



**Amendments to The Charter of the County of Kaua'i
November 3, 2020
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 2020 general election ballot.

- 1. SHALL SECTION 23.06, ESTABLISHING A TIME LIMIT FOR NEGLIGENCE CLAIMS AGAINST THE COUNTY, BE AMENDED TO COMPLY WITH STATE LAW?**

Charter Language: Section 23.06. Claims. No action shall be maintained for the recovery of damages for death or injury to person or property by reason of negligence of any officer or employee of the county unless a written statement stating fully when, where, and how the damages occurred, the extent thereof and the amount claimed therefor, has been filed with the county clerk within [~~six months after the date the death, injury, or damages were sustained~~] the time period provided in Hawai'i Revised Statutes section 46-72.

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

Educational Material: Section 23.06 establishes a six-month time limit in which anyone alleging they have been injured by the negligence of the County must file a written claim. This six-month time limit conflicts with state law, which allows two years within which to file a claim against the County. The proposed amendment deletes the six-month time limit from section 23.06, and brings the Charter into harmony with state law.

Section 23.06, titled "Claims," requires that any person who believes they have been injured or damaged by the negligence of the County must submit a written statement with the details of their claim within a specified period of time. Under the current Charter, the time limit for submitting a claim against the County is six months. Before 2007, state law (HRS Section 46-72) provided a six-month time limit for submitting such claims. In 2007, however, the state legislature amended state law to extend the time limit to two years.

Because state law is superior to the County Charter on this issue, the six-month time limit set out in the Charter currently has no meaningful effect.

Leaving the language as-is keeps the county claims language out of compliance with state law.

2. **SHALL POLICE CHIEF QUALIFICATIONS (SECTION 11.04) BE INCREASED TO REQUIRE FIFTEEN YEARS LAW ENFORCEMENT EXPERIENCE AND A BACHELOR'S DEGREE?**

Charter Language: Section 11.04. Chief of Police. The chief of police shall be appointed by the police commission. The chief of police may be removed by the police commission only after being given a written statement of the charges against the chief and a hearing before the commission. The chief of police shall have had a minimum of ~~[five]~~fifteen years of training and experience in law enforcement, of which at least ten years have been as a peace officer in a full-service, public sector, law enforcement agency, and at least three of those ten years [of which shall be in a responsible, administrative capacity.] have been in performing management-level duties at the rank of lieutenant or higher. The chief of police shall have a bachelor's degree in administration of justice, business administration, public administration, or a similar administrative field. The chief of police shall make such reports from time to time as the commission shall require and shall annually make a report to the commission on the state of affairs and condition of the police department. (Amended 1984)

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

Educational Material: The Kaua'i Police Commission, after having gone through the process of hiring a new police chief, recommended more stringent requirements for future police chief candidates. The goal of this measure is to ensure that candidates for the county's top law enforcement post meet adequate minimum standards, which match standards in other communities.

Under this measure, a candidate would need a college degree in an appropriate field, a 15-year work history, of which at least 10 years would be as an officer in a full-service law enforcement agency, and three years as a lieutenant or higher rank.

Leaving the language as-is would retain minimal standards of five years of training, three of which were as an administrator.

3. **SHALL THE LIST OF COUNTY OFFICIALS REQUIRED TO FILE ETHICS DISCLOSURES (SECTION 20.04) BE EXPANDED TO INCLUDE THE MANAGING DIRECTOR, AGENCY AND DIVISION HEADS, AND REGULATORY EMPLOYEES?**

Charter Language: Charter 20.04. Disclosure.

- A. The mayor, councilpersons, ~~[all department heads and deputies,]~~ managing director, heads and deputies of all departments, agencies, and divisions, members of boards and commissions, the purchasing administrator, and [any employee delegated or authorized to act on behalf of the director of finance and the deputy director of finance in their absence shall] regulatory employees

shall, within thirty days of assuming office, file with the board a list of all real property within the county in which such person has any right, title, or interest, a list of all business firms which contract for county business in which such person has any interest, and all of such person's places of employment, including part- time employment, all sources and amounts of income, business ownership, officer and director positions, debts, creditor interests in insolvent businesses, and the names of persons represented before government agencies. Amendments to the list, including additions, deletions, or changes in title, interest in property or of employment, shall be made within thirty days of the occurrence of the amendment. The list shall be a matter of public record[-]; provided that the lists of regulatory employees shall not be open to public inspection. (Amended 2008, 2010)

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

Educational Material: Certain county employees are required to file disclosure of their interests in business and local real estate. This change would include on the list the county managing director, heads and deputies of county departments, agencies and their divisions. It would also include regulatory employees such as building permit inspectors and liquor control investigators. Specific "regulatory employee" classifications would be defined later via administrative rule by the Board of Ethics.

If this provision were to remain as-is, such ethics disclosure requirements would be limited to elected officials, department heads and deputies, the purchasing administrator and members of boards and commissions.

4. **SHALL THE MAYOR, WITH THE APPROVAL OF THE COUNCIL, FILL A VACANCY OF LESS THAN 18 MONTHS IN THE PROSECUTING ATTORNEY'S POSITION IF A FIRST DEPUTY IS UNABLE TO FILL THE POSITION (SECTION 9A.05)?**

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 [~~a year~~] eighteen months, the first deputy shall act as prosecuting attorney. If the position of first deputy is vacant or if the first deputy is unable to so act, the mayor with the approval of the council shall fill the vacancy by appointment of a person with requisite qualifications within thirty days after the occurrence of the vacancy.

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. (Amended 1972)

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

Educational Material: Due to an oversight, there is currently no provision for filling a vacancy in the Prosecuting Attorney's office if a vacancy is expected to last between one year and 18 months.

If a vacancy is longer than 18 months, a special election would be held. Under current language, if a vacancy is less than a year, the first deputy would fill in as prosecutor. But there is no guidance on what to do if a Prosecuting Attorney vacates the office with a remaining term of between one year and 18 months. This measure would allow the first deputy to fill in the position for those 18 months. If there is no first deputy or the first deputy is unable to fill the position, the mayor, with council approval, shall appoint a Prosecuting Attorney.

Leaving the language as-is could require going to court for direction in the event of a vacancy of 12 to 18 months.

5. **SHALL AN INDIVIDUAL WHO HAS EXTENSIVE WORK AND SUPERVISORY EXPERIENCE IN AN ENGINEERING OR RELATED FIELD ALSO BE QUALIFIED TO SERVE AS THE COUNTY ENGINEER, HEAD OF THE DEPARTMENT OF PUBLIC WORKS?**

Charter Language: Section 13.02. County Engineer. The county engineer shall be appointed and may be removed by the mayor. The county engineer ~~shall~~ may but is not required to be a registered engineer, and shall have had a minimum of five years of training and experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity. (Amended 1980)

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

Educational Material: The County Engineer oversees the largest department in the county, the Department of Public Works. While this was once a position with extensive engineering requirements, it is now primarily a management and administrative assignment, and engineering is performed by trained and certified engineers within the department's divisions.

Mayors for many years have had difficulty filling the position with registered engineers. This amendment recognizes the changing function of the position, and it would expand the pool of qualified applicants.

Leaving the provision as-is would continue to require a Hawai`i-registered engineer hold the position.

6. **SHALL AN INDIVIDUAL WHO HAS EXTENSIVE WORK AND SUPERVISORY EXPERIENCE IN AN ENGINEERING OR RELATED FIELD ALSO BE QUALIFIED TO SERVE AS MANAGER AND CHIEF ENGINEER OF THE DEPARTMENT OF WATER SUPPLY?**

Charter Language: Section 17.04. Staff. The ~~[board shall appoint an engineer duly registered under Hawai`i state laws pertaining to registration of engineers]~~ manager and chief engineer shall be appointed and may be removed by the board of water. Said person [shall be known as the manager and chief engineer and] shall be the head of the department. The manager and chief engineer may but is not required to be an engineer duly registered under Hawai`i state laws pertaining to registration of engineers, and shall have had a minimum of five years of training and experience in an engineering related position, at least three years of which shall have been in a responsible administrative capacity. Said person shall have the powers and duties prescribed by the board. (Amended 1980)

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

Educational Material: The direction of the Department of Water is increasingly an administrative rather than an engineering function. This provision would recognize that a qualified manager with engineering experience could meet the requirements of the position as well as would a Hawai`i-registered engineer.

Furthermore, as the Board of Water Supply has had difficulty filling this position with qualified engineers, this provision has the capacity to expand the pool of qualified applicants.

Leaving the provision as-is would continue to require a Hawai`i-registered engineer hold the position.

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