DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Adoption of Chapter 3-170
Hawai'i Administrative Rules

January 27, 2006

SUMMARY

Chapter 170 of Title 3, Hawai'i Administrative Rules, entitled "Rules of the Elections Commission", is adopted.

HAWAI'I ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

CHAPTER 170

RULES OF THE ELECTIONS COMMISSION

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SUBCHAPTER 1

GENERAL PROVISIONS

§3-170-1 Purpose. This chapter shall govern the practice and procedure before the

elections commission. [Eff JAN 24 2008]
(Auth: HRS §11-7.5) (Imp: HRS §§11-7.5, 91-2)

§3-170-2 Definitions. As used in this chapter, unless the context specifically or otherwise indicates, the following definitions apply:

"Chairperson" means the individual selected as "chairperson" under section 11-7, Hawaii Revised Statutes, or the election commission member designated by chairperson to serve in that capacity for a limited period of time or circumstances.

"Government record" is as defined in section 92F-3, Hawaii Revised Statutes.

"Meeting" is as defined in section 92-2, Hawaii Revised Statutes, and includes public hearings.

"Person" or "persons" is as defined in section 91-1(2), Hawaii Revised Statutes.

"Public hearing" means any meeting conducted by the elections commission, or a committee of the elections commission, for the purpose of taking testimony or receiving other evidence.
[Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §§11-7, 91-1)

§3-170-3 Location and office hours. (a) The office of the elections commission is at the office of elections, located at 802 Lehua Avenue, Pearl City, Hawaii 96782. All communications to the elections commission shall be specifically addressed to the elections commission and sent to this address unless otherwise directed.

(b) The office of the elections commission shall be open from 7:45 a.m. to 4:30 p.m. daily except Saturdays, Sundays, and legal holidays; unless otherwise provided by statute or executive

order. [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §91-2)

§3-170-4 Government records. All requests to inspect government records or for copies of government records maintained by the elections commission shall be directed to the election commission in writing or in person. Copying and inspection of government records maintained by the elections commission and the related fees and costs are governed by chapter 92F, Hawaii Revised Statutes, and rules adopted under that chapter. [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §§91-2, 92-21, 92F-19, ch. 92F)

§3-170-5 Public information and submittals. (a) Any person may obtain information available for public dissemination concerning the activities of the elections commission during established business hours.

(b) Any person may file in the office of the elections commission requests, objections, or views on any matter before the elections commission in accordance with this chapter. [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §91-2)

SUBCHAPTER 2

COMPLAINTS AND INVESTIGATIONS

§3-170-6 Scope of complaints. An appropriate subject for a complaint to the elections commission concerning an administrative act of the office of elections might be that the act is:

(1) Contrary to law;

(2) Unreasonable, unfair, oppressive, or

unnecessarily discriminatory, even though in accordance with law;
(3) Based on a mistake of fact;
(4) Based on improper or irrelevant grounds;
(5) Performed in an inefficient manner; or
(6) Otherwise erroneous. [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §11-7.5)

§3-170-7 Form of complaints. Complaints shall be made in writing and must be filed within 90 days from the date of the incident or occurrence. The complaint should be drawn so as to fully and completely advise the office of elections and the elections commission in what respects the provisions of the law or rules have been, are being, or will be violated and should set forth in plain language the facts claimed to constitute the violation.
[Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §11-7.5)

§3-170-8 Responses to complaints. All complaints will be forwarded to the office of elections, and the office of elections will be given the opportunity to respond to the complaint in writing. The response to the complaint shall be addressed to the complainant, with a copy of the response sent to the elections commission.
[Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §11-7.5)

§3-170-9 Investigations. (a) After reviewing the complaint and the response, the

elections commission may decide to investigate the complaint.

(b) On its own motion, the elections commission may authorize an investigation, without a pending complaint.

(c) The elections commission may convene a public hearing to receive evidence and to solicit public comment concerning the investigation. Such a public hearing will be held within a reasonable time after the elections commission has completed its investigation. [Eff JAN 24 2008 _____] (Auth: HRS §11-7.5) (Imp: HRS §11-7.5)

§3-170-10 Procedure after investigations. If, after investigation, the elections commission finds that:

(1) A matter should be further considered by the office of elections;

(2) An administrative act should be modified or canceled;

(3) A statute or regulation on which an administrative act is based should be altered;

(4) Reasons should be given for an administrative act; or

(5) Any other action should be taken by the office of elections; the elections commission shall report the elections commission's opinion and recommendations to the office of elections. The elections commission may request that the office of elections notify the elections commission, within a specified time, of any action taken on the elections commission's recommendations.

[Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §11-7.5)

SUBCHAPTER 3

ELECTION COMMISSION MEETINGS

§3-170-11 Open meetings. (a) Every meeting of the elections commission 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, Hawaii Revised Statutes, or any other applicable law; provided that the chairperson may remove any person or persons who willfully disrupt a meeting to prevent and compromise the conduct of the meeting.

(b) Interested persons wishing to submit data, views, or arguments, in writing, on any agenda item shall submit to the elections commission, no later than the two workdays prior to the day of the meeting, a legibly written or typed copy of the information, on 8 1/2 by 11 inch paper. The information must be in a form that may be reproduced by xerographic means for distribution to the members of the elections commission.

(c) Oral testimony may be given to the elections commission on any agenda item, but the chairperson may limit each person to no more than three minutes per agenda item and may further limit or terminate testimony that the chairperson determines to be repetitious or given solely for the purpose of delay. The chairperson may at any time require any person appearing before it in a representative capacity to show that person's authority and qualifications to act in such a representative capacity and to identify the person and interests that are being represented.

(d) Nothing in this section shall prevent the elections commission from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the elections commission on any particular matter

that relates to items on the elections commission's agenda. [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS§ 92-3)

§3-170-12 Executive meetings. The elections commission may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the elections commission members present; provided the affirmative vote constitutes a majority of the members to which the elections commission is entitled. The reason for holding such a meeting or session shall be publicly announced and the vote of each elections commission member on the question of holding a meeting closed to the public shall be recorded and entered into the minutes of the meeting. [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §92-4)

§3-170-13 Meetings by videoconference. The elections commission may meet by videoconference, so long as the requirements of section 92-3.5, Hawaii Revised Statutes, are met. Additionally, members of the public may attend the meeting at any location where an elections commission member is attending by videoconference. [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §92-3.5)

§3-170-14 Notice. (a) The elections commission shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and

place of the meeting, and in the case of an executive meeting the purpose shall be stated.

(b) The elections commission shall file the notice in the office of the lieutenant governor, and in the office of the elections commission for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. In the event the notice is filed in the office of the lieutenant governor less than six calendar days before the meeting, the meeting shall be canceled and a notice canceling the meeting will be posted at the place of the meeting, and no meeting shall be held.

(c) The elections commission shall not change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the elections commission is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the elections commission 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.

(d) The elections commission shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to these persons at their last recorded address no later than the time the agenda is filed under subsection (b). [Eff JAN 24 2008] (Auth: HRS §11-7.5) (Imp: HRS §92-7)

§3-170-15 Minutes. The elections commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a

true reflection of the matters discussed at the meeting and the views of the participants. [Eff JAN 24 2008] (Auth: HRS §11-7.5)(Imp: HRS §92-9)

Chapter 3-170, Hawaii Administrative Rules, on the Summary Page dated January 27, 2006, was adopted on [redacted], 2007, following a public hearing held on May 31, 2007, after public notice was given in the Honolulu Star Bulletin, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune Herald on April 27, 2007, and the full text was posted on the website for the Office of the Lieutenant Governor from May 18, 2007 through June 1, 2007.

The adoption of chapter 3-170 shall take effect ten days after filing with the Office of the Lieutenant Governor.

SUSAN RUSSELL
Acting Chairperson
Elections Commission

RUSS K. SAITO
State Comptroller

APPROVED:

Linda Lingle
Governor
State of Hawaii

Dated: JAN 14 2008

APPROVED AS TO FORM:

ROBYN B. CHUN
Deputy Attorney General

Filed

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LIEUTENANT GOVERNOR'S OFFICE

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