



Amendments to The Charter of the County of Kaua'i
November 8, 2022
General Election

Pursuant to Hawai'i Revised Statutes § 50-10 and Article XXIV, Section 24.03, of The Charter of the County of Kaua'i, the **Kaua'i Charter Review Commission** is publishing the following Proposed Amendments to The Charter of the County of Kaua'i, which the Commission has approved for inclusion on the 2022 general election ballot.

1. 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 a special election for the sole purpose of filling a vacancy of the Prosecuting Attorney.

Background: The recent resignation of the Prosecuting Attorney triggered a special election for the sole purpose of electing a Prosecuting Attorney, 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.

Charter Language: 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 ~~[so act]~~ serve, the mayor with the approval of the county council shall within 30 days of the vacancy or as soon thereafter as possible, ~~[fill the vacancy by appointment of a person with requisite qualifications within thirty days after the occurrence of the vacancy]~~ 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)

*(Language to be deleted is bracketed and stricken through. Language to be added is underlined.)

2. 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 Charter provisions 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.

Charter Language:

[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 for 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 be 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 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, expenditures 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)]

*(Language to be deleted is bracketed and stricken through. Language to be added is underlined.)

3. SHALL THE CHARTER BE AMENDED TO GIVE THE SALARY COMMISSION THE AUTHORITY TO ESTABLISH THE MAXIMUM SALARY 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, reports, and a resolution to the County Council, who can reject all or portions of the resolution by a vote of five or more members. 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 salary 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.

Charter Language: 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)

*(Language to be deleted is bracketed and stricken through. Language to be added is underlined.)

4. SHALL THE CHARTER BE AMENDED BY REMOVING THE PORTION OF SECTION 19.17 THAT REQUIRES SURETY BONDS FOR CERTAIN OFFICERS AND EMPLOYEES?

Purpose: To provide the county with flexibility in purchasing insurance or surety bonds by eliminating a provision that requires the purchase of surety bonds.

Background: The removal of the specific language would allow the county to purchase surety bonds, insurance, or both. Council would continue to have the authority to determine if surety bonds are required for specific officers or employees. This would allow the county to select the policies that provide the best coverage and better manage overall costs.

Surety bonds for public officials generally provide a financial guarantee against loss, specifically that the official duties of an office will be faithfully and legally performed during a specific term. Insurance can provide similar coverage. The County currently purchases errors and omissions insurance for public officials and an employee crime policy. The public official insurance protects against fraud and other wrongful acts of officers and employees, such as an actual or alleged omission, misstatement, misleading statement, neglect, or breach of duty. The employee crime insurance protects against theft, forgery, computer fraud, burglary, and fraudulent money transfers committed by an officer or employee. The County bundles these policies in with several other forms of insurance including general liability, property coverage, automobile liability coverage, employee benefits liability, law enforcement liability, lifeguard liability, workers compensation, cyber coverage, aircraft coverage, and commercial excess liability. The bundled policies are then procured annually by the Director of Finance.

Charter Language: Section 19.17. Surety Bonds. ~~[Except as otherwise provided, the]~~ The council shall determine which officers and employees, if any, are ~~[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.

*(Language to be deleted is bracketed and stricken through. Language to be added is underlined.)

**For more information on the Charter Review Commission,
please go to
www.kauai.gov/Charter
or contact the Office of Boards and Commissions
at 808-241-4917,
Monday-Friday, between 7:45 a.m. and 4:30 p.m.**