Meetings of the Charter Review Commission will be conducted as follows until further notice:

- Meetings will be publicly noticed pursuant to HRS Chapter 92.
- Minutes of meetings will be completed pursuant to HRS Chapter 92 and posted to the Commission’s website upon completion and approval.

Public Comments and Testimony:

- **Written testimony** will be accepted for any agenda item herein.
  - Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, 2) the agenda item that you are providing comment on, and 3) contact information (telephone number and email address), may be submitted to asegregti@kauai.gov or mailed to the Charter Review Commission, c/o Office of Boards and Commission, 4444 Rice Street, Suite 300, Lihue, Hawaii 96766.
  - Written testimony received by the Charter Review Commission at least 24 hours prior to the meeting will be distributed to all Charter Review Commissioners prior to the meeting.
  - Any testimony received after this time and up to the start of the meeting will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.
  - Any late testimony received will be distributed to the members after the meeting is concluded.

- **Oral testimony** will be taken during the public testimony portion of the meeting.
  - It is recommended that anyone interested in providing oral testimony register at least 24 hours prior to the meeting by emailing asegregti@kauai.gov or calling (808) 241-4917. Any request to register shall include your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, and 3) contact information (telephone number and email address).
  - Per the Charter Review Commission’s and Chairs practice, there is a three-minute time limit per testifier per agenda item.
  - Individuals who have not registered to provide testimony will be given an opportunity to speak on an agenda item following the registered speakers.

**SPECIAL ASSISTANCE**

IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS PLEASE CONTACT THE OFFICE OF BOARDS AND COMMISSIONS AT (808) 241-4917 OR ASEGRET1@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATIVE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.
REGULAR MONTHLY MEETING NOTICE AND AGENDA
Monday, May 23, 2022
3:00 p.m. or shortly thereafter
Boards & Commissions Office Conference Room
Pi`ikoi Building, Suite 300
4444 Rice Street, Līhuʻe, HI 96766

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting of the Open Session
   1. April 25, 2022

E. PUBLIC TESTIMONY
   CRC 2022-10 Written testimony dated April 23, 2022 from Gary Hooser regarding CRC 2022-08 and CRC 2020-17.

F. COMMUNICATION
   CRC 2022-11 Possible conflict of interest and recusal dated May 12, 2022, from Vice Chair Jan TenBruggencate on CRC 2022-05, relating to a proposed charter amendment to remove Article XXX relating to the Electric Power Authority.
   CRC 2022-12 Memo dated May 17, 2022, from Matthew Bracken, County Attorney, relating to a proposed Charter amendment to remove Charter Section 19.17 Surety Bonds.

G. BUSINESS
   CRC 2020-17 Discussion and possible action on proposing a Charter amendment relating to Council Districting.
   CRC 2021-08 Discussion and possible action on proposed ballot question, purpose, and background to amend Charter Section 9A.05.
Vacancy in Office related to the Office of the Prosecuting Attorney.

CRC 2022-05 Discussion and possible action on proposed ballot question, purpose, and background on Charter amendment to remove Article XXX relating to the Electric Power Authority.

CRC 2022-09 Discussion and possible action on a proposed ballot question, purpose, and background on Charter amendment to amend Article XXIX of the Charter allowing the Salary Commission authority to establish the maximum salaries of all elected and appointed officials.

CRC 2022-12 Discussion and possible action on a proposed Charter amendment to remove Charter Section 19.17 Surety Bonds.

H. ANNOUNCEMENTS
Next Meeting: June 27, 2022

I. ADJOURNMENT

NOTICE OF EXECUTIVE SESSION
Pursuant to Hawaii Revised Statutes §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.

cc: Teresa Tumbaga, Deputy County Attorney
**COUNTY OF KAUA’I**  
Minutes of Meeting  
OPEN MEETING SESSION

<table>
<thead>
<tr>
<th>Board/Commission:</th>
<th>CHARTER REVIEW COMMISSION</th>
<th>Meeting Date</th>
<th>APRIL 25, 2022</th>
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<tbody>
<tr>
<td>Location</td>
<td>Boards &amp; Commissions Conference Room, Lihue Civic Center</td>
<td>Start of Meeting: 3:08 p.m.</td>
<td>End of Meeting: 4:15 p.m.</td>
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**Present**  

**Excused**  
Reid Kawane

**Absent**

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<tr>
<td>A. Call To Order</td>
<td>Chair Lori Koga, called the meeting to order at 3:08 p.m.</td>
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| B. Roll Call            | Roll Call: Commissioner Bautista-present  
                         Chair Kawane - excused  
                         Commissioner Sandblom- present  
                         Commissioner Trugillo-present  
                         Vice Chair TenBruggencate-present  
                         Chair Koga- present  
                         Quorum: 5 commissioners present |                             |
| C. Approval of Agenda   | Chair Koga asked about adding another item regarding Salary Commission request, re: facsimile/digital signatures.  
                         Administrator Ching explained that the guidance received from Office of County Attorney is that the facsimile signature does not need to be changed to digital signatures cause those signatures are related to bonds, not all contracts, so Salary Commission has considered it a moot point.  
                         Chair Koga entertained a motion to approve the agenda. | Vice Chair TenBruggencate moved to approve the agenda. Commissioner Bautista seconded.  
                         Voice Vote:  
                         5 Ayes, 0 Nays  
                         Motion carried 5:0 |
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<td><strong>D. Minutes</strong></td>
<td>Chair Koga entertained a motion to approve the minutes of March 28, 2022. <strong>Vice Chair TenBruggencate moved to approve the minutes of March 28, 2022. Commissioner Sandblom seconded.</strong> <strong>Voice Vote:</strong> 5 Ayes, 0 Nays <strong>Motion carried 5:0</strong></td>
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| **E. Public Testimony** | Testimony received today by Mr. Jonathan Jay at 2:24 p.m.  
Mr. Bert Lyon present. He spoke during agenda item. **Vice Chair TenBruggencate received testimony submitted by Mr. Jay. Commissioner Sandblom seconded.** **Voice Vote:** 5 Ayes, 0 Nays **Motion carried 5:0** |                                                                                                                                                               |
| **F. Communication** | None                                                                                                                                                                                                        |                                                                                                                                                               |
| **G. Business** | **CRC 2022-08 Discussion and possible action on the report of the Permitted Interaction Group (PIG).** The purpose of the Permitted Interaction Group (PIG) is to provide a written recommendation on how and whether to create districting for our County Council.  
Chair asked if any Commissioners had any questions regarding the PIG report.  
Mr. Bert Lyon, testifier, stated that he had comments on the report. He shared that on page 1, it would be helpful to know which years districting it was discussed and commission voted to not put it on ballot. He added that districting on neighboring counties, page 3, Maui Council passed a resolution on March 21, which proposed to eliminate the Charter amendment and on April 13, the Charter Commission passed a resolution which accepted the** |                                                                                                                                                               |
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<td>Council’s proposal, so that eliminated the Charter amendment on Maui to have three districts, three members at large, so they remain with nine at-large with a residency requirement. On page 11, he stated that the report notes that the cost of the Kaua’i County Council seat is less than the cost of a State House Representative campaign on Kaua’i or a Hawai’i County Council campaign despite the similarity of district size. He pointed out that this would only be applicable if there were on three County Council districts, if there were more than each would be smaller in size, and he believes it would be cheaper to campaign in a smaller district than a larger district. For example, he believes it would be cheaper if there were seven districts than if there were three. Consequently, testimony referenced on page 7, “the cost of campaigning for a district vs. island wide would be less” would likely only apply if there were more than three council districts. He continued that on page 12, regarding number of Hawai’i County Council candidates, 24 in 2020, which he believes this should be the number rather than the 26 in the report. He believes it’s much less and would only be applicable to only 3 districts, more candidates for more districts. Regarding the survey and contracting someone, he believes that the question should be as simple as possible like the 2016 survey.</td>
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<td>Administrator Ching explained that at this point the Commission will decide if they will adopt the recommendations, and which one(s).</td>
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<td>Vice Chair TenBruggencate asked Administrator Ching to outline the PIG’s recommendation.</td>
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<td>Administration Ching outlined recommendations as follow:</td>
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<td>1. The Commission should retain a consultant to formulate a plan to seek and obtain input of a maximum of 5% or registered voters or 2362, between 5-10% max. The input solicited should be on the larger questions below.</td>
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<td>• Their opinion on districting&lt;br&gt; • Their opinion on whether there is better representation in the council or in the house&lt;br&gt; • What form of districting 3, 5 or 7&lt;br&gt; Based on Mr. Lyon’s testimony for simpler questions and allowing the consultant to have more flexibility to determine size of sample. She suggested that if they wanted to adopt recommendation 1, that they would leave it more flexible, and allow consultant to work with Commission on questions and sample size.</td>
<td>ACTION</td>
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<td>2. The Commission would retain a consultant to conduct a study on the cost of districting in general, as well as with 3-5-7 districts. She noted that the Office of Boards and Commissions does not have a budget to retain these consultants and she would need to submit it based on what the commission wants to do.</td>
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<td>3. Upon obtaining the results on the inputs and cost the Commission should deliberate on the larger questions of the pros and cons of districting and equal worth of each person’s vote.</td>
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<td>4. Upon obtaining the report the Commission should deliberate of the larger question of the benefits of districting and if it will result on improvements.</td>
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<td>5. Any future proposal must include an appropriation commission.</td>
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<td>6. Upon obtaining the reports, future considerations should start with the 2006 ballot question proposal.</td>
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<td>7. Upon obtaining the reports, the consideration should start with three districting first.</td>
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<td>8. Upon obtaining the reports, the commission should start with the concept of a seven-member Council for cost containment and efficiency.</td>
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<td>9. Get the consultant before making any decisions to move forward on the ballot.</td>
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<td>Chair Koga asked if there are people doing surveys.</td>
<td>Administrator Ching, answered yes, probably on Oahu, and they would probably not need to come here to do survey and therefore should not be a problem, and as far as the cost containment that would probably be an accounting firm.</td>
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<td>Vice Chair TenBruggencate commented that the letter from Mr. Jay asserted that it was the job of the Charter Review Commission is to confirm the issue in question is worthy of consideration by the voters. He thinks that it misstates what the job of the Commission is. He stated that what he reads in the Charter is very simple, they can only put items on the ballot which they believe are necessary and desirable. So, he does not believe that they do not have the authority to put an item on the ballot to just allow people to express an opinion. He went on to state that the issue that has baffled the Commission over time is that if districting, which districting. He believes that recommendation needs to be addressed before anything else is dealt with, and that on an island of this size a smaller sample than 5% may reveal information that may be in the high 90% accuracy level. He is proposing receiving with thanks the PIG report and ask staff to research the details involved in what it will take to obtain the budget required, how big the budget needs to be, and bring it back to the commission so they may proceed with asking the public to help with the concept of if they want districting, what kind of districting. If this path is taken, there will be nothing on this ballot as budget process will take time.</td>
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<td>Administrator Ching addressed the budget issue and stated that should the proposal be accepted, she would be researching the cost and submitting with her budget which is done in December. Her current budget is in its final stages and she would be researching and submitting it with her December 2022 budget request.</td>
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<td>Vice Chair TenBruggencate suggested that a mid-budgeting request to the Council could be made to speed up the process. If not, they would be running up to the 2024 election. He noted that the Council could say no, but they could request it as soon as they have a number, if they would consider it.</td>
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<td>Commissioner Sandblom stated that she wanted to be clear in response to Mr. Jay’s letter. She went on to state that no place did they recommend no action be taken and made nine recommendations to take action and move forward. She explained that there were areas where they made comparisons with Hawai‘i Island County for some of the costs and ratios, and no where did they talk about pinning district against district, the main consideration to take is that they had robust discussion on the many options of districting, 3, 5, 7, and looked at pros and cons of each. Each led them to more questions and how would it actually play out and consider the unintended consequences. She addressed the 3-2-1 scenario and she stated that they did discuss this scenario, there are three distinct districts and do they have to live in the district for a period of time and what may happen if the person elected had to move because they are renting and house is being sold and they were only able to find something outside of the district, would there need to be a special election. They did consider several options and looked at what it would mean for the County. There is nine recommendations, and it was difficult for them to agree on what was the front runner, and there is still a lot of questions.</td>
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<td>Commissioner Bautista agreed with Commissioner Sandblom and noted that with the testimonies more questions come up and it opens another door with questions that they went through in the PIG trying to find answers for. Everything had pros and cons and none of them could say one is the front runner. Agrees that seeking more answers would be great and number one would address that.</td>
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<td>Mr. Lyon commented that it was wise for the PIG to want to defer and get</td>
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more answers to the many questions. He went on to state that in talking about a consultant he noticed a Colin Moore that Maui had consulted with from UH Public Policy that they may want to start in that direction. He commented on recommendation number six, start with the 2006 ballot question proposal which was three district and four at-large, he felt that at least if they look at 2016 survey, that he believes that any other survey will have similar results to, that proposal was the least popular, only receiving 8% of the vote in 2016, which he did not feel meant it was the most popular. He pointed out the in the 2016 survey that the five district, two at-large was the most popular, and seven district, zero at large was only 1% difference. He also reminded the Commission that the PIG from 2013 recommended the five district, two at large proposal. He feels one of these would be better to start with than the three district, four at large. He went on to comment on residency, with Hawai`i Island and Oahu may be to look at, 90 days is what he’s read, and if move, continue to work through term and then next election would need to run for new district.

Administrator Ching suggested that they take each recommendation separately for adoption.

Commissioner Sandblom recommended all nine, but if there are any that do not seem to fit to let the PIG know.

Vice Chair TenBruggencate suggested that the Commission accept the PIG report with its recommendations and use the recommendations as the guide for future actions. What they are doing if they proceed down this path is passing to the County Council, and they will need to decide if they will be providing the funds. He feels that the process should be started and will be occupying their time for the next year in a half. Staff will need to start looking at companies, costs and developing a budget and getting it to the County Council. In discussions once someone is picked than go back to report and

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<td>limit to a Council scenario</td>
<td>limit to a Council scenario with seven Councilmembers as one of the recommendations was and consider the various alternatives. He suggested receiving the report and let the document continue to guide them.</td>
<td>Commissioner Bautista moved to receive the PIG report and adopt the recommendations in regard to how they move forward in districting. Commissioner Sandblom seconded.</td>
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<td>Roll Call Vote: Commissioner Bautista-aye Chair Kawane - excused Commissioner Sandblom- aye Commissioner Trugillo-aye Vice Chair TenBruggencate-aye Chair Koga- aye 5 Ayes, 0 Nays Motion carried 5:0</td>
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<td>CRC 2020-17</td>
<td>CRC 2020-17 Discussion and possible action on proposing a Charter amendment relating to Council Districting.</td>
<td>Vice Chair TenBruggencate moved to defer CRC 2020-17 and continue to have it appear on the agenda. Commissioner Bautista seconded.</td>
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<td>CRC 2022-09 Discussion and possible action on a proposal to amend Article XXIX of the Charter allowing the Salary Commission authority to establish the maximum salaries of all elected and appointed officials.</td>
<td>Administrator Ching went over the proposed ballot question is simpler than previously put on the ballot. Purpose and background information has been added. Commissioners reviewed submitted proposed ballot question, purpose, and background. Vice Chair TenBruggencate commented on the proposed purpose presented. He would reword it to say that the purpose is to efficiently establish salaries that attract and retain the best and the brightest. He will assist Administrator Ching on this with the Commissions permission.</td>
<td>Vice Chair TenBruggencate moved to resubmit the proposal to staff for clarity and bring back to Commission at the next meeting to review. Commissioner Bautista seconded. Voice Vote: 5 Ayes, 0 Nays Motion carried 5:0</td>
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<td>CRC 2022-05 Discussion and possible action on proposed ballot question, purpose, and background on Charter amendment to remove Article XXX relating to the Electric Power Authority.</td>
<td>Administrator Ching discussed the second draft of the questions, purpose, and background with the Commission. She noted that instead of using roman numerals she used numbers for clarity. Commissioner Sandblom moved to approve as presented the ballot question, purpose, and background for proposed Charter amendment removing Article XXX. Commissioner Bautista seconded. Voice Vote: 4 Ayes, 0 Nays Motion carried 4:0:1 recused</td>
<td>Vice Chair TenBruggencate recused himself from this item, he is a member of the KIUC board.</td>
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<td>H. Announcements</td>
<td>Next Meeting: May 23, 2022</td>
<td>Vice Chair returned to meeting at 4:15pm</td>
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<td>I. Adjournment</td>
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<td>Hearing no objections Chair Koga adjourned the meeting at 4:15 p.m.</td>
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Submitted by: __________________________________  Reviewed and Approved by: _________________________________________

Anela Segreti, Administrative Specialist  Lori Koga, Chair

( ) Approved as circulated.
( ) Approved with amendments. See minutes of _______________
Testimony to the Kauai Charter Review Commission on agenda items CRC 2022-08 & CRC 2020-17

From:
Gary Hooser
Former Kauai Councilmember and State Senator

Aloha,

I am offering this testimony today in support of creating district voting for County Council races and in opposition to the Permitted Interaction Group (PIG) recommendation of “no action” - CRC 2022-08.

After serving 8 years on the Kauai County Council and running for election 8 different times, I can say without any reservation whatsoever that residents in our community would benefit greatly from elections held by district, rather than the current “at large” system.

Therefore, I am also requesting the Commission’s support of CRC 2020-17 and allow the voters of Kauai the opportunity to vote on a proposal for districting that utilizes the existing 3 State House Districts. This proposal provides for the election of two Councilmember’s per district plus one at large Councilmember --- the 3x2+1 option.

This proposal will allow regional representation on the Council while still preserving some elements of the existing at-large system and avoids the cost and effort of creating brand new districts.

To restate: I am offering testimony today in opposition to the PIG “no action” recommendation in CRC 2022-08 and in strong support of CRC 2020-17 — placing the 3x2+1 proposal on the ballot for voters to decide.

Thank you for giving the above your positive consideration.

While I’m not able to attend this meeting, I am available at other times by telephone or in person should anyone have questions.

Sincerely,
Gary Hooser
MEMORANDUM

May 12, 2022

TO: Lori Koga, Charter Review Commission Chair
and Commissioners of the Charter Review Commission

FROM: Jan TenBruggencate, Charter Review Commission Vice Chair

RE: POSSIBLE CONFLICT OF INTEREST AND RECUSAL ON CRC 2022-05, RELATING TO A PROPOSED CHARTER AMENDMENT TO REMOVE ARTICLE XXX RELATING TO THE ELECTRIC POWER AUTHORITY.

Pursuant to Section 20.04(B) of the Kaua`i County Charter, and Section 3-1.9 of the Kaua`i County Code 1987, as amended. I hereby provide written disclosure on the record of a possible conflict of interest concerning CRC 2022-05, regarding a proposed charter amendment to remove Article XXX relating to the Electric Power Authority, on the May 23, 2022 Charter Review Commission Meeting Agenda, as I am a member and the Vice Chair of the Kauai Independent Utilities Co-op Board of Directors.

In light of the above, I will recuse myself from the aforementioned item and any decision-making, related to this item and at any meeting related to this item.

Should you have any questions, please feel free to contact me. Thank you for your attention to this matter.

AS:jt

cc: May 23, 2022 Charter Review Meeting Agenda
County of Kaua`i Board of Ethics

CRC 2022-11
May 17, 2022

TO: Lori Koga, Charter Review Commission Chair and Commissioners

FROM: Matthew Bracken, County Attorney

RE: Removal of Charter Section 19.17 Surety Bonds

Section 19.17 of the Kaua’i County Charter requires certain officers and employees of the County to be bonded. While the rational for the bonding requirement is not found in the Charter, it is embedded in historic state laws. The 1888 Laws of his Majesty Kalakaua discussed the bonding of Marshals and Sheriffs to provide “any person thereby injured” the right to “institute a suit upon such bond” to “recover such damages as shall be legally assessed.”¹ Certain carriers still offer public official surety bonds and define them as “a financial guarantee against loss that the official duties of an office will be faithfully performed according to the law during a specific term of a specified office.”²

The Charter language is below:

**Section 19.17. Surety Bonds.** Except as otherwise provided, the council shall determine which officers and employees shall be required to furnish surety bonds and shall determine the kind and amount of each individual or blanket bond. All officers concerned with the receipt, collection, custody, or disbursement of public funds shall be bonded. The director of finance shall procure all such surety bonds from companies licensed to do business in the state. All such bonds shall be in favor of and the premiums thereon shall be paid by the county.

The County currently procures insurance for:

- General Liability Coverage
- Commercial Automobile Liability Coverage
- Public Official and Employment Practices Liability
- Law Enforcement Liability Coverage
- Excess Liability Coverage

The County has a self-insurance thresholds which varies yearly and by the kind of claim. The insurance provides protection for the county and a third party for an injury caused by the County.

CRC 2022-12

¹ Laws of His Majesty Kalakaua Chapter 8, Section 7.
² [https://www.victorinsuranceus.com/industries/public-entities/Pages/PE-PublicOfficialsBonds.aspx](https://www.victorinsuranceus.com/industries/public-entities/Pages/PE-PublicOfficialsBonds.aspx)
Bonding and insurance can occupy the same space. They provide protection for a third party injured by the County and provide protection for the county against excessive claims. While Bonding is still required in some states and required under the charter it is somewhat antiquated. The County does not currently procure surety bonds. This can be attributed to the County’s current insurance policies. The Charter only requires that the director of Finance procure insurance to protect designated properties, however, the County’s insurance policies are broader covering areas that can also be bonded.

The Director of Finance supports the deletion of Section 19.17 as this kind of coverage appears duplicative with the County’s current insurance coverage. Removal of the section would eliminate confusion over bonding requirements as the County does not currently procure surety bonds.
1. Prosecutor’s office vacancies:

**Ballot Language:** Shall the County Charter be amended to require that future elections for Prosecuting Attorney occur at the same time as the County’s elections?

**Purpose:** The purpose of this amendment is to amend the County Charter to avoid the high cost of conducting a special election to fill a vacancy of the Prosecuting Attorney.

**Background:** The recent resignation of the Prosecuting Attorney triggered a special election pursuant to the Charter. The cost to the County of the election was approximately $500,000.00. This amendment would allow the first deputy prosecutor to serve as Prosecuting Attorney until the seat is filled in a regularly scheduled election. The special election to fill a vacancy of the Prosecuting Attorney would be held concurrently with the County’s elections if the vacancy occurs more than three days before the filing deadline for the elections. If the vacancy occurs later, the special election will occur concurrently with the County’s next scheduled election and the first deputy would serve until the County Prosecutor is seated. In the event a first deputy is unable to serve, the Prosecuting Attorney will be appointed by the mayor with approval of the county council.

CRC 2021-08
Suggested changes from Vice Chair TenBruggencate

1. Prosecutor’s office vacancies:

   **Ballot Language**: Shall the County Charter be amended to require that future elections for Prosecuting Attorney occur at the same time as the County’s regularly scheduled elections?

   **Purpose**: The purpose of this amendment is to amend the County Charter to avoid the high cost of conducting an independent special election to fill a vacancy of the Prosecuting Attorney.

   **Background**: The recent resignation of the Prosecuting Attorney triggered an independent special election pursuant to the Charter. The cost to the County of the election was approximately $500,000.00. This amendment would allow the first deputy prosecutor to serve as Prosecuting Attorney until the seat is filled in a regularly scheduled election. The special election to fill a vacancy of the Prosecuting Attorney would be held concurrently with the County’s elections if the vacancy occurs more than three days before the filing deadline for the elections. If the vacancy occurs later, the special election will occur concurrently with the County’s next scheduled election and the first deputy would serve until the County Prosecutor is seated. In the event a first deputy is unable to serve, the Prosecuting Attorney will be appointed by the mayor with approval of the county council.
Proposal to amend Charter Section 9A.05 for review:

Section 9A.05. Vacancy in Office. A vacancy in the office of prosecuting attorney shall be filled in the following manner:

A. [If the unexpired term is less than eighteen months, the first deputy shall act as prosecuting attorney.] If the vacancy occurs more than three days prior to the closing date for filing of nomination papers for the mid-term election, the position will be filled with a special primary election and special general election held in conjunction with the mid-term election. The first deputy prosecutor shall serve until the winner of that election is seated as prosecutor. If the position of first deputy is vacant or if the first deputy is unable to serve, the mayor with the approval of the county council shall within 30 days of the vacancy or as soon thereafter as possible, appoint a qualified prosecuting attorney to serve until a new elected prosecutor is seated. (Amended 2020)

B. [If the unexpired term is for eighteen months or more, or in the event the person elected as prosecutor dies before taking office or is unable to qualify, then the vacancy shall be filled by a special primary election and a special general election, patterned after the primary and general election laws of the state, insofar as applicable. The special primary election shall be called by the council and held within forty-five days after the occurrence of the vacancy. The special general election shall be held thirty days after the special primary election. Pending a special election, the first deputy shall act as prosecuting attorney.] If the vacancy occurs later than three days prior to the closing date for filing of nomination papers for the mid-term election, the first deputy prosecutor shall serve for the remainder of the term. If the first deputy position is vacant or if the first deputy is unable to serve, then the mayor, with the approval of the county council shall within 30 days of the vacancy or as soon thereafter as possible, appoint a qualified prosecuting attorney to serve until a new elected prosecutor is seated. (Amended 1972)
1. Electric Power Authority:

**Ballot Language:** Shall the Charter be amended to remove Article 30 which allows the County Council to create an electric power corporation?

**Purpose:** The purpose of this amendment is to remove provisions in the Charter that allow the Council to create an electric power corporation like the Kauai Island Utility Cooperative (KIUC). This would avoid any duplication of services and limit the unnecessary growth of government.

**Background:** In 2002, voters approved an amendment that added Article 30 to the County’s Charter in response to the proposed sale of the Kauai Electric Company to the Kauai Island Utility Cooperative (KIUC). If the sale of Kauai Electric to KIUC failed, or if KIUC was not able to provide adequate electrical services, Article 30 allowed the County Council to establish an electric power authority corporation. In September 2003, however, the Hawaii Public Utilities Commission approved the sale of Kauai Electric to KIUC. KIUC has since adequately managed and operated Kauai’s electrical power system and has become a national leader in renewable energy.

CRC 2022-05
[ARTICLE XXX
ELECTRIC POWER AUTHORITY]

[Section 30.01.—Electric Power Authority.]. The council may establish by ordinance an electric power authority corporation for the county, which shall be a body corporate, and shall be responsible for the planning, development, production, purchase, transmission, and distribution of all electricity-related services by the county.

If established by ordinance, all provisions of this article XXX shall be included in the ordinance and no ordinances shall be enacted and no administrative rules shall be adopted, which either expressly or by implication conflict with the provisions of this article.

Sections 30.02 through 30.06 of this article shall be effective thirty calendar days from and after the enactment of an ordinance establishing an electric power authority for the County of Kaua'i.

If established by ordinance, the authority shall operate as a separate unit of county government, except as otherwise provided in this charter. The authority shall be free from the jurisdiction, direction, and control of other county officers and of the council.

Notwithstanding any provision in the charter to the contrary, the council may by ordinance enact any further provisions it deems necessary to implement this article including, but not limited to, provisions concerning the power authority's powers, duties, and liabilities, its organization and governing structure, the manner in which officers and employees are elected, appointed, or employed, and the manner in which rates are set and the authority's revenues are utilized.

Section 30.02.—Board of Directors of the Electric Power Authority. There shall be a board of directors of the electric power authority, which shall have exclusive jurisdiction, control, and policy-making responsibility over the authority and all of its operations and facilities.

The board shall have and may exercise all rights, powers, duties, privileges, and immunities possessed by the county, which are or may be secured by law including, but not limited to, all powers and duties possessed by the county to construct, acquire, expand, and operate the utility, and to do any and all acts or things that are necessary, convenient, or desirable in order to operate, maintain, enlarge, extend, preserve, and promote an orderly, economic, and business-like administration of the utility.

The board shall adopt articles of incorporation and by-laws consistent with all provisions of this article. Such articles and by-laws may be amended from time to time by the board; however, any such amendments shall be consistent with all provisions of this article. Such articles and by-laws shall also include provisions as are customary to set forth both the corporation's purpose and nature and the procedural matters necessary for its governance.

The board shall operate as a separate unit of county government, except as otherwise provided in this charter. Both the board and the authority shall be free from the jurisdiction, direction, and control of other county officers and of the council.

The board may sue or be sued in its own name. All liability from damage claims arising from the operations of the board and the authority shall be the responsibility of and be liquidated by the board from the appropriate funds of the authority.

Section 30.03.—Organization of the Board.
A. Number of directors. The board shall consist of seven directors, one of whom shall be the chief executive officer of the authority, and six of whom shall be elected at-large. All seven directors shall be voting members of the board. Charter section 7.05K shall not apply to this article.

B. Election and tenure of directors.

1. Directors elected at-large. Directors elected at-large shall be elected at the next regularly scheduled general election after the enactment of the ordinance creating the authority.

2. Subject to the provision in paragraph D of this section that the terms of the first directors who have no licensing or education and experience qualification requirements shall be two years, all directors shall serve terms of four years, unless they die, resign, or are removed from office pursuant to paragraph D of this section. The terms of all elected directors shall begin at twelve o’clock meridian on the first working day of December following their election.

3. Term limits of directors. No elected director shall serve as director for more than two consecutive full terms.

C. Vacancies. Vacancies shall be filled by the board for the unexpired term. No vacancy on the board shall impair the right of the remaining directors to exercise all the powers of the board.

D. Qualifications. All persons seeking positions as elected directors shall, upon filing for their candidacies, be citizens of the United States and registered voters in the county. In addition, three of the six elected directors shall possess the following additional qualifications upon filing for their candidacies.

Three of the six elected directors must either:

(1) Have been licensed by any state in the United States for a minimum of five years in engineering, accountancy, or law; or

(2) Have an undergraduate or graduate degree in business management or business administration from a university or college within the United States accredited by the Middle States Association of Colleges and Schools, North Central Association of Colleges and Schools, New England Association of Schools and Colleges, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges and have worked in the field of business management or business administration for a minimum of five years.

All persons seeking positions as elected directors shall specify in their nomination papers whether they are seeking to be elected for one of the three director positions which have licensing or education and experience qualification requirements, or the director position which has no such qualification requirements.

All persons seeking director positions which have licensing or education and experience qualification requirements shall execute an affidavit stating that the applicant has satisfied the qualification requirements for those positions. The person shall swear to the truth of the allegations by self-subscribing oath in the affidavit. The county clerk shall prescribe the form of the affidavit. If the clerk so desires or believes it to expedient, the clerk may demand that the person furnish substantiating evidence to the allegations in the person’s affidavit. If the clerk determines that any person has not satisfied the licensing or education and experience requirements of this paragraph D, the person shall be deemed unqualified for the position sought.
With respect to any director elected to fill a position having licensing or education and experience requirements, the following rule shall apply. If, at any time, it is learned that any such director has not satisfied these requirements, the board shall immediately remove the director from office. Any vacancies arising from such a removal shall be filled by the board for the unexpired term; provided that all persons appointed by the board as a result of such a removal shall satisfy, at the time of their appointment, the qualification requirements for such elected directors.

For the director positions which have no licensing or education and experience qualification requirements, the three candidates receiving the highest number of votes shall be elected to those three positions. The terms of the first directors who have no licensing or education and experience qualification requirements shall be two years.

For the three director positions which have licensing or education and experience qualification requirements, the three candidates receiving the highest number of votes shall be elected to those three positions.

The qualification requirements of this paragraph D shall not apply to the chief executive officer of the authority.

No director may hold any county office, be an officer or employee of the county government, or have been an officer or employee of the county government within twelve months of the date that the director’s term of office is effective. No director may conduct any business whatsoever with the authority.

A director convicted of the commission of a felony shall be removed from office when convicted of the felony.

E. Officers. The board by majority vote shall elect from among its members a chair who shall preside over the meetings of the board, and a vice chair who shall act for the chair during absences, and may elect from among its members one or more vice presidents, a secretary and a treasurer, and assistant secretaries and treasurers. The board shall prescribe and may amend the duties of all such officers.

Election of officers shall be held at the first regular meeting at which all members are present following the appointment or election of a new director for a full term, but not later than the second meeting following the appointment or election.

F. Meetings. The board shall take no action except by the affirmative vote of at least four directors, who shall constitute a quorum.

The board shall meet at least once each month at such times as the board may prescribe.

Except where meetings closed to the public are permitted under applicable law, all board meetings shall be open to the public. Agendas shall be posted pursuant to applicable law.

G. Errors and omissions. The authority shall hold harmless and indemnify its director, chief executive officer, agents, and employees to the full extent permitted by law, including but not limited to, all liabilities, expenses, and losses incurred by its directors, chief executive officer, agents, and employees in connection with acts of error or omissions, other than willful violations of laws, committed within the scope of their duties, and shall defend, at the authority’s expense, all related claims and suits.

Section 30.04. Organization of the Authority.
A. Divisions. The authority shall keep separate funds and accounts as required by the uniform systems of accounts for gas, electricity, water, communications, and other utilities, as promulgated by the Hawai‘i Public Utilities Commission or the Federal Energy Regulatory Commission.

B. Policy. The board shall establish an annual budget and written policies governing utility operations to cover such areas as employees’ duties, customer rates, service rules and termination procedures, expenditure of funds, long-range planning, and other appropriate activities.

C. Chief executive officer. The board shall appoint and the authority shall employ a president and chief executive officer of the authority who shall be qualified by training and experience for the overall management of the utility. The chief executive officer shall serve according to the terms of an employment contract to be executed between the officer and the board, and shall have such authority as delegated by the board. The salary of the chief executive officer shall be fixed by the board.

The chief executive officer shall, subject to board approval, (1) determine the number of employees necessary for the operation of the utility, and (2) fix their duties and compensation. The chief executive officer shall have control of all actual construction and repairs, the immediate management of operation of the utility, and the enforcement and execution of all rules and regulations, programs, plans, and decisions made or adopted by the board. The chief executive officer shall maintain suitable permanent records regarding actions taken. The chief executive officer shall prepare plans and specifications, take bids, and let contracts, subject to the approval of the board. The chief executive officer shall prepare and submit to the board periodic reports on the utility’s compliance with local, state, federal laws in the areas of safety, environmental matters, and civil rights.

D. Other employees. There shall be such other officers and employees of the authority as may be provided by the board. The officers and employees shall be appointed and removed by the chief executive officer subject to the provisions of applicable local, state, and federal laws or binding contracts entered into with employees and the authority, or both.

E. Surety bonds. The board may require surety bonds for any of the officers and employees of the authority in such amounts as the board deems necessary. The premiums for the bonds shall be paid by the authority in the same manner as any other operating expense.

Section 30.05. Powers and Duties of the Board.

A. Real estate and contracts. The board, in the efficient and economical operation of the authority, may, as state law permits: (1) sell its products and services to the public and private corporations and to other consumers; (2) construct and operate plants and operate distribution system, transmission lines, and other facilities; (3) purchase real estate and franchises; and (4) enter into all contracts, leases, and agreements in furtherance thereof.

B. Joint operations with others. The board may enter into contracts and agreements with any public or private corporation or any individual, both inside and outside the boundaries of the county and state: (1) for the joint use of property belonging either to the authority or to the other contracting party or jointly to both parties; and (2) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other facilities.

C. Eminent domain. The board may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain in like manner as the county, and to the same extent as the county, when the board determines that public necessity or convenience requires such action.
D. Use of thoroughfares for utility installations. The board may use the ground over, under, or along any road, railway, highway, street, sidewalk, thoroughfare, alley, or waterway in the operations of the authority but shall in all cases and subject to the applicable general regulations of the county and state cause the surface of the public way to be restored to its usual condition.

E. Rates. The board shall fix rates and other charges to be assessed against each customer class for electrical services rendered by the authority. Rates and other charges for each customer class shall be based on the cost of the service provided and be just, reasonable, compensatory, and without undue preference or discrimination.

The board may require reasonable deposits as security for the payment of charges for utility services, and may provide for the return of the deposits when satisfactory consumer credit has been established.

F. Authorization for expenditures. No money shall be drawn from the funds of the authority nor shall any obligation for the expenditure of money be incurred except in conformity with authorization by the board. No claim against the authority shall be paid unless evidenced by a voucher approved by the chief executive officer, or by some other employee to be designated by the chief executive officer.

G. Use of utility funds. All utility revenues shall be directed to the provision of utility services and not applied to the general fund of the county, unless the transfer of revenues constitutes a payment in lieu of taxes. Except for those taxes that are assessed pursuant to county, state, or federal law, no other taxes or fees, or both, shall be assessed against the authority. Nothing in this section G shall prohibit the authority from entering into such business arrangements or contracts, or both, with the county as the board may deem advisable.

H. Bond issues and other indebtedness. Subject to applicable state laws, the board may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, improvement, and extension of the utility facilities owned by the county or authority, including facilities owned or operated jointly with others. Use of general obligation bonds may entail approval by the county council.

I. Short-term indebtedness. The board may borrow money for periods not to exceed three years and may issue negotiable notes, payable from the revenues of the authority, as evidence of the indebtedness. The action of the board may be by resolutions that may be adopted at the same meetings at which the resolutions are introduced and shall take effect immediately upon adoption.

J. Investment of surplus funds. The board may invest surplus funds of the authority in securities that are deemed safe and as may be authorized by specific action of the board.

K. Delegation of powers. The board shall retain powers relating to budget approval, rate setting, and long-term indebtedness; however, it may from time to time delegate in writing other powers to officers or employees responsible to it, as may be necessary.

Section 30.06. General Provisions.

A. Disposition of power authority. The county council shall have no authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of the electric power authority under this article, without first holding a public hearing during which a certified public accountant shall present a report to the county council concerning the revenue that has been earned by the electric power authority throughout the county’s ownership, and an analysis of the revenues to be lost by the county through the proposed sale of the electric power authority.
There shall be two council votes at least six calendar months apart to call a referendum election concerning a sale of the authority. The county shall hold a referendum election which must be passed by a majority of the voters, voting at the election, to approve a sale. The referendum election shall be held at the next regularly-scheduled general election.

B. Existing obligations. Contracts and obligations relating to the electric power authority which were incurred prior to the effective date of sections 30.02 through 30.06 shall not be impaired, and shall be binding upon the board insofar as they apply to the authority.

C. Repeal of prior county charter provisions and ordinances. All county charter provisions and ordinances and parts of county charter provisions and ordinances inconsistent with any provision of this article are hereby repealed; however, all county charter provisions and parts of county charter provisions that are not inconsistent with any provision of this article including, but not limited to, article XX of the charter, shall apply to this article.

D. Severability of provisions. If any provision of this article, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the sections, subsections, and parts thereof of this article are severable. (Amended 2002)
RE: Salary Commission’s Charter Amendment proposal, 3rd draft

Background

1. Salary Commission

**Ballot Language:** Shall the Charter be amended to give the Salary Commission the authority to establish the maximum salary range for elected and appointed officials?

**Purpose:** To efficiently establish salaries that attract and retain the “best and the brightest.” All counties in the State of Hawaii except for Kaua‘i have given their Salary Commissions the authority to establish the maximum salaries of elected and appointed officials, which includes department heads and deputies.

**Background:** Kaua‘i’s Salary Commission currently conducts extensive research and analysis on salaries of department heads and deputies, but is not authorized to independently make changes to salary caps. The Salary Commission presents its research and reports to the County Council for a vote to approve changes to salaries by resolution. The Salary Commission’s reports include an analysis of the salaries of all elected and appointed officials in the neighboring counties and the State, the consumer price index, Kauai County’s economic status and outlook, vacancies, and salaries inversions (where a lower ranking position has a higher salary than a higher ranking position). Salary inversions have been a common and chronic problem in the County as have vacancies, recruitment, and retention. This amendment will empower the Salary Commission to use its expertise to timely address these issues with a long-term strategy within the context of the current economic conditions.
RE: CRC 2022-09

Suggested changes from Vice Chair TenBruggencate

1. Salary Commission (as submitted)

   **Ballot Language:** Shall the Charter be amended to give the Salary Commission the authority to establish the *maximum salary range* for elected and appointed officials?

   **Purpose:** To efficiently establish salaries that attract and retain the “best and the brightest,” all counties in the State of Hawaii except for Kaua‘i have given their Salary Commissions the authority to establish the maximum salaries of elected and appointed officials, which includes department heads and deputies.

   **Background:** Kauai’s Salary Commission currently conducts extensive research and analysis on salaries of department heads and deputies, but is not authorized to independently make changes to salary caps. The Salary Commission presents its research and reports to the County Council for a vote to approve changes to salaries by resolution. The Salary Commission’s reports include an analysis of the salaries of all elected and appointed officials in the neighboring counties and the State, the consumer price index, Kauai County’s economic status and outlook, vacancies, and salaries inversions (where a lower ranking position has a higher salary than a higher ranking position). Salary inversions have been a common and chronic problem in the County as well as vacancies, recruitment, and retention. This amendment will empower the Salary Commission to use its expertise to timely address these issues with a long-term strategy within the context of the current economic conditions.

Suggested changes:

   **Purpose:** To efficiently establish salaries that attract and retain the “best and the brightest.” All counties in the State of Hawaii except Kaua‘i have given their Salary Commissions the authority to establish the maximum salaries of elected and appointed officials, which includes department heads and deputies.

   And the second to last sentence of Background, I’d rephrase slightly this way:

   Salary inversions have been a common and chronic problem in the County, as have vacancies, recruitment and retention.
ARTICLE XXIX
SALARY
COMMISSION

Section 29.01. Organization. There shall be a salary commission composed of seven members to establish the maximum salaries of all elected and appointed officers as defined in 23.01 D of this charter. (Amended 1988, 2006, 2012)

Section 29.02. Policies. The commission shall adopt and, when it deems necessary, may change the policies governing its salary-setting decisions. (Amended 1988, 2006)

Section 29.03. Resolution. The commission’s salary findings shall be adopted by resolution of the commission and forwarded to the mayor and the council on or before March 15 of any calendar year. [The resolution shall take effect without the mayor’s and council’s concurrence sixty days after its adoption by the commission unless rejected by a vote of not less than five members of the council. The council may reject either the entire resolution or any portion of it.] The resolution shall take effect on July 1 of the same calendar year. The respective appointing authority may set the salary of an appointee at a figure lower than the maximum figure established by the salary commission for the position, provided that elected officers may voluntarily accept a salary lower than the maximum figure established by the salary commission for their position, or forego accepting a salary. (Amended 1988, 2006, 2012)

Section 29.04. Rules. The commission shall establish its rules of procedures and adopt rules and regulations pursuant to law. (Amended 1988, 2006)

Section 29.05. Changes in Salary. No change in the salary of councilmembers shall be effective during the term in which a change is enacted or for twenty-four months after a change is enacted, whichever is less. (Amended 1988, 2006)

Section 29.06. Administration and Operation. The mayor and council shall provide an annual appropriation sufficient to enable the commission to secure clerical or technical assistance and pay other operational costs in the performance of its duties. (Amended 1988, 2006, 2012)

Note: Charter material to be repealed is bracketed and stricken. New charter material is underscored.