

**TEMPORARY ADVISORY COMMISSION ON BIOPROSPECTING  
INAUGURAL MEETING  
OFFICE OF HAWAIIAN AFFAIRS – BOARD ROOM  
Friday, March 16, 2007  
9:30 am – 2:00 pm**

**PRESENT:**

Trustee Haunani Apoliona, OHA Chair  
Lawrence P. A. Burgess, for the Hawaiian Community  
Elizabeth R. Corbin, designee for Theodore Liu, Director, DBED & Tourism  
Keiki-Pua Serene Dancil, for the Hawaiian Community  
Walter M. Heen, OHA Trustee, designee for OHA chair, Haunani Apoliona  
Betsy Gagne, designee for Peter Young, Director, DLNR  
Lisa H. Gibson, Bioprospecting Industry  
Kevin Kelly, designee for David McLain, U.H. President  
Wayne Kaho'onei Panoke, for the Hawaiian Community  
Oswald Stender, for the Hawaiian Community  
Vickie Holt Takamine, for the Hawaiian Community  
Theresa Wong, designee for David Watamull, Bioprospecting Industry

**STAFF:**

Clyde Namuo, OHA Administrator  
Kai Markell, OHA Native Rights, Land & Culture Director  
Kaimo Muhlestein and Kali Hannahs, NRLC

**GUEST SPEAKER:**

Jennifer Brooks, Office of Information Practices

**I. CALL TO ORDER**

At 9:38 am the meeting convened with OHA Trustee Walter M. Heen giving the Pule Ho'owehe.

**II. INTRODUCTIONS**

Clyde Namuo, OHA Administrator, welcomed everyone and announced that Kai Markell, OHA Native Rights, Land and Culture Director will staff the temporary commission. He noted that NRLC staff, currently overwhelmed with other work, may not be able to record the commission's proceedings, or assist with research and writing and that hiring a staff assistant at OHA's expense is being considered. He thanked everyone for accepting this responsibility.

Chair Haunani Apoliona bid everyone aloha and announced the designation of Trustee Walter M. Heen to serve on the commission in her stead.

Kai Markell, NRLC Director, welcomed and acknowledged everyone for accepting this kuleana and representing their respective constituents. At his request, commissioners and designees named in HCR 193, H.D. 1 (2006) introduced themselves. He noted the presence of all commissioners and designees with the exception of Wayne Kaho'onei Panoke who arrived later.

### III. THE SUNSHINE LAW, PART 1, CHAPTER 92 (HRS)

Jennifer Brooks, Office of Information Practices, distributed copies of booklets on the Sunshine law, often referred to as the open meeting law that governs the manner in which government boards and commissions conduct their business and briefed commissioners on some of its provisions.

Board Business & Discussions This applies to discussion of board business, i.e. discreet issues that are either on the agenda or likely to come on the agenda in the foreseeable future. Ms. Brooks noted that the Sunshine law is not concerned if members get together to talk about topics that are not commission business or to discuss in very general terms some of the issues the commission is considering. If it is not a discreet matter than it is not a Sunshine law concern. However, this may not be a good idea anyway because of the danger of public perception, or that conversations might slip into discussion of commission business.

#### Meeting Agendas

A meeting agenda listing all items to be considered and discussed must be filed with the Lt. Governor's office six days in advance of the meeting. The law requires a level of detail not generally required by non-governmental bodies. Minor issues or items may be added later by a two-thirds vote of the members. Action items may or may not be listed and the commission will not be in violation if action is taken on an item following discussion or debate. Copies of the agenda are to be made available to the public and a copy posted on the door of the commission meeting room.

The public has a right to testify on any agenda item. Testimony can be oral or written, testifiers identifying themselves or speaking anonymously and, while public comment may be allowed, it is not be required by law. The commission may regulate its meetings by "rule" e.g. limiting the time an individual may speak on an agenda item. Phone and e-mail voting is prohibited.

#### Executive Sessions

The purposes for which executive sessions may be held are outlined in the law. They include personnel decisions, attorney-client privileges and contract negotiations. Executive sessions require a listing on the agenda or announcement at the meeting and a recorded vote of two-thirds of the members present or a majority of the membership.

#### Minutes

Minutes of meetings must be available for the public within thirty days. Minutes must include a list of members present, actions taken by the commission, a record of each member's vote on such actions, including votes to hold closed meetings, the purpose for a closed meeting and the topic for discussion.

#### Violations

Unwilful compliance, the most serious penalty, has never been used. Most boards try to do the right thing but get some detail wrong or don't quite understand how something worked. OIP has the power to investigate and to file civil complaints. Training is recommended when violations are discovered. The Attorney General has the power to file suit for injunction to prevent a board from taking action or to void an action.

#### Ka Aha Pono Conference

Re Commissioner Stender's participation in Ka Aha Pono Conference, the Sunshine Law is a limitation on people's ability to freely assemble and freely speak and there are constitutional concerns if this is interpreted too broadly. If you are talking about bioprospecting in general terms rather than things that the commission is expected to act on it is ok. Ms. Brooks stated that Mr. Stender's speech does not seem to address issues currently before the commission; i.e. board business narrowly defined. Ms. Brooks agreed that commissioners' expertise or training is not board business. It is when discussion gets into specifics and three or more members are together that there could be a problem.

Advisory or investigative committees of less than a quorum are not required to keep a record but are required to report back to the commission.

In closing, Ms. Brooks said that OIP attorneys responsible for administering the Sunshine law advise the public and boards, answer questions, take complaints, open investigative files and provide training. She thanked Commissioners for their patience and attention.

#### IV. COMMISSION BUSINESS

Kai Markell thanked Ms. Brooks for her presentation and for the record he noted the presence of Wayne Kaho'onei. He asked whether alternates or designees will be attending meetings permanently, as changing membership would be disruptive in many ways. Theresa Wong said that she will discuss the matter with David Watanull. Betsy Gagne noted that Dan Polhemus would probably attend; uncertain about Peter Young. Kevin Kelly said that it would either be himself or Dr. Gaines. Elizabeth Corbin is the official designee for Theodore Liu and Walter Heen the official designee for OHA Chair as was announced at the start of this meeting.

##### A. Organization of Commission

On motion by Lisa Gibson, Walter Heen was elected chair on unanimous vote of appointed commissioners and designees. On motion by Vicky Holt Takamine, Wayne Kaho'onei Panoke was elected vice-chair on unanimous vote of appointed commissioners and designees. (Votes recorded). The chair stated that for the purpose of this meeting

and, absent any other communication, all parties present are considered official designees.

B. Review of HCR No. 193, H.D. 1 (2006) and Discussion

What is Commission's purpose? Page 2 suggests what it is we need to do. Page 3 establishes the foundation for discussion; examination of the cultural and industrial issues and submission of the Commission's report of recommendations for policy development to the Legislature and the Governor.

For the conduct of our business OHA is providing staff. Minutes will be taken of all meetings. Absorption of expenses by OHA is problematic. Other organizations and the State need to step up to the plate. Commission has no need for a secretary or treasurer and it is too early to decide on subcommittees.

In examining cultural and scientific issues we need to know what is actually going on in Hawaii today. Scientific research needs to be defined.

What will be the process for developing policy recommendations? How will we frame the discussion? Will we have outside resources? How will we gather the information? Basic concepts and definitions are needed. Copies of the Legislative Reference Bureau Report on Bioprospecting were given to commissioners for review.

A report was to have been submitted 20 days prior to convening of the 2007 legislature. A resolution stating that the Commission has begun the process and needs additional time to complete its work is pending before the Legislature.

Funding Possibilities

Motion by Vickie Takamine, second by Wayne Kaho'onei that the commission ask OHA to amend its budget bill to include funding for the temporary commission passed unanimously. (Vote recorded)

Budget

Cost items would include meeting schedules here and on neighbor islands, travel, lodging, fact finding, public outreach/ information gathering, researchers, investigative committees, facilitators, educational materials, printing/copying.

Motion by Kaho'onei, second by Larry Burgess to establish the commission budget at \$200,000 passed unanimously. (Vote recorded). Oz Stender will develop a commission line item budget with the budget narrative and a letter from the commission in support of the budget for signature by the chair.

V. ITEMS FOR NEXT AGENDA

1. Staff Report
2. Mission and Goals
3. Presentation by Legislative Reference Bureau

Discussion

After lengthy and healthy discussion it was suggested that speakers from the Center for Excellence in Hawaiian Law, Center for Hawaiian Studies and others knowledgeable in the areas of bioprospecting, genetic engineering, intellectual property rights and the cultural underpinnings of these issues be invited to address the commission.

The commission will meet on Friday, April 25, 2007, in the OHA Board Room.

For now commissioners may communicate with Kai Markell, email [kaim@oha.org](mailto:kaim@oha.org).

There being no objections, the meeting was adjourned on motion by Kaho'onei Panoke, second by Oz Stender.

Respectfully submitted,  
Marion Shim, Secretary