaka Maoli without regard to compensation. I am on the Board of my community association, the Maunalua Fishpond Heritage Center, Aloha ‘Āina ‘O Kamilo Nui, and on various committees of other Boards, including my neighborhood board. I am never paid, nor would I want to be paid.

My father was there at the inception of OHA, attended meetings and gave his mana‘o as to what things OHA should be doing. At the time, Trustees made \$100 per meeting, which was more than enough compensation.

Today, it is obscene that Trustees who never come into the office or attend only a few meetings a year, should make \$55,440. If you are going to pay Trustees, the salary requirement needs to be based on the participation of each Trustee. I would prefer \$100 per meeting or \$100 per day that they are actually in the office doing work.

Also, at election time, the attendance of every Trustee must be published to ensure that ka po‘e are adequately being represented. He po‘e ho‘opiha wa‘a.

*Mahalo, Jeannine Johnson
Honolulu, Hawai‘i 96821
"PUPUKAHI I HOLOMUA"
(Unite in Order to Progress)*

Received on February 15, 2012,

OHA Salary Commission Draft Report & Recommendations - 7/01/11-6/30/15

Good Morning:

- 1) *Good work*
- 2) *Good recommendations, using the current pay structure of other elected officials*

However, Page 5, VI. Duties and responsibilities of OHA Trustees -Formulating policies related to Hawaiians. SORRY! 'A'OLE

OHA TRUSTEES AND CHAIRMAN DO NOT FORMULATE POLICIES FOR THE BENEFICIARIES!

OHA TRUSTEES AND CHAIRMAN RECOMMEND POLICIES FOR PROGRAMS OFFERED TO HAWAIIANS-

Dictating policies on how beneficiaries live, act, respond to, address concerns is

outside the chairman and trustees scope of responsibilities.

Therefore, bullet point #3 is recommended to be revised/amended as follows:

Formulating policies related to programs offered to and for the benefit of Hawaiians.

Thank you!

M Kapuniai, Waimea Hawaiian Homesteaders' Association, Inc.

Commissioners are very appreciative that these individuals took the time to review the report and recommendations, and submit written comment. Commissioners view meeting attendance as part of the duties and responsibilities of the position of elected Trustee, and suggested the next Commission explore this further as to what option relative to salary there is within the law. Commissioners reviewed the current duties and responsibilities of the Trustees as elected officials and fiduciaries working for betterment of conditions of native Hawaiians and Hawaiians as set by the state Constitution and statutes, and the OHA Board of Trustees Bylaws, and considered a salary reflective of the work and expertise required for the position. The full phrase on the Board of Trustees powers and duties relative to policy in Hawai'i Revised Statute section 10-5 reads, "(4) *Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such*

policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution.”

One Commissioner reported receiving oral feed back from some beneficiaries, and summarized that these beneficiaries paid attention to the work of the Commission and gave high marks for the work completed in a short time, and for the thoughtful, timely decisions. Further, that they commend the 2012 OHA Salary Commission for their work, using their intelligent minds for matters important to beneficiaries. Commissioners appreciated this feed back.

Another Commissioner reported an inquiry as to whether or not Trustees can have another job. The understanding is that Trustees can have another job, if it does not interfere with their duties and responsibilities as elected Trustees, and is within the ethics laws.

Commissioners reviewed and considered the above comments at the February 15, 2012 meeting of the 2012 OHA salary Commission.

XIII. Recommendations

As a result of the analysis, discussion and findings described in this report, the OHA Salary Commission approved the recommendations for the salary of the OHA Trustees on February 15, 2012.

These recommendations are:

Table 1: Salary Recommendations for OHA Trustees			
Starting	Ending	Chairperson	Trustees
July 1, 2011	June 30, 2012	\$63,204	\$55,440
July 1, 2012	June 30, 2013	\$63,204	\$55,440
July 1, 2013	June 30, 2014	\$63,204	\$55,440
July 1, 2014	June 30, 2015	\$(see formula below)	\$(see formula below)

Formula for Fiscal Year 2015. Regarding the Trustee salary for the period 7/1/2014 – 6/30/2015: Starting with the base of the \$63,204 for the Chairperson and \$55,440 for the other OHA Trustees, the Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2012 – 6/30/2015 or the annual Honolulu Consumer Price Index (CPI) for prior year ending 12/31/2013, but not less than zero.

Note: July 1, 2015 is the date the 2016 OHA Salary Commission recommendations go into effect.

In summary the recommendations maintain the current salary of \$63,204 for the OHA Chairperson and the current salary of \$55,440 for the other OHA Trustees, for Fiscal Year 2012, Fiscal Year 2013 and Fiscal Year 2014. For Fiscal Year 2015 the salary amount for the Chairperson and Trustees is determined by the above formula.

In accordance with HRS Chapter 10-9.5, these salary recommendations are effective immediately, unless the Hawai'i State Legislature disapproves through the passage of a concurrent resolution prior to the adjournment sine die in May 2012.

With the approval of the salary recommendations, the 2012 OHA Salary Commission dissolved by unanimous vote at the adjournment of its meeting on February 15, 2012.

2016 Office of Hawaiian Affairs Salary Commission

February 17, 2016

The Honorable David Y. Ige
Governor, State of Hawai‘i
Executive Chambers, Hawai‘i State Capitol
Honolulu HI 96813

The Honorable Ronald D. Kouchi
Senate President
Room 409, Hawai‘i State Capitol
Honolulu HI 96813

The Honorable Joseph M. Souki
Speaker of the House
Room 431, Hawai‘i State Capitol
Honolulu HI 96813

Subject: Report and Recommendations of the 2016 OHA Salary Commission

Aloha Governor Ige, President Kouchi and Speaker Souki:

The 2016 Salary Commission for the Board of Trustees of the Office of Hawaiian Affairs (OHA), in furtherance of its statutory duties and responsibilities, has completed its study and review and submits this proposed salary recommendation for the OHA Trustees. On February 17, 2016, the Commission voted to approve the “Final Report and Recommendations Regarding the Salary of the Board of Trustees of the Office of Hawaiian Affairs” (attached).

By Hawai‘i law, Hawai‘i Revised Statutes (HRS) Section 10-9.5, the Hawai‘i Governor appoints an OHA Salary Commission every four years. The 2016 OHA Salary Commission was appointed on January 15, 2016, and tasked with making recommendations for the salaries of the Board of Trustees for the Office of Hawaiian Affairs before the 20th legislative day, or February 22, 2016, of the regular session. The Commission took its duty seriously and strongly recommends that ample time be provided for public comment. Specifically, the late January appointments severely constrained analysis, created a bias for the status quo and suggested that the Commission’s work is of little consequence. Given the importance of the task and the need for timely public input, we strongly urge that Commissioners to the 2020 OHA Salary Commission be appointed as provided for by law on or before August 31, 2019.

Pursuant to HRS Chapters 92, 92-F, and 94, the process and deliberations of the 2016 OHA Salary Commission were open and prudent. The Commission carefully reviewed the duties and responsibilities of the OHA Trustees, their current compensation and benefit package, the financial and programmatic growth of the organization, current staff compensation, the recommendations of past OHA Salary Commissions, the compensation of comparable state and county elected officials, as well as economic indicators, including the consumer price index, the forecast of the Council on Revenues and Social Security cost of living adjustments.

On February 10 - 15, 2016, Commissioners solicited public comment through the Commission’s notice of opportunity to submit written comments via email at ohasalarycommission2016@oha.org. The Commission shares the concerns of the public comment received on February 17, 2016, that [he was] “*disturbed by the fact that the public comment period was only 5 days and that complete community input will suffer as such and not*

fully reflect the sentiments of OHA's Native Hawaiian beneficiaries", and urges greater attention be given to the timeliness of all future salary commission appointments to ensure a more meaningful and democratic form of participation by the public in this process.

In sum, the 2016 OHA Salary Commission for the OHA Board of Trustees recommends that Trustee salary levels be calibrated with OHA staff adjustments and changes with the Honolulu Consumer Price Index.

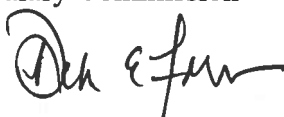
With its approval of the salary recommendations, the 2016 OHA Salary Commission dissolved by unanimous vote at the adjournment of its meeting on February 17, 2016.

Mahalo nui loa,

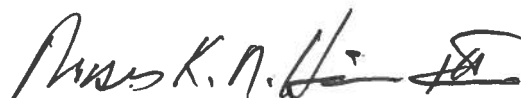
2016 Office of Hawaiian Affairs Salary Commission



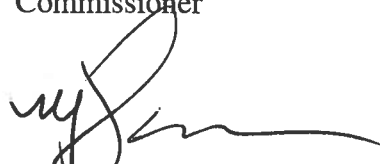
Kippen de Alba Chu
Commissioner



Dennis Fern
Commissioner



Moses K. N. Haia, III
Commissioner



Neil J. Hannahs
Commissioner



Jalna Keala
Commissioner



Diane S. L. Paloma
Commissioner

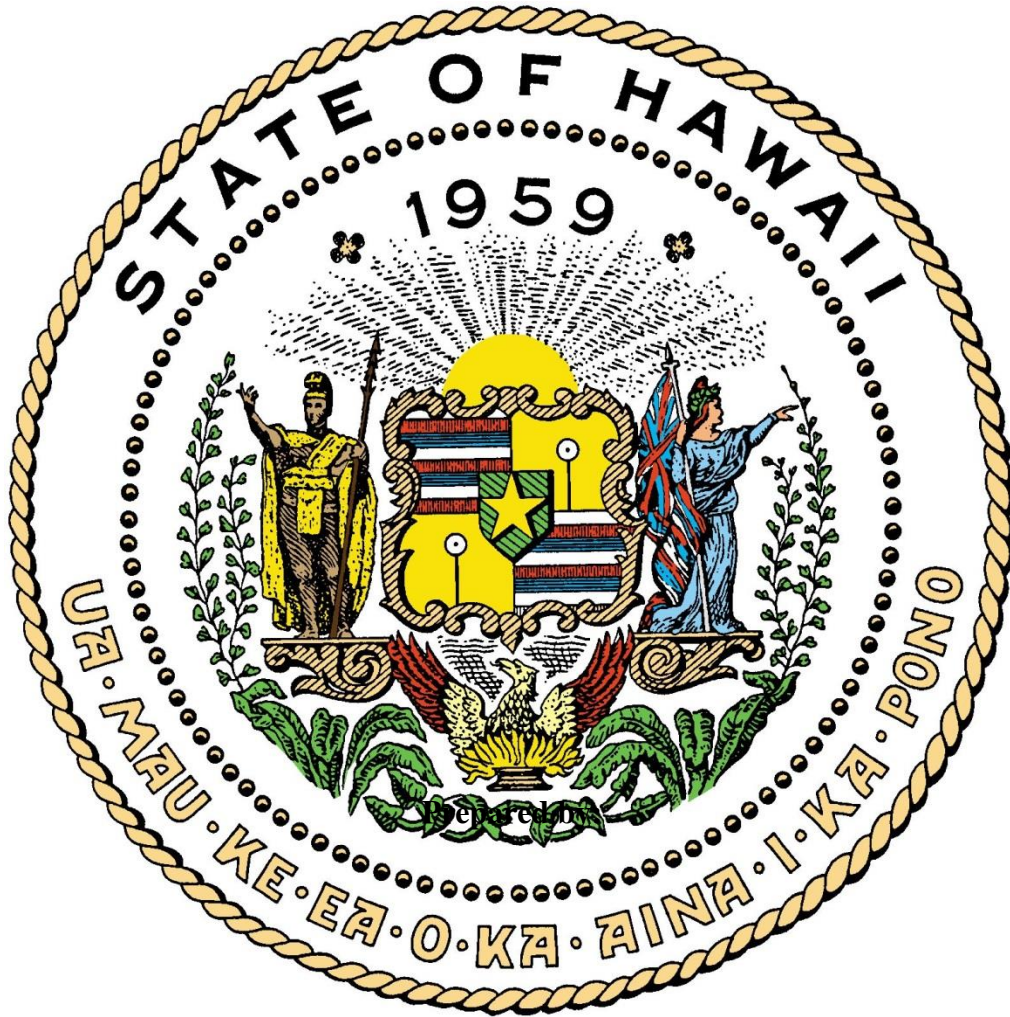


Wendell W. Perry, Jr.
Commissioner

Attachment – Report and Recommendations of the 2016 OHA Salary Commission

- c: The Honorable Robert K. Lindsey, Jr., Chairperson, Office of Hawaiian Affairs
- The Honorable Dan Ahuna, Vice-Chairperson, Office of Hawaiian Affairs
- The Honorable Lei Ahu Isa, Trustee, Office of Hawaiian Affairs
- The Honorable Rowena Akana, Trustee, Office of Hawaiian Affairs
- The Honorable Peter Apo, Trustee, Office of Hawaiian Affairs
- The Honorable Haunani Apoliona, Trustee, Office of Hawaiian Affairs
- The Honorable Carmen Hulu Lindsey, Trustee, Office of Hawaiian Affairs
- The Honorable Colette Machado, Trustee, Office of Hawaiian Affairs
- The Honorable John Waihe'e, IV, Trustee, Office of Hawaiian Affairs
- Kamana'opono M. Crabbe, Ph.D., Ka Pouhana, Office of Hawaiian Affairs

**REPORT AND RECOMMENDATIONS
REGARDING THE SALARY OF THE
BOARD OF TRUSTEES OF THE
OFFICE OF HAWAIIAN AFFAIRS**



**2016 OHA SALARY COMMISSION
FEBRUARY 17, 2016**

**2016 OHA Salary Commission
Report and Recommendations
Regarding the Salary of the
Board of Trustees for the Office of Hawaiian Affairs**

February 17, 2016

I. Recommendations

The 2016 Office of Hawaiian Affairs (OHA) Salary Commission (Commission) has completed its analysis, discussion and findings, and on February 17, 2016 approved the recommendations regarding the salary of the OHA Trustees (Trustees).

a. Process

By Hawai'i law, Hawai'i Revised Statutes (HRS) Section 10-9.5, the Hawai'i Governor appoints an OHA Salary Commission every four years. The 2016 OHA Salary Commission was appointed on January 15, 2016, and tasked with making recommendations for the salaries of the Board of Trustees for the Office of Hawaiian Affairs before the 20th legislative day, or February 22, 2016, of the regular session. The Commission took its duty seriously and strongly recommends that ample time be provided for public comment. Specifically, the late January appointments severely constrained analysis, created a bias for the status quo and suggested that the Commission's work is of little consequence. Given the importance of the task and the need for timely public input, we strongly urge that Commissioners to the 2020 OHA Salary Commission be appointed as provided for by law on or before August 31, 2019.

b. Salary

Table 1: Salary Recommendations for OHA Trustees			
Starting	Ending	Chairperson	Trustees
July 1, 2015	June 30, 2016	\$64,164	\$56,280
July 1, 2016	June 30, 2017	\$64,164	\$56,280
July 1, 2017	June 30, 2018	\$(see formula below)	\$(see formula below)
July 1, 2018	June 30, 2019	\$(see formula below)	\$(see formula below)
<p>Formula for Fiscal Year 2018. Regarding the Trustee salary for the period 7/1/2017 – 6/30/2018: Starting with the base of \$64,164 for the Chairperson and \$56,280 for each of the other OHA Trustees, the Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2016 – 6/30/2018 or the annual Honolulu Consumer Price Index (CPI) for the prior year ending 12/31/2016, but not less than zero.</p> <p>Formula for Fiscal Year 2019. Regarding the Trustee salary for the period 7/1/2018 – 6/30/2019: The Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2017 – 6/30/2019 or the annual Honolulu Consumer Price Index (CPI) for the prior year ending 12/31/2017, but not less than zero.</p> <p>Note: July 1, 2019 is the date the 2020 OHA Salary Commission recommendations go into effect.</p>			

In summary, the recommendations maintain the current salary of \$64,164 for the OHA Chairperson and the current salary of \$56,280 for the other OHA Trustees, for Fiscal Year 2016 and Fiscal Year 2017. Fiscal Year 2018 and Fiscal Year 2019 should use the formula determined above.

In accordance with HRS Chapter 10-9.5, these salary recommendations are effective as of the date of the recommendations unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to its adjournment sine die in May 2016.

The details of the Commission's study and the basis for its recommendations are provided in the report below.

II. Background

The Governor appointed the 2016 OHA Salary Commission on January 15, 2016. The Commission urges the Governor to begin the process of appointment of the OHA Salary Commission in August of the year prior to the date the Commission Report and Recommendations are due to the Legislature. Given the appointment date and the date the Commission must make its recommendation (the 20th legislative day, February 22, 2016), the turn-around time was extremely short; and ensuring due diligence required each Commissioner and the staff assisting it to complete its task in a severely limited timeframe. This compressed timeframe also resulted in the shortening of the public comment period.

The shortened time frame made it difficult to find meeting dates that worked for all seven Commissioners. Thanks to the flexibility and willingness of each Commissioner and each OHA staff member who assisted the Commission, it was able to set meeting dates to accommodate most Commissioners, and provided public notice consistent with Hawai'i's Sunshine Law. The Commissioners planned their task and conducted their business prudently within the allotted time. The Commission publicly noticed and convened meetings on February 2, 8, 16, and 17, 2016.

During the course of these meetings, the Commission reviewed its statutory mandate, the history and recommendations of previous commissions, pertinent sections of HRS Chapter 10, the Bylaws of OHA Board of Trustees, the 2015 OHA Annual Report, the OHA Strategic Plan 2010 – 2018, the duties and responsibilities of the OHA Trustees and their current compensation and benefits, OHA statistics on staffing numbers and salary changes, researched and analyzed the salaries of comparable elected officials and OHA staff, reviewed economic indicators and forecasts, and engaged in healthy discussions of each. This Commission adopted five of the six principles the 2012 Commission used to prepare and finalize their recommendations¹.

OHA Salary Commissioners noted that beneficiaries hold their elected OHA Trustees to a high cultural and fiduciary standard. As leaders who have a mandate to better the conditions for native Hawaiians, the Board continually balances Hawaiian cultural views with their fiduciary oversight responsibilities of a large trust fund. For those reasons the

¹ See page 5 of the 2012 OHA Salary Commission Report and Recommendations, V. Guiding Principles and Considerations: Letter "e" not adopted by the 2016 Commission; e. Compensation needs to be sufficient to attract (or at least not discourage) candidates from seeking the elected office of the OHA Trustee.

Commission viewed its kuleana as demanding prudent and fair decision-making to compensate equitably.

Commissioners agreed that they are not conducting a performance evaluation because the Salary Commission kuleana is to set the salary rate for the positions of Trustee and Chairperson, and not to evaluate the performance of any individual. However, one Commissioner felt it important to note that “modern compensation” puts greater weight on results and impact and not just activity as seems to be the case in the 2012 report, which focused on presence, attendance, and time. This suggests that Trustees’ compensation should be linked to their contributions to fostering the achievement of organizational goals and enhancement of the well-being of our lāhui. Unfortunately, the Commission was unable to determine how to incorporate this best practice without exceeding its charter by requiring performance goal-setting and assessment of the trustees.

In the discussion, more than one Commissioner expressed the belief that they expected these leaders to lead by example, and that the percentage of increase for Chairmanship and Trustees should align with the percentage increase of staff salaries, if any.

Commissioners reviewed data, OHA’s activities, OHA pay and staffing, the 2012 report and recommendation from the prior OHA Salary Commission and a host of other relevant factors. The current economic conditions and forecasts were considered.

III. The 2016 OHA Salary Commission and its Statutory Responsibilities

The Commission was established pursuant to HRS Chapter 10-9.5 to study and make recommendations to the State Legislature on appropriate salary for the Board of Trustees of OHA. The Commission is formed every four years and consists of seven members appointed by the Governor from nominations submitted by Native Hawaiian organizations.

On January 15, 2016, Governor David Y. Ige appointed the following seven members to the Commission:

1. Mr. Kippen de Alba Chu, Friends of ‘Iolani Palace nominee
2. Mr. Dennis Fern, Queen Lili‘uokalani Children’s Center nominee
3. Mr. Moses K. N. Haia, III, Native Hawaiian Legal Corporation nominee
4. Mr. Neil J. Hannahs, Kamehameha Schools’ nominee
5. Ms. Jalna Keala, Association of Hawaiian Civic Clubs’ nominee
6. Mrs. Diane S. L. Paloma, The Queen’s Health Systems’ nominee
7. Mr. Wendell W. Perry Jr., Hawai‘inuiākea School of Hawaiian Knowledge nominee

The Commission held its first meeting on February 2, 2016, at which time the simple majority agreed to act as equals on the Commission and not elect a Chair. OHA staff facilitated all meetings of the Commission.

The salary recommendations of the Commission are due by the twentieth legislative day of the 2016 Legislative Session (February 22, 2016) and become effective as of the date of the recommendations, unless the Legislature disapproves the recommendations by adoption of a concurrent resolution prior to adjournment sine die of the Legislative Session. The Commission is dissolved upon the completion and submission of its recommendations.

IV. Past OHA Salary Commissions

The first Advisory Commission on OHA Trustees' Compensation was appointed in 1992 and provided recommendations to the State Legislature in 1993. The 1993 Legislature set the OHA Trustees' salaries at \$32,000 per year, with the Chairperson receiving an additional \$5,000, and made provision for regular adjustment of the salaries every four years by a salary commission. In 1996, no appointments were made. In 1999, the Legislature amended the HRS Chapter 10-9.5 in order that the next duly appointed Salary Commission would submit recommendations to the 2000 Legislature. The Salary Commission appointed in 2000 recommended no salary adjustment.

The Salary Commission formed in 2004 recommended that the Trustees annual salary be established at \$41,000 and \$47,000 for the Chairperson. The Commission recommended that this salary remain constant for the statutorily mandated, four-year period.

The 2008 OHA Salary Commission recommendations included a base or starting annual salary of \$57,000 for the Chairperson and \$50,004 for the Trustee. Additionally, the Commission recommended a 3.5% annual increase effective at the start (July 1) of the 2009, 2010 and 2011 fiscal years. These salaries are specified in the Table 2 below:

Starting	Ending	Chairperson	Trustees
February 11, 2008	June 30, 2009	\$57,000	\$50,004
July 1, 2009	June 30, 2010	\$59,004	\$51,756
July 1, 2010	June 30, 2011	\$61,068	\$53,568
July 1, 2011	Effective Date*	\$63,204	\$55,440
* This is the date the 2012 OHA Salary Commission recommendations go into effect.			

The 2012 OHA Salary Commission recommendations maintain the current salary of \$63,204 for the OHA Chairperson and the current salary of \$55,440 for the other OHA Trustees, for Fiscal Year 2012, Fiscal Year 2013 and Fiscal Year 2014. For Fiscal Year 2015 the salary amount for the Chairperson and Trustees is determined by the formula in the Table 3 below.

Starting	Ending	Chairperson	Trustees
July 1, 2011	June 30, 2012	\$63,204	\$55,440
July 1, 2012	June 30, 2013	\$63,204	\$55,440
July 1, 2013	June 30, 2014	\$63,204	\$55,440
July 1, 2014	June 30, 2015	\$(see formula below)	\$(see formula below)

Formula for Fiscal Year 2015. Regarding the Trustee salary for the period 7/1/2014 – 6/30/2015: Starting with the base of the \$63,204 for the Chairperson and \$55,440 for the other OHA Trustees, the Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2012 – 6/30/2015 or the annual Honolulu Consumer Price Index (CPI) for prior year ending 12/31/2013, but not less than zero.

Note: July 1, 2015 is the date the 2016 OHA Salary Commission recommendations go into effect.

V. Guiding Principles and Considerations

The Commission adopted the following guiding principles to conduct their work:

- a. The salary of OHA Trustees should be fair and equitable.
- b. The recommendations of the Commission are for the position of OHA Trustee and not reflective of the OHA Trustee currently in office.
- c. The recommendations of the Commission are solely for the salary of the OHA Trustees as expressed in statute.
- d. The compensation should adequately reflect the fiduciary responsibility maintained by the OHA Trustees.
- e. Annual cost-of-living increases should be considered if possible.

VI. Duties and Responsibilities of OHA Trustees

Pursuant to State law (HRS §10-5 and §10-6), the Trustees for the Office of Hawaiian Affairs are charged with broad powers, duties and responsibilities, among which include in part, and in summary:

- Managing the income and proceeds from the pro rata portion of the Public Land Trust;
- Controlling real property held by OHA;
- Formulating policies related to Hawaiians;
- Providing grants and technical and financial assistance to individuals, organizations, and agencies;
- Developing and continually updating a strategic plan for OHA;
- Assisting in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;

- Advising and coordinating with Federal, State, and County officials regarding Hawaiians and Hawaiian programs; and
- Promoting and assisting the establishment of agencies to serve native Hawaiians and Hawaiians.

In carrying out their fiduciary responsibilities and balancing cultural views, Trustees serve in a year-round capacity. In addition to regular Board of Trustee meetings, there are two standing committees of the whole: 1) Beneficiary Advocacy and Empowerment and 2) Resource Management. Further, the two committees periodically hold joint meetings.

Over and above their regular internal meetings, OHA Trustees are also called upon by the Executive and Legislative Branches to serve on various Boards and Commissions.

Trustees also convene and attend periodic community meetings on each island statewide, and travel to Washington, D.C., to advocate with Members of Congress and the Administration.

VII. Trustee Current Salary and Fringe Benefit Package

In addition to the salary, OHA Trustees also receive a cash fringe in the form of an allowance and, for the Chairperson, a protocol fund. Both the allowance and protocol fund are intended to assist the Trustees in the functions of their office and are not considered as part of their annual salary.

OHA Trustees receive a fringe benefit package comparable to OHA employees and other State government officials. These benefits are described in Attachment A.

VIII. Analysis Methodology

- a. Review compensation of comparable state and county elected officials.
- b. Analyzing the Concept of a Possible Annual Adjustment:
It was noted that during OHA's biennium budgeting process, staff could receive an across-the-board percentage increase that is not necessarily consistent with other state employees.

Upon inquiry of OHA Corporate Counsel, it was learned that an annual 3.5 increase in Trustee salary recommended by the 2008 OHA Salary Commission, and affirmed by the State Legislature, could not be rejected or refused by Trustees because it was a legislative decision and set by statute. In other words, neither individual Trustees nor the Board of Trustees as a body could reduce Trustee salaries by personal choice or vote because salary is set by statutory process with the legislature as final decision-maker.

IX. Analysis Discussion

Given the methodology outlined above, the analysis discussion is presented using Base Salaries.

TABLE 4: ANALYSIS OF ELECTED OFFICIALS			
	Annual Salary 2/06/2012	Salary Effective 7/01/2013	Current Annual Salary, as of 2/5/2016
State Legislature – 1			
Senate President/House Speaker	\$56,208	\$63,396	\$67,680
Senators/Representatives	\$48,708	\$55,896	\$60,180
Honolulu City Council – 2			
Chair	\$55,666.08	\$58,596	\$64,872
Council Members	\$49,823.52	\$52,446	\$58,056
Maui County Council – 3			
Chair	\$71,500	\$82,225	\$82,225
Council Members	\$66,500	\$76,475	\$76,475
Hawai'i County Council–4			
Chair	\$53,220 - \$56,544	\$52,008	\$58,008
Council Members	\$47,928 - \$50,928	\$48,000	\$52,008
Kaua'i County Council – 5			
Chair	\$63,879	\$63,879	\$63,879
Council Members	\$56,781	\$56,781	\$56,781
Averages:			
Chair/Leadership			\$67,333
Members			\$60,700

Note 1: STATE LEGISLATURE

State Legislators extended 5% pay reduction through 12/31/2013, Act 57; amended to end reduction effective 6/30/2013.

In January 2014, the **State Legislature** received the following increase:

- i. Senate President/House Speaker: \$63,396 to \$65,352 3% increase
- ii. Senators/Representatives: \$55,896 to \$57,852 3% increase
- iii. Effective January, 2015, 2016, and 2017 – 2% increase

Note 2: HONOLULU CITY COUNCIL

Eff. 7/1/2011 took 5% less than Salary Commission approved. Reduction ended 6/30/2013.

In April 2015, **Honolulu** Salary Commission approved a 2.5% salary increase.

Note 3: MAUI COUNTY COUNCIL

In 2013, **Maui County** Council members received a 15% salary increase. No increase since.

Note 4: HAWAI'I COUNTY COUNCIL

In June 2014, **Hawai'i County** Salary Commission approved an 11.5% (Council Chair) and 8.3% (Council Member) salary increase effective 7/1/2014. County Council approved. No increases since.

Note 5: KAUAI COUNTY COUNCIL

In January 2016, **Kaua'i County** Salary Commission proposed the following salary increases be effective December 1, 2016:

- i) Chair Council member \$63,879 to \$71,033 - 11.2%
- ii) Council Member \$56,781 to \$63,140 - 11.2%
- iii) Same increases were proposed in 2015 but were rejected by County Council.
- iv) No salary increase since 12/1/2009.

Info: September 2015-HI Council on Revenues: revenue growth projection = 6% for FY 16 and 5.5% for FY17; January 20, 2016-BLS DOLIR – **HNL CPI-W =0.5% CY 15; SSN COLA** effective 2016 = 0 due to the decrease in CPI.

a. 2016 Base Salary

In comparison to the current average salaries of other elected officials, the OHA Chair's base salary is 95% of other Chair salaries, and OHA Trustees' base salary is 93% of other member salaries. These results are shown in Table 4.

b. Consistency with OHA Staff

It was felt that care should be taken to view OHA as a whole organization. Trustees are elected leaders, who should lead by example. OHA is an organization consisting of Trustees and staff. Beneficiaries depend on the collaborative work of OHA Trustees and OHA staff, and salaries and budgeting parameters should move on the same trajectory.

X. Findings

After careful review and deliberation, the Commission recommends utilization of the formula defined in Table 1.

XI. Draft Salary Recommendations and Solicitation of Public Comments

As a result of the above analysis, discussion and findings, the OHA Salary Commission approved a draft report and draft recommendations for the salary of the OHA Trustees on February 8, 2016.

The Commission directed that the draft recommendations be made available for public review and comment. A public notice of the availability of the Draft Report and Recommendations was released on February 10, 2016. In the notice, interested persons were invited to submit their comments via email at ohasalarycommission2016@oha.org; all comments were due by Monday, February 15, 2016.

XII. Review of Draft Salary Recommendations and Public Comments

On February 16, 2016, the Salary Commission convened its third meeting to review the Draft Report and Recommendations, as well as consider written and oral public comment. Commissioners worked intensively within the short time available for them to conduct review and analysis, seek and review public comment, and complete their kuleana. The Commission was deeply concerned over the limitations that the tight timeline posed; which the Commission felt strongly contributed to the minimal written comments and oral testimony submitted before finalizing the report and recommendations. The Commission emphasizes the importance and need for timely public input, and strongly urges that

Commissioners to the 2020 OHA Salary Commission be appointed on or before August 31, 2019, as provided for by law.

Between February 10, 2016 and February 15, 2016 general input on Trustee salary was sought from the public. The Commission duly notes that no written comments were received during those five days; nor did they receive oral testimony at the four publicly noticed 2016 OHA Salary Commission meetings. After the deadline of February 15, ohasalarycommission2016@oha.org received one comment. Commissioners were very appreciative that this individual took the time to review the report and recommendations, and submit the following comment:

Received on February 17, 2016
2016 Office of Hawaiian Affairs Salary Commission

Aloha Commissioners,

Mahalo for all the work that was accomplished in the short time allowed. That being said, I'm disturbed by the fact that the public comment period was only 5 days and that complete community input will suffer as such and not fully reflect the sentiments of OHA's Native Hawaiian beneficiaries.

Moreover, after reviewing the Commission's report, I do not feel that there is just compensation for OHA Trustees. It's unfair that Hawaiians always seem to take the brunt of kuleana in the private and public sectors but do so at the expense of low-pay, high expectations, performance and productivity demands. The fiduciary duties and responsibilities of OHA's trustees year-round are indeed even more formidable than any comparable Ali'i Trust trustee, state legislator or county councilmember that are well-compensated for their time and effort.

The current compensation package discourages current and future generations of Native Hawaiians to look toward the OHA trustee position. The Honolulu median income to live in Hawai'i for a family four is approximately \$82,600 (according to HUD) and median home price at \$360,000. Trustees also do not earn the state employee's benefit of 21 vacation days. Making it even more difficult for a candidate to consider the position and leaving it to be filled by a retiree or a previously accomplished business person. It's shameful and degrading for those aspiring for higher office.

I recommend that the Commission revisit the possibility of at least compensating individual OHA trustees at a salary commensurate with the cost-of-living and comparable to trustees in the private sector, namely those of the Ali'i Trust.

As a possible salary and benefit recommendation:

*OHA Chair - \$100,000 or a low six-figure income
Trustee - \$88,000
Add 21 vacation days.*

I urge the Commission to take into consideration that there are qualified Native Hawaiian candidates that are willing to take the step into public service if given the incentive to do so.

Mahalo for allowing me the opportunity to comment.

*Me ka ha'aha'a,
Don Aweau*

XIII. Recommendations

The 2016 Office of Hawaiian Affairs (OHA) Salary Commission (Commission) has completed its analysis, discussion and findings, and on February 17, 2016 approved the recommendations regarding the salary of the OHA Trustees (Trustees).

a. Process

By Hawai'i law, Hawai'i Revised Statutes (HRS) Section 10-9.5, the Hawai'i Governor appoints an OHA Salary Commission every four years. The 2016 OHA Salary Commission was appointed on January 15, 2016, and tasked with making recommendations for the salaries of the Board of Trustees for the Office of Hawaiian Affairs before the 20th legislative day, or February 22, 2016, of the regular session. The Commission took its duty seriously and strongly recommends that ample time be provided for public comment. Specifically, the late January appointments severely constrained analysis, created a bias for the status quo and suggested that the Commission's work is of little consequence. Given the importance of the task and the need for timely public input, we strongly urge that Commissioners to the 2020 OHA Salary Commission be appointed as provided for by law on or before August 31, 2019.

b. Salary

Table 1: Salary Recommendations for OHA Trustees			
Starting	Ending	Chairperson	Trustees
July 1, 2015	June 30, 2016	\$64,164	\$56,280
July 1, 2016	June 30, 2017	\$64,164	\$56,280
July 1, 2017	June 30, 2018	\$(see formula below)	\$(see formula below)
July 1, 2018	June 30, 2019	\$(see formula below)	\$(see formula below)

Formula for Fiscal Year 2018. Regarding the Trustee salary for the period 7/1/2017 – 6/30/2018: Starting with the base of \$64,164 for the Chairperson and \$56,280 for each of the other OHA Trustees, the Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2016 – 6/30/2018 or the annual Honolulu Consumer Price Index (CPI) for the prior year ending 12/31/2016, but not less than zero.

Formula for Fiscal Year 2019. Regarding the Trustee salary for the period 7/1/2018 – 6/30/2019: The Trustee percentage salary increase shall be the lesser of: the average of any across the board percentage annual salary increase that may be afforded to OHA staff for the period 7/1/2017 – 6/30/2019 or the annual Honolulu Consumer Price Index (CPI) for the prior year ending 12/31/2017, but not less than zero.

Note: July 1, 2019 is the date the 2020 OHA Salary Commission recommendations go into effect.

In summary, the recommendations maintain the current salary of \$64,164 for the OHA Chairperson and the current salary of \$56,280 for the other OHA Trustees, for Fiscal Year 2016 and Fiscal Year 2017. Fiscal Year 2018 and Fiscal Year 2019 should use the formula determined above.

In accordance with HRS Chapter 10-9.5, these salary recommendations are effective as of the date of the recommendations unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to the adjournment sine die in May 2016.

With the approval of the salary recommendations, the 2016 OHA Salary Commission dissolved by unanimous vote at the adjournment of its meeting on February 17, 2016.

Attachment A – Summary Comparison of OHA Trustee Salary and Fringe Benefits (OHA Inception to Present)

	*1993 – 2004		2004 – 2008		7/1/08 – 6/30/09		7/1/09 – 6/30/10		7/1/10 – 6/30/11		7/1/11 – 6/30/14		7/1/14-present		
Categories	CHR	TRS	CHR	TRS	CHR	TRS	CHR	TRS	CHR	TRS	CHR	TRS	CHR	TRS	Authority
Wage/Salary	37,000	32,000	47,000	41,000	57,000	50,004	59,004	51,756	61,068	53,568	63,204	55,440	64,164	56,280	HRS §10-9(a)
Cash Fringe	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Trustee Allowance	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	7,200	22,200	22,200	HRS §10-9(b)
Protocol Fund		0		0		0		0		0	3,500	0	3,500	0	HRS §10-9(b)
Total Cash		39,200		48,200		57,204		58,956		60,768	75,604	62,640	86,364	78,480	
Non-Cash Fringe (%)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
State Health Fund (EUTH)			Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	Yes ⁽¹⁾	HRS Chapter 87A
State Retirement Plan (ERS)	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	Yes ⁽²⁾	HRS §§88-54.5
Group Term Life Ins.			Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	Yes ⁽³⁾	HRS § 10-9(b)
Paid Holidays			Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	Yes ⁽⁴⁾	HRS §8-1
Workers Compensation	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	Yes ⁽⁵⁾	HRS Chapter 386
Temporary Disability Insurance (TDI)	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	Yes ⁽⁶⁾	HRS § 10-9(b), and §§ 392-5, 392-27
Island Saving Plan (Deferred compensation)			Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	Yes ⁽⁷⁾	HRS § 10-9(b)
Mileage reimbursement	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	HRS § 10-9(b)
Vacation and Sick Leave	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	No ⁽⁹⁾	HRS §78-23

Notes:

*7/01/1989 to 6/30/1993: Section 10-9 HRS, members of the Board shall be allowed compensation at the rate of \$100/day for each day’s actual attendance at meeting.

*Prior to 7/01/1989: OHA Trustees’ compensation was at the rate of \$50/day for each day’s actual attendance at meeting.

- (1) State contribution toward premium depends on the type of plan selected by Trustee. A wide range of health care plans is offered to eligible employees and their families. Plans include Medical, Prescription Drug, Vision, and Dental. There is no enrollment waiting period, coverage is immediate.
- (2) State contribution toward a plan depends on the type of plan in which Trustee is enrolled. Premiums are pre-tax contributions. The benefits Trustees receive are identical to those received by other State elected officials (i.e., State Legislature). Additionally, Trustees who were in office prior to being included in the Employee Retirement System have been allowed to “buy back” into the system. Upon retirement, medical coverage is identical to any other State retiree if eligibility requirements are met. Effective July 1, 2002, OHA Trustees may choose to become a member of ERS, Section 88-43 HRS.

- (3) Trustees are provided group term life insurance at no cost. Benefit amount is dependent upon the age. Portability is also offered with this plan.
- (4) Trustees receive 13 days paid holidays in a non-election year and 14 days in an election year.
- (5) Trustees are covered by OHA self-insurance workers compensation plan.
- (6) Trustees are covered by TDI law and subject to eligibility requirements.
- (7) Trustees can decide how much of their salary they wish to contribute to the savings plan (pre-tax basis) and how to invest their contribution.
- (8) Trustees receive 57.5 cents per mile for reimbursement in 2015. Trustees receive 54 cents per mile for reimbursement in 2016.
- (9) Unlike other State employees, Trustees do not receive 21 days of vacation and 21 days of sick leave.