

**KENNETH G. GOODENOW**  
County Clerk



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December 15, 2009

*Sent via e-mail to keoff@co.hawaii.hi.us; no hard copy will follow*

Honorable Edmund Hiatsuka and Members of the  
County of Hawai'i Charter Commission  
c/o Hawai'i County Council  
25 Aupuni Street  
Hilo, Hawai'i 96720

RE: Comments about Charter Amendment Proposal CA-20

Dear Chairman Hiatsuka and Commission Members:

Thank you for the opportunity to comment on proposed Charter amendment CA-20 which would add a section to Article III to create a requirement that the county council establish standing committees composed of all council members.

The Office of the County Clerk provides the following comments regarding this proposal:

- 1) The proposed amendment states that "[t]he Council shall have the right to determine how many standing committees it needs." This seems to be in conflict with the provision that "[t]he county council shall establish standing committees." Does this mean the council might be sued if it decides to establish only one or no committees?
- 2) The proposed amendment states that "[i]t shall be the duty of the standing committees to investigate, consider, and make recommendations to the council on matters referred to the respective committees," yet there is no guidance as to the referral process. Presumably the council chair may decide not to refer a matter to a committee at all, but this is not clear.

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- 3) The proposed amendment also states that the council "shall have the right to determine...the subject matter that each committee shall control." Some legislation may involve more than one committee; would this amendment require multiple committee referrals or open the county to litigation if a certain committee did not review a matter prior to council action?
- 4) In my opinion, this proposed section is not the appropriate place to include filing and posting requirements, unless the Commission desires to make these provisions applicable to committee agendas only. I also note that no other county charter in our state includes provisions relating to council agenda procedures or posting requirements.
- 5) Our office's Legislative Research Branch reviewed the charters and rules of procedure of the other three counties in our state and numerous charters from other jurisdictions. In no case was it found that all board members served on all committees; Hawai'i County seems to be unique in this regard.
- 6) The proposed amendment states that standing committees are to be established "in order to expedite the business of the council." It is hard to understand how this would be accomplished if all members serve on every committee.
- 7) As noted in Robert's Rules of Order, 10<sup>th</sup> Edition, the term *committee* implies that, within the area of its responsibilities, a committee has less authority to act independently than a board is usually understood to have. Indeed, according CA-20, the committees only make recommendations to the council, as is the current practice. As committee action has no legal bearing on the validity of an ordinance or resolution, i.e., the council could pass a matter that received a negative recommendation by a committee, letting the council itself determine its internal procedures is more appropriate in my opinion.

If I can provide further information or assistance, please do not hesitate to contact me at 961-8271.

Yours, very truly,



KENNETH G. GOODENOW  
County Clerk