CHAPTER 1

LAWS, GOVERNMENT,
AND THE LEGISLATIVE PROCESS

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INTRODUCTION

The Hawai'i Constitution, written and adopted by Hawai'i residents, sets up a government composed of three independent branches, each with a different kind of power. These three branches are the Legislature, the Executive (Administration), and the Judiciary. Conceptually and ideally, these branches should work together to ensure each of us the right to seek individual goals while living in civility under the principles of the State Constitution. Reality, though, is not always true to concepts and ideals.

The legislative branch is intended to represent the will of the people and enact the laws which govern the people of the State of Hawai'i. These laws, known as statutes, can be amended or repealed during any legislative session. These statutes are compiled in a set of books called the Hawai'i Revised Statutes. When the Legislature makes permanent changes to statutes, the changes are incorporated into the Hawai'i Revised Statutes. These books may be most conveniently found at the State libraries, the Hawai'i Supreme Court law library, and the University of Hawai'i law library.

The Executive branch of Hawai'i's government is headed by the Governor. It is empowered to carry out the laws enacted by the Legislature. The Executive branch includes agencies like the Department of Education, the Department of Land and Natural Resources, and the Hawaiian Homes Commission. Some of these agencies are described in Chapter Two. When a new governor is elected, she has the power to name new directors for each administrative agency or commission, with approval of the State Senate.
Finally, the third branch of government, the court system or Judiciary, may be called upon when a conflict arises between two or more persons and/or entities. The job of the courts is to tell us what a law means and make sure that the law is applied the same way to everyone. Hawai‘i’s state court decisions are commonly referred to as Hawai‘i’s common law.

The system of government outlined above is known as a representative democracy. The Legislature is composed of Hawai‘i residents who are elected by their constituents, Hawai‘i residents who live in the area represented by the elected representative. As a body, these elected representatives are intended to represent the voices of all the people in the State.

Under most circumstances, if someone desires to add a law or change or get rid of a law, he or she must get the Legislature itself to pass, change (amend), or get rid of (repeal) the law. Enter the legislative process.

What follows is an explanation of the legislative process, or, if you will, the life and times of a bill from its introduction to its enactment into law or eventual demise. This section along with Chapter Four, Drafting Written Testimony and Presenting Oral Testimony, discusses how to track and present testimony regarding bills which are of interest to the Kanaka Maoli people.

THE LEGISLATIVE PROCESS

Every year the Legislature passes new laws and amends or repeals old laws. Although thousands of bills are introduced, comparatively few become law. As will become very apparent, the legislative process can be very complicated.

Getting involved in the legislative process

If you have an idea, or support an idea, that you think should be a law or oppose an idea that someone else thinks should be a law or that is the law, you should consider getting involved in the legislative process. The first step is to form a clear picture of what you think the law should do or say or not do or not say. It is generally helpful to write down what you want the law to accomplish and some possible language for the law. In order to do this, you may need to research the idea you are concerned about and to learn as much as you can about it.
1. Research the idea.

Where do you start? A call to the agency that handles the subject matter, for example the Department of Land and Natural Resources ("DLNR") or the Office of Hawaiian Affairs ("OHA"), may be a good starting point. The agency may be able to explain why things are the way they are, or why they aren't the way you think, for good reason, they should be. Sometimes agencies would also like to make changes.

Another good place to start is by reading the existing law. Remember, laws are in the set of books entitled the Hawai‘i Revised Statutes and librarians can be an excellent source of help in your research. They are trained to assist you.

2. Provide a solution, if you can.

The Legislature is in the business of solving problems, but they may not always see the problem or the solution you think will work. The Legislature must be convinced that there is a problem and that your solution will help to solve the problem in a manner that is fair to everyone.

3. Get support from others.

Try to identify other people who share your concerns and who will support your idea. The more people who agree with your idea, the more likely a legislator will take your ideas seriously. This is the First Rule of Politics:

*The more voters who support an idea, the more a legislator is likely to support it.*

Having support of others is also very important because the legislative process can last for the whole four months that the Legislature is in session.

It can be very helpful to have the support of community or organization leaders. These types of leaders usually know what is important to others and are willing to work for what they believe in. Leaders usually have experience in getting others to work together to reach a goal. The ideal support group will have leaders with different skills, such as writing, speaking, or organizing who are committed to supporting your idea.

4. Figure out who will oppose your idea.

How powerful are the groups who might oppose your idea or whose idea you
oppose? Can you talk to them and work things out so they either won't oppose your bill or will adequately address your concerns? If not, it's a good idea to develop reasons why your idea will benefit groups outside of your own. By broadening the appeal of your idea, you increase the voices speaking in support of it. The more serious opposition to your idea, the more you need to organize broad support. Likewise, it is best to organize broad opposition to an idea you oppose. Community groups and groups dealing with specific types of issues (for example, environmental groups or health organizations) can be good sources of support.

5. Communicate with your legislator.

Do you know your Representative or Senator? Can you talk to her? If so, try to arrange a short meeting to present your idea in person. She will usually give you her suggestions of how your idea can get into the legislative process. Offer to write your ideas and solutions down and mail it to her so she can think about them more.

If you don't know your House or Senate representatives personally, it may be a good idea to write them a letter which introduces yourself to them, tells them the problem you think needs solving and how you think it can be solved. You want your letter to get the legislator to see the issue through your eyes. It's best to keep your letter short. One or two pages is a good length since legislators have a lot of people trying to get their attention and are hesitant to spend too much time on any one thing. Be sure to include your return address and phone number. Legislators or their staff usually answer all letters.

Your representatives are supposed to be your voice in the legislature, but in reality they cannot fairly represent the views of every single person. If you think your representatives are not likely to be helpful, send them the letter anyway. Then consider other legislators you may have a personal connection with or who may be interested in the subject of your idea. Supporters of your idea may be able to contact their representatives or identify others who may be interested.

6. Get your idea to the legislator early.

The Legislative session begins in January. Legislators are often busy in December, preparing their legislation for the new session, but they may not be available over the holidays. The best time to communicate with your legislators is probably in early November. That will give them time to consider your idea while they are developing their
strategy for the upcoming session. If you don't hear from them by the first week in January, call their office.

Legislative rules set a deadline that allows legislators only a few days to introduce new bills to be considered in the session. If your idea is not ready before the session starts in January, you will have to work very fast to make the deadline for that year. If you are not ready to present your idea, you may want to consider waiting until the next year and spend the time working on your idea with your support group.

**The Legislative Session: How a Bill moves through the Process**

An idea begins its journey through the legislative process by becoming a Bill for an Act. See Appendix "A" for a sample bill. Bills can be introduced only by a legislator. If a legislator agrees to introduce your bill, she will see that it is written in the correct form. However, ask for and review a copy of the bill to make sure it says and does what you want.

Legislators usually send bills to other legislators before they introduce them to get support for the bill. Legislators who support the bill sign their name to it. Sometimes, when legislators introduce a bill they don't really support, they write "by request" on it before they send it to others. Some legislators won't add their support to "by request" bills.

Once a bill is introduced, other members of the Legislature should become aware of as many voices in support of or opposition to the bill as soon as possible. To be successful, you will need to follow the bill through the entire legislative process. It is a very good idea to ask the legislator to put you on a mailing or phone list to keep you updated on the status of that bill.

Another way to follow a bill is through the Legislature's ACCESS program. ACCESS is an on-line program accessible from a home computer and some libraries. This program can tell you what is in a bill and what committees will be considering it before it goes before the Legislature for a vote. There is also an ACCESS room at the Capitol building where you can get the most up-to-date information on bills.

One way to increase the likelihood a bill will pass is to have the same or similar bill introduced in both the House and the Senate. When the same bill or similar bills are introduced in both bodies of the Legislature, they are called companion bills. Although this means you will have to follow both bills, it will increase the chances for the bill to become law. Group support may be crucial to insure you do not miss any hearings or actions on these
bills. This is true for bills you support, as well as for ones which you oppose.

1. Legislative Deadlines

The legislative process works through a series of internal and external deadlines. Internal deadlines determine how fast a bill must move through committees and readings. External deadlines include the deadline for bringing bills to the Legislature, recesses, when a bill must move over to the other body for consideration, and when the legislative session ends. For a bill to become a law, it must be approved by both houses of the Legislature within the same legislative session.

Final Decking is a crucial deadline that requires all bills, with committee reports attached, be filed at the House or Senate Clerk's office for final reading. If committees have not completed their consideration of all bills before this deadline, the bill is said to "die in committee." Although there are ways to resurrect a bill that has died, a bill that dies generally will not be considered further. It may, however, be introduced the following year for consideration during the next session. There are actually two Final Decking deadlines, one for legislative business and a later deadline for Administration, Judiciary and OHA business in the House or for Capital Improvement Projects in the Senate.

2. Committee Hearings

A bill is introduced to the full House or Senate at First Reading, then it is given a number and referred to at least one committee. Legislative committees specialize in different areas, for example, housing, health, and water-land use. Your legislator should communicate to you through letter or phone what committee the bill you are interested in has been referred to. You may want to let the clerk of that committee know that you are following the bill and ask her to put you on a mailing list for committee hearings.

Presenting testimony to the Committee

All committee hearings are open to the public for public testimony. Committee clerks send out notices of committee hearings telling you when, where and at what time testimony may be presented, and how many copies of testimony you need to provide. The testimony usually needs to be in the committee office 24 hours before the hearing. Sometimes, you can get help through a legislator to have copies made if you cannot do it
yourself. But remember, everyone in the Legislature is running around trying to deal with a lot of paperwork and fast moving deadlines, so don't expect too much.

If a bill is referred to two or more committees, you will want to present testimony to each committee. You may want to consider the specific interests of the committee and focus your testimony accordingly. It is important to be as brief and to the point as possible so you hold their attention. Be clear about whether you want committees to pass or kill the bill and be sure to tell them why you believe the bill is good or bad.

You want to communicate to all members of each committee why you think this bill should or should not become law. The most obvious way of doing this is to present testimony at the committee hearing. You and your supporters might want to reinforce your testimony by phone call, letter, or personal visit to committee members. It is most important to convince the voting members of the committee that they should agree with your point of view.

A personal visit to members of the committee by a number of supporters may be an effective way to show community support for or opposition to a bill. If the legislator is not able to fit a personal visit into her schedule, try to meet with her staff. Letters from supporters can also be effective. These letters should be short, to the point, supportive of your testimony, and polite -- and the more letters the better.

Committee referrals can be a minefield that threaten passage of a bill you support.

Sometimes committees will change a bill. Minor changes are "technical" and are a mere change in words to reflect the way laws work. On the other hand, a "substantive" change may change the meaning of a bill. You need to make sure the bill still gets you most of what you want or work to oppose the changes.

Occasionally a bill will be referred to three committees after first reading. If this happens to a bill you support, it could be a signal that the bill will not make it successfully through the committee process. Triple-committee referrals must move through the hearing process quickly in order to make the internal deadlines of the legislature. Support of individual committee members or an influential legislator can overcome the difficulties of three-committee referrals.

A bill is "killed" when it fails to make it all the way through the legislative process. A bill dies if a committee votes against it. A bill also dies if a committee chair does not
schedule it for a committee hearing. This might happen because the bill was referred to a committee chaired by a legislator who will not support the bill.

If a bill is killed in committee, you might be able to resurrect it. There are a number of ways to accomplish this. You may be able to convince another committee to amend a similar bill to include your bill. You may also insert your bill into a short-form bill. A short-form bill is a bill which is introduced at the beginning of the legislative session. It is simply a bill with a title and nothing more. For example, the short form bill might simply say, "A Bill for an Act Relating to Native Hawaiian Rights." Legislators use these bills as security blankets. In any event, to resurrect a bill you will need a strong legislator as well as strong community support. This is an especially critical time for you and as many supporters as possible to call, write and fax sympathetic legislators, urging them to somehow resurrect your bill.

3. Second Reading

If a bill you support or oppose passes through the committee hearings, it goes to the full House or Senate for a vote, called Second Reading. By this time, each legislator should have read the bill. Unless this is a very controversial bill, it will likely be placed in a file for a third and final reading by the first body (House or Senate) where it was introduced. Sometimes, after second reading, the bill will be referred to committee again for further review or changes. If that happens to your bill, you will want to know about it so you can attend the hearing and present testimony.

4. Third Reading – An opportunity for all legislators to debate your bill

If a bill you support or oppose passes through all committees and Second Reading, this may be the last chance for its opponents to argue against it. If you support it, you will want to be prepared to answer any opposition. If this is a bill that has enough support, it will cross over to the other house for consideration. Whether you support or oppose the bill, you will now need to direct your efforts to the other house.

5. Crossover - Your bill moves into the second Legislative body

When a bill crosses over, it is read in the second body, given a new number (for example, HB 1234 from the House of Representatives becomes SB 5678 in the Senate), and
referred to new committees. You will want to notify the committee clerks of the new committees that you want to be on the mailing list for that bill. The legislator that originally introduced the bill may also keep you informed. After all, every legislator wants to see a bill they support get passed into law.

6. Strategizing to successfully kill or pass a bill

Legislative strategy is very important now that you and your bill are this far along in the process. What are these committee members interested in? Whether you support or oppose the bill, what can you say in your testimony that appeals to their special interests and furthers your purposes? You may want to submit new testimony, or resubmit your old testimony. The bottom line is that you must convince the majority of the committee members to support or oppose the bill.

How do you find out what a particular committee member is interested in, anyway? One way is to ask another legislator you may know. Another way is by talking to people familiar with the committee members and to listen to the questions she asks at the public hearings. The more you can present testimony that appeals to the interests of the members, or convinces them it is good for the general issues the committee is responsible for, the more you increase chances the bill will pass. If you oppose passage of the bill, you will want to strive for the opposite outcome.

One strategy that improves your bill's chance of passage is figuring out how it can be implemented without State money. If you oppose the bill, it certainly helps to show that the bill needs big money to work. As far as the Legislature is concerned, a good bill is one that needs little or no money to work. All "money" bills must go through the legislative money committees, either the House Finance Committee or the Senate Ways and Means Committee. A bill that avoids the money committees has a better chance of passage than a "money" bill.

7. Second Reading - Second Body

Not many bills reach a second reading in the second body. The reason is that this time around the members will have time to decide if they really support your bill or not. If the members do not vote to pass the bill but the bill has important support, it can be referred to committee for further review. If the bill passes on second reading, it will be set for Third Reading. A bill that is approved unchanged after a third reading in the second body is sent to
the Governor for signature.

8. Second Decking

If a bill is changed by committee or on the Floor in the second body, the changed bill must be adopted by the body that first passed it. The bill will need to meet a certain deadline for going back to the body it originated in, so that body can consider the new (amended) bill. This deadline is called "Second Decking".

Time may now become an enemy if you support the bill and an ally if you oppose it. The legislators are rushing to pass all kinds of bills someone or other thinks is important, and your bill may get shuffled aside. You will want to keep in touch with committee clerks to make sure your bill keeps moving and meeting deadlines if you support it and vice-versa if you oppose it. If it is still alive, it must go through another third reading in the body it started in.

9. Conference Committee - Last chance for a bill to be heard

A bill that has passed from the originating body to the second body for the second time actually has two more opportunities to become a law or die. The second body can accept the bill on a third reading exactly as the bill has crossed over. If the bill is amended during third reading in the second body, it will need to be sent to a conference committee made up of Representatives and Senators.

Conference committee meetings are open to the public but no further testimony can be given. The conference committee's job is to change the bill to make it acceptable to both bodies. In conference, every word in a bill can be erased and a whole new bill can be put in. If your bill has already been killed, you can try to have someone else's bill erased in conference committee and replaced with the wording of your bill.

If a compromise on the amended bill and the original bill (the one that crossed over) is reached, the bill goes back to both houses for a final vote. This Final Reading is the last chance for the Legislature to pass or kill a bill. If one or both houses do not pass it, the bill "dies in conference". If both houses do pass it, the bill goes to the Governor for signature.

10. After a bill is sent to the Governor

If you are lucky enough to have a bill you support make it this far, write to the
Governor and urge him to sign the bill into law. You should get a response one way or the other, and if it is negative, you may well be told the reasons the Governor doesn't like the bill. If the Governor doesn't sign the bill but doesn't veto it either, it still becomes law. If you oppose passage of the bill, request the Governor veto it and try to convince the Governor to agree with you. If it is vetoed, the only way the bill will become law is if the Legislature reconsider the bill and approves it by a 2/3 vote of each house.

CONCLUSION

If your bill is signed into law or otherwise becomes a part of the general and permanent law, congratulations! Your idea has become a part of the Hawai’i’s Revised Statutes. Congratulations are also in order if the bill which you opposed dies. If the result in either case is not to your liking, you can try again in the next legislative session to achieve your goal.

With this outline of the legislative process in mind, the next chapter provides some insight into the workings of the agencies created to carry out the business of government. Chapter Two outlines the duties and responsibilities of most of the agencies whose decisions directly impact Kanaka Maoli interests.