

Alternative Methods of Compensating Members of the OHA Board of Trustees

Susan L. Gochros
Researcher

Report No. 1, 1992

Legislative Reference Bureau
State Capitol
Honolulu, Hawaii

FOREWORD

This report was prepared in response to Senate Concurrent Resolution No. 222 which was adopted during the Regular Session of 1991 requesting the Legislative Reference Bureau to study alternative means of compensating members of the Board of Trustees of the Office of Hawaiian Affairs. This report contains the results of that study.

The Bureau extends its appreciation to all of those whose participation and cooperation made this report possible. The information presented could not have been obtained without the assistance of those who provided their time, insights, and input through often lengthy personal interviews. The Bureau is especially grateful to the many OHA Trustees, past and present, who participated in the interviews and offered their candid perspectives; Office of Hawaiian Affairs Administrator Richard K. Paglinawan and Deputy Administrator Stanley H. K. Lum; Elizabeth Higa; Martin Wilson; Paul Alexander, Esq.; Dr. Mitsugi Nakashima; Sherry Broder, Esq.; Melody MacKenzie; and Mahealani Kamaau.

Samuel B. K. Chang
Director

January 1992

TABLE OF CONTENTS

	<u>Page</u>
FOREWORD	ii
1. OVERVIEW	1
Methodology of Study.....	1
2. ESTABLISHMENT AND PURPOSE OF OHA AND THE EVOLVING POWERS AND DUTIES OF THE OHA BOARD OF TRUSTEES	3
Establishment of the Office of Hawaiian Affairs	3
Duties and Responsibilities of the OHA Board of Trustees	3
Present Composition of OHA Board of Trustees	5
Financial Evolution of the Office of Hawaiian Affairs and Concomitant Expansion of the Role and Expectations of OHA Trustees	5
Past Funding.....	5
Present Funding	6
OHA's Financial Future: OHA Ceded Lands Entitlement Law, Act 304	6
Evolution of Issues Confronted by OHA Trustees; Insight from OHA Trustees and Others	6
Evolution of Time Spent by OHA Board of Trustee Members	8
Time Spent in Meetings	8
1982	8
1986	8
1990	8
1991	8
Insight from OHA Board Members Regarding Time Commitments of Their Position.....	9
Neighbor Island Travel/Time Demands	11
Endnotes	13
3. EXPLANATION AND ASSESSMENT OF THE PRESENT METHODS AND RATE OF COMPENSATING MEMBERS OF OHA BOARD OF TRUSTEES	15
Statutory Compensation	15
Board Meetings	15
Standing Committee Meetings	15
Advisory Committee Meetings	16
Ad Hoc Committee Meetings	16
Community Meetings, Informational Meetings, and Public Hearings	16

	<u>Page</u>
Internal Methods of Compensating OHA Trustees	17
OHA's Interpretation of Statutory Mandate of "\$100 Per Meeting Per Day"	17
What Constitutes Compensable "Official OHA Business"	17
Annual Allowance to OHA Trustees.....	19
Health Plan for OHA Trustees	20
Compensation for Travel-Related Expenses	21
Amount of Compensation Received by OHA Trustees	21
OHA Trustee Compensation from May 1, 1991 through September 30, 1991	22
Problems Inherent with the Present System of Compensating OHA Trustees	22
Endnotes	26
4. PAST PROPOSALS FOR OHA TRUSTEE COMPENSATION.....	30
1982 Trustee Salary Report.....	30
OHA Trustee Compensation Bills Introduced in 1987 Legislative Session	30
1988 Legislative Session.....	31
1989 Legislative Session.....	31
Act 290, Session Laws of Hawaii 1989.....	32
1991 Legislative Session.....	32
Endnotes	32
5. COMPARISON OF THE OFFICE OF HAWAIIAN AFFAIRS BOARD OF TRUSTEES WITH OTHER HAWAII BOARDS, COMMISSIONS, AND COUNCILS	34
Bishop and Campbell Estates	34
Bishop Estate	34
Campbell Estate	36
Board of Education.....	36
Comparison with OHA Regarding Compensation	37
Type and Number of Meetings for Which Board of Education Members Receive Compensation	38
Department of Commerce and Consumer Affairs Regulated Industries Boards and Commissions.....	39
Hawaii Labor Relations Board (HLRB)	40
Hawaii Paroling Authority.....	40
Hawaii State Legislature	41
Honolulu City Council	43
Public Utilities Commission.....	44
University of Hawaii Board of Regents.....	44
Endnotes	45

	<u>Page</u>
6. COMPARISON OF OHA WITH INDIAN TRIBAL COUNCILS AND STATE COMMISSION AND BOARDS FOR OTHER STATES' NATIVE GROUPS	49
Indian Tribal Councils	49
State Boards and Commissions Designed to Promote Indigenous Native Groups	50
The Indian Self-Determination and Education Assistance Act and Indian Tribal Councils	50
Endnotes	52
7. ANALYSIS OF ALTERNATIVE METHODS OF COMPENSATING OHA TRUSTEES ...	54
Part I. Alternative Methods of Compensation	54
Part II. Analysis of Alternative Methods of Compensating OHA Trustees	55
1. Annual Salary for All OHA Trustees	55
Arguments in Favor of Annual Salary Method	55
Arguments in Opposition to Annual Salary Method	57
2. Annual Salary for the OHA Chairperson Only	58
Argument in Favor of Chairperson Compensation Method	58
Arguments in Opposition to Chairperson Compensation Method	59
3. Payment of Commissions Based Upon a Percentage of the Income Generated by OHA	59
Argument in Favor of Percentage Method	59
Arguments in Opposition to Percentage Method	59
4. Maintaining the Present System (i.e. Payment of a Specified Amount Per Meeting Per Day) as Conceived by the Legislature	59
Argument in Favor of Present System	59
Argument in Opposition to Present System	60
5. Maintaining the Present System but Amending the Statutory Scheme for Compensating OHA Trustees to Make it Consistent with OHA's Present Internal Policies and Guidelines (Modified System I)	60
Argument in Favor of Modified System (I)	60
Argument in Opposition to Modified System (I)	60
6. Maintaining the Present Compensation Method With an Increased Rate of Compensation Per Meeting Per Day (Modified System II)	60
Argument in Favor of Modified System (II)	60

	<u>Page</u>
Argument in Opposition to Modified System (II).....	60
7. Maintaining the Present Compensation Method (at Either Current or Increased Rates) While Placing a Cap on the Total Compensation Available Per Year (Modified System III).....	61
Arguments in Favor of Modified System (III).....	61
Arguments in Opposition to Modified System (III)	61
8. Other Considerations.....	61
Amount of Salary	61
Full-Time or Part-Time Work	62
Endnotes	62
8. FINDINGS AND RECOMMENDATIONS	64
Facts and Findings.....	64
Recommendations.....	68
Endnotes	69

Appendices

A. Senate Concurrent Resolution No. 222, Senate, Sixteenth Legislature, 1991 Regular Session, State of Hawaii.....	70
B. Committees of the Board.....	75
C. Sample Questionnaire	77
D. State Indian Boards and Commissions	81

Chart

1. Data from Questionnaires.....	35
----------------------------------	----

CHAPTER 1

OVERVIEW

In March, 1991, the Legislature of the State of Hawaii adopted Senate Concurrent Resolution No. 222 (1991), entitled "Senate Concurrent Resolution Urging a Study of Alternative Means of Compensation of the Board of Trustees of the Office of Hawaiian Affairs" (See Appendix A). The premise behind the concurrent resolution is that the Office of Hawaiian Affairs (hereinafter "OHA") has grown exponentially over the past decade both in terms of the amount of assets it manages and the scope of programs it administers. The concurrent resolution states that, based on the continuous growth of the OHA's budget and the expansion of the duties of the members of the Board of Trustees, it is appropriate to review and consider alternative methods for compensating the members of the OHA Board of Trustees.

The Legislature directed the Legislative Reference Bureau to conduct a study of "alternative means to compensate the Board of Trustees in view of their increased responsibilities." This report has been prepared in response to the Legislature's direction.

Methodology of Study

The second chapter of this study describes the precise nature of the OHA Board members' present functions and duties, and reviews the evolution of these duties over the past thirteen years. Anticipated future expansions of these duties are also discussed. The following sources were consulted:

- (1) Constitutional and statutory bases for:
 - (A) The establishment and purpose of the Office of Hawaiian Affairs, and
 - (B) The powers, duties, and functions of the Board;
- (2) OHA's Annual Reports submitted to the Hawaii State Legislature;
- (3) Interviews with past and present members of the OHA Board of Trustees;
- (4) OHA Trustees' Compensation and Personal Expense Summaries.

The third chapter reviews the present method of compensating members of the OHA Board of Trustees. Both the statutorily prescribed method of compensation and OHA's internal policies and procedural guidelines for compensation are reviewed. The actual amount of compensation drawn by the OHA trustees is also reported. Various perceptions about the time commitments required of the OHA trustees are reported, based upon personal

interviews with over 20 people with personal knowledge of the matter. Finally, the problems inherent in the present system are assessed.

The fourth chapter sets out proposals for compensation previously considered by the Legislature. This information was obtained through review of statutes enacted and bills proposed. Also reviewed were the relevant committee reports and testimony provided for each of the bills suggesting different methods and/or amounts of compensation for the OHA Trustees.

The fifth chapter reviews and compares other statutorily created boards and commissions and two private entities presently operating in Hawaii. The means of compensation employed by each such entity are reviewed. The functions, duties, and time commitments of the various board and commission members are compared through reviews of the applicable statutory provisions, interviews, and responses to questionnaires provided to representatives of the various boards and commissions.

The sixth chapter reviews and compares various commissions set up throughout the country which have functions analogous to OHA - e.g. the promotion and protection of each state's native population. This information is reported through a review of statutorily created state Indian Affairs Commissions and Boards and various Indian Tribal Councils.

The seventh chapter explores several possible alternatives for compensating OHA Board members and presents arguments for and against each potential method of compensation.

The conclusions and recommendations of this study are presented in chapter eight.

CHAPTER 2

ESTABLISHMENT AND PURPOSE OF OHA AND THE EVOLVING POWERS AND DUTIES OF THE OHA BOARD OF TRUSTEES

Establishment of the Office of Hawaiian Affairs

The Office of Hawaiian Affairs ("OHA") was created in 1978 by the Constitutional Convention and ratified by Hawaii's voters for the purpose of establishing a public trust entity to manage and administer the resources held for the benefit of persons of Hawaiian ancestry and formulating policy for their benefit.¹ OHA's activities were to be funded through a share of the revenues from the "public land trust", i.e. lands ceded to the United States government at the time of Hawaii's annexation in 1898 and transferred to the State of Hawaii in 1959.

Duties and Responsibilities of the OHA Board of Trustees

The constitutional and statutory² powers and duties of the OHA Board of Trustees are set out as follows:

- (1) Managing, investing, and administering the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians;
- (2) Exercising control over real and personal property set aside to OHA by the State of Hawaii, the United States of America, or any private sources, and transferred to OHA for native Hawaiians and Hawaiians;
- (3) Collecting, receiving, depositing, withdrawing, and investing money and property on behalf of the office;
- (4) Formulating policy relating to the affairs of native Hawaiians;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegating to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Providing grants to public or private agencies for pilot projects, demonstrations, or both, where those projects or demonstrations fulfill criteria established by the board;

- (8) Making available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of OHA.

In addition, the Board is statutorily charged with the following general duties:³

- (1) To develop, implement, and continually update a comprehensive master plan for native Hawaiians and Hawaiians which shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
 - (C) Establishment of immediate and long-range goals pursuant to programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities for program implementation and of alternatives for program implementation; and
 - (E) Organization of administrative and program structure, including the use of facilities and personnel;
- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
- (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
- (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;
- (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;
- (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;
- (7) To act as a clearinghouse for applications for federal and state assistance to carry out native Hawaiian or Hawaiian programs or projects;

ESTABLISHMENT AND PURPOSE OF OHA

- (8) To apply for, accept, and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians;
- (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians; and
- (10) To have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by Chapter 10 and which may be necessary to fully and completely effectuate the purposes of Chapter 10, Hawaii Revised Statutes.

Present Composition of OHA Board of Trustees

The Board of Trustees is composed of nine members, each elected to a four-year term by people of Hawaiian blood in statewide elections. The trustees' terms are on a staggered basis: four are elected in one general election and five are elected in the next general election year.

A full-time administrator is selected by the Board to handle the management and operation of the office. At present, there are approximately 65 authorized staff positions.⁴

Financial Evolution of the Office of Hawaiian Affairs and Concomitant Expansion of the Role and Expectations of OHA Trustees

OHA has been the recipient of progressively increased funding since its creation.

Past Funding

Since OHA's inception, the Legislature has appropriated general funds and OHA has been required to match those amounts with special funds derived from its revenues from various sources, including land trust funds, interest and investment income, federal grants, revenues generated by the Native Hawaiian Legal Corporation, and donations.⁵

During its first year of operation, the Legislature appropriated \$225,000 for OHA. That year, OHA's expenditures totaled \$186,825. Five years later, the Legislature doubled its appropriation to \$535,861 and OHA's total expenditures were \$2,081,482. For fiscal year 1990-91, the Legislature appropriated \$1,738,380.⁶

General funds appropriated by the Legislature to OHA totaled \$9.8 million from 1980 through 1991.⁷

Present Funding

For fiscal years 1991-1992 and 1992-1993, the Legislature appropriated general funds in the amount of almost \$7,000,000 (not including OHA matching funds) for the two years of the biennial budget of the Office of Hawaiian Affairs.⁸

OHA's Financial Future: OHA Ceded Lands Entitlement Law, Act 304

In 1980, the Legislature passed a law providing Hawaiians 20 percent of the revenue earned from all lands ceded from the Hawaiian kingdom to the United States and then to the State of Hawaii when Hawaii became a state in 1959, for the benefit of the conditions of native Hawaiians.⁹

In June 1990, OHA and the State reached an agreement which was subsequently approved by the Legislature and signed into law by Governor John Waihee, entitled the "OHA Ceded Lands Entitlement Law."¹⁰ Under this agreement, OHA will be provided with an annual base of approximately \$8,500,000 a year from leases, licenses, fees, and other types of activities conducted on Hawaii's ceded lands. The agreement also entitles OHA to reimbursement for the last ten to eleven years of nonpayment. The practical effect of the law will be that OHA will be provided with a lump sum of approximately \$100,000,000 in addition to an annual base of over \$8,000,000.¹¹

This infusion of substantial assets, when implemented, will provide OHA with a huge increase in resources with which to manage and carry out its statutory and constitutional duties.

Evolution of Issues Confronted by OHA Trustees; Insight from OHA Trustees and Others

The contrast between OHA's past circumstances and those it is presently operating under is reflected in various comments about OHA's early days:

When OHA was first created, the trustees were equipped with "a lot of paper power and very little teeth."¹² The trustees were armed with "a statute, one employee, an office with no furniture and [a phone which] rang off the hook with expectations of the people."¹³

The first OHA trustees felt they had immense responsibilities which were difficult to fulfill with a budget of only \$250,000 for operating costs and an additional \$1,200,000 expected from the State's public land trust. As OHA's first employee pointed out, the trustees felt they were provided with "the proverbial slingshot" to carry out their tremendous duties.¹⁴

One of the members of the first Board of Trustees recollects that during OHA's first trustee meeting, no one knew what to do or where to begin.¹⁵

As another former trustee recalls: "The decision making process took awhile. . . Nobody had a clear vision of what our agency was or where it was headed."¹⁶

Interviews with both past and present OHA trustees as well as those that have worked closely with OHA over the years, reveal that the trustees are required to deal with a wide array of complex, diverse, and controversial issues which had been "festering" for many years prior to the inception of the agency. Examples of some of these issues are: ceded land disposition and entitlements; federal surplus lands; water and mineral resource rights; educational opportunities for beneficiaries; the study of Hawaiian culture, history, and language; historic preservation; other Polynesian peoples and cultures; health, social, and other services for Hawaiians; business assistance programs; various legislative issues; memoranda of agreement with selected state and private agencies and with indigenous peoples; and federal and state issues of sovereignty.¹⁷

The difficulties confronted by OHA trustees were explained as follows:¹⁸

Hawaiian issues are not limited to housing, health, and employment. These are needs that any group may have. The true crux of the problem for Hawaiians has to do with the loss they suffered as a native people in terms of their land and everything else that made up their life--including language, philosophy of life, subsistence, etc. In dealing with the loss of their sovereignty and the task of regaining what has been lost, the Trustees are faced with extremely complex matters. In attempting to restore the original people of this land to a semblance of governance and a semblance of recovery of loss, the Trustees must also deal with strong emotions and frustration in coming up with a balance of making living today in Hawaii work for the Hawaiians and for other other groups who have a legitimate right to live on this land. The task itself as well as the task of finding a consensus as to how to accomplish this, is monumental.

The OHA trustees appear quite cognizant that the impending infusion of significant financial resources will permit them to meaningfully address concerns and issues which have plagued Hawaiians for many decades. According to OHA's present Administrator, "OHA is delving into a new phase. Previously, OHA was advocating for its own existence. It is now moving into new arenas where it has no history and is grappling with, for instance, issues of homerule and sovereignty on both a state and federal level. With the new resources which will become available, OHA will be able to turn in its slingshots for a whole new set of artillery."¹⁹

The Office of Hawaiian Affairs has declared the 1990s "the Decade of Decision" in recognition of the "overwhelming significance of events and choices" which it will confront.²⁰

Evolution of Time Spent by OHA Board of Trustee Members

Time Spent in Meetings

It is difficult to assess the actual time spent by OHA trustees as records are only kept of compensable time. Questionnaires were sent to the OHA trustees which, in part, asked for calculations of time spent on OHA-related activities. However, since only two completed questionnaires were returned, a determination of the amount of hours OHA trustees spend on noncompensable OHA-related tasks is not available. The number of hours spent by trustees in meetings is only one aspect of the total time spent by trustees. However, it is one indicia of the increasing time spent by the OHA trustees on OHA-related duties and is therefore worthy of note.

1982

According to a 1982 newspaper article, an OHA Trustee Salary Report prepared by OHA reported that the trustees met 43 times during the previous year, for an average of 3.5 meetings a month. There were an additional 17 Standing Committee meetings during 6 months. Thus, the average total number of board and committee meetings was approximately 7 per month.²¹

1986

According to a Management Audit of the Office of Hawaiian Affairs conducted in 1986, from November 1984 to July 1986 (a 19 month period), the Board met a total of 33 times, or approximately 1.7 times a month. In addition to the regular board meetings, there was often a continuation meeting which was counted separately, special meetings (8 during the period), work sessions (2), community meetings (7) and executive meetings (1). The average total of meetings reported was 2.7 per month for this period.²²

1990

In a 1990 newspaper article, it was reported that "on the average, Trustees meet 5 times a month for committee and board meetings on Oahu, in addition to their yearly meetings on each of the major neighbor islands."²³

1991

During the eight month time period from February 1 to September 27, 1991, OHA held a total of 7 Board of Trustee meetings and a total of 83 Standing Committee meetings. The average OHA Board of Trustees meeting during this period lasted 3.6 hours and the average meeting time for 57 of the 83 Standing Committee meetings was 2.3 hours.²⁴

In addition to sitting on the Board and Standing Committees, the Trustees are involved in various administrative Board, and community-related tasks. For instance, the OHA Chairperson or his/her delegate serves as chairperson of the Sovereignty Advisory Council. Various OHA Trustees also sit on such boards as The Hawaii Visitors Bureau, the Native Hawaiian Culture and Arts Program, the State Preservation Task Force, and Hui Na'auao.

Insight from OHA Board Members Regarding Time Commitments of their Position

Personal interviews conducted with eight of the nine present OHA Trustees reveal that the general perception of the present OHA Trustees is that the responsibilities and duties of their position are quite time consuming. Some of the comments, primarily made by past and present members of the OHA Board of Trustees in response to questions posed during personal interviews regarding the type and amount of time commitments required of the task are paraphrased as follows:

"I resigned from my former job based on the increasing time demands required by my position with OHA. I found that I was spending at least 4 full days a week at OHA."

"I have had to give up many of the community activities I was involved with in order to be an OHA trustee."

"The more meetings there are, the more difficult it is to coordinate meeting times that accommodate everyone's schedules. Therefore, those with outside jobs have difficulty juggling the different demands upon their time."

"It is incredible how many hours the OHA Trustees are willing to put in the job."

"OHA meetings often go on for hours and hours."

"OHA meetings last too long."

"All of the OHA Trustees make a substantial time commitment to OHA."

"In the beginning, OHA was so under-funded that Trustees spent most of their time trying to keep the agency's head above the financial waters. Now they spend their time dealing with issues that are overwhelming in their complexity."

"The OHA Trustees are making a super-human effort to get involved with and seek input from the Hawaiian community -- a rather time consuming proposition."

"I doubt that any of the Trustees expected the job to be as time-intrusive as it turned out to be."

"One of the trustees would spend countless hours on the job and would rarely ask for compensation for all of his compensable time."

"I put in 3 to 5 days a week at OHA. I sometimes put in 13 hour days and often come to the office on Saturdays and Sundays as well."

"The trustees make and create work for themselves."

"The first OHA trustees spent all of their time trying to make OHA operational. With the possibility of future infusion of funds, responsibilities and duties of trustees will expand immensely."

"OHA is going through a critical period where all the things we once only dreamed of can now be available but that will mean more time and energy required of the OHA trustees than ever before."

"The recent proliferation of meetings is nothing more than a mechanism to provide OHA trustees with additional compensation."

"OHA trustees spend a lot of time in meetings coming up with new ways to make work for themselves."

"OHA trustees spend a lot of time actually implementing policies -- and that flies in the face of their statutory mandate."

"The reason why the trustees spend so much time at OHA is because they refuse to limit their roles to that of policy makers -- instead, they are intimately involved with OHA's daily operations."

"I have found that if you're willing to put in the time and effort at OHA, you can really see the results."

"All of the OHA trustees have made substantial financial sacrifices to be trustees and many don't have the resources to make such sacrifices."

"The amount of time I find that I am spending with OHA far exceeded my expectations when I first ran for office."

"I probably would not have run for OHA had I known the time commitment expected."

"I spend at least 3 full working days at OHA each week."

"Some of OHA's best trustees have left their positions because of financial problems associated with their commitment to serve OHA."

ESTABLISHMENT AND PURPOSE OF OHA

"Some of OHA's best trustees have been financially decimated because of their time commitments to OHA."

"I tell my constituents that I am only a phone call away and I am always available to them."

"I am 'on call' and available to the beneficiaries at all hours of the day and often receive and respond to questions, desires to provide input, and requests for assistance from my home. I consider it part of my responsibility as an OHA trustee."

"In addition to time spent on strictly OHA-related tasks, each trustee is required to serve on other boards and commissions such as Governor's Literacy Committee, State Preservation Task Force, the Hawaii Visitor's Bureau, and the Native Hawaiian Culture and Arts Program."

"I spend a great deal of time doing research."

"It used to be possible to schedule meetings on weekends to accommodate the OHA trustees who had other jobs. With so many demands on our time and so many meetings to attend, this is no longer possible. Now there are multiple meetings each day and fewer adjustments can be made for the individual trustees' schedules."

In responding to an editorial appearing in the Honolulu Advertiser, the time demands of the OHA Trustees were reported as follows by the OHA Administrator:²⁵

. . . Several [OHA trustees] devote full time to their OHA responsibilities. These responsibilities include participating in committee meetings as well as attending monthly Board meetings at which policy is set. In addition, the trustees must keep track of all Hawaiian issues and meet frequently with OHA beneficiaries throughout the islands. Trustees from neighbor islands as well as those who live in Honolulu must be away from family and friends for days at a time.

These men and women make considerable financial and personal sacrifices to fulfill their obligations, and do it gladly. In order to be available for meetings, many are forced to exhaust their vacation time or take unpaid leave from jobs. . . OHA's trustees gladly devote their time and energy to a cause in which they believe passionately.

Neighbor Island Travel/Time Demands

The OHA trustees residing on Neighbor Islands also reported that the job demands require extensive travel to and from Honolulu.

Two of the three OHA trustees residing on the neighbor islands reported traveling to and from Honolulu approximately 2 to 3 times each week. A third reported traveling to Honolulu 4 times each week.²⁶

In addition to the financial strain perceived by OHA trustees and those that have worked closely with OHA, with regard to the present compensation system, many expressed sentiments relating to the "non-fiscal" aspects of the present compensation system: Some of the sentiments expressed during the course of the interviews are paraphrased as follows:

"If the trustees can't afford to put in the hours necessary to get the job done, the whole agency suffers."

"Any extra money that trustees get takes away from money that should be available to the Hawaiian people."

"We're discriminating against a socio-economic group by providing them with a disincentive to run for office."

"A salary for the trustees will provide a further incident of sovereignty."

"Our staff make good, health salaries. It's denigrating when we're looked down upon by those that are supposed to serve us, because we're not salaried."

"A salary will entice candidates with greater expertise to serve."

"We won't be able to attract the type of person who can effectively represent OHA if the only ones able to run for office are retirees with pension plans or those with independent sources of income."

"If you don't pay someone properly, you run the risk of corruption. U.S. Senators certainly are paid well even in the midst of a recession, because it's in the public interest."

"The present system of compensation short-changes the Hawaiian people."

"There's a callous attitude as to the type of representation the State would like our people to have--it's callous to think that people of good minds and good capacity will serve without adequate compensation."

"It is a matter of dignity."

ENDNOTES

1. Hawaii Const., art. XI, secs. 5-6, Hawaii Rev. Stat., sec. 10-1 to 10-16.

The purposes for which OHA was created are set out in the committee reports of the Hawaii Constitutional Convention, 1978, Proceedings, Vol. 1, Standing Committee Report No. 59; Committee of the Whole Report, No. 14; the legislative history of the implementing legislation (Hawaii, Senate Standing Committee Report No. 784 on House Bill No. 890, Tenth Legislature, 1979, State of Hawaii; p. 1350-1360); and the codification contained in chapter 10, Hawaii Revised Statutes.

2. Hawaii Const., art. XII, sec. 6, and Hawaii Rev. Stat., sec. 10-5.
3. Hawaii Rev. Stat., sec. 10-6.
4. Interview with Stanley H. K. Lum, OHA Deputy Administrator, November 22, 1991.
5. Hawaii, Legislative Auditor, Management and Financial Audit of the Office of Hawaiian Affairs, Report No. 90-11, February 1990, p. 8.
6. Appropriations Acts for OHA, as set out in Table 2.2, Management and Financial Audit of the Office of Hawaiian Affairs, Report No. 90-11, February 1990, p. 9.
7. Management and Financial Audit of the Office of Hawaiian Affairs, p. 8.
8. Act 301, Session Laws of Hawaii, 1991.
9. Act 273, Session Laws of Hawaii, 1980.
10. Hawaii, House Conference Report No. 91 on House Bill No. 2896, 15th Legislature, 1990, State of Hawaii.
11. The state administration has recently calculated that it owes OHA \$95.6 million for the years 1981 to 1991. This figure is presently being checked by an auditor. Honolulu Star-Bulletin, November 20, 1991, p. A-3.
12. Interview with Richard K. Paglinawan, OHA Administrator, September 17, 1991.
13. Statement of Rodney K. Burgess, Ka Wai Ola O Oha, May 1991, p. 11.
14. Interview with Martin Wilson, Administrative Service Officer, OHA, September 17, 1991.
15. Interview with Roy Benham, former OHA Trustee, September 10, 1991.
16. Statement of Rodney K. Burgess, Ka Wai Ola O Oha, May 1991, p. 11.
17. Management and Financial Audit of the Office of Hawaiian Affairs, pp. 8-9.
18. Lum interview.
19. Paglinawan interview.
20. Ka Wai Ola O Oha, June 1991, p. 17.
21. Honolulu Star-Bulletin, January 15, 1982, pp. A-1, A-3. The actual report is no longer available.

ALTERNATIVE METHODS OF COMPENSATING MEMBERS OF THE OHA BOARD OF TRUSTEES

22. Arthur Young, Management Audit of the Office of Hawaiian Affairs, Final Report, November 26, 1986.
23. Honolulu Star-Bulletin, June 19, 1990, p. A-8.
24. The meeting duration for 26 of the 83 Standing Committee meetings held during this period is not presently available.
25. Honolulu Advertiser, Letters to the Editor, March 6, 1989, p. A-3.
26. Interviews with Louis Hao, OHA Trustee, November 13, 1991; Edwina Moanikeala Akaka, OHA Trustee, November 14, 1991; and Abraham Aiona, OHA Trustee, September 23, 1991.

CHAPTER 3

EXPLANATION AND ASSESSMENT OF THE PRESENT METHOD AND RATE OF COMPENSATING MEMBERS OF OHA BOARD OF TRUSTEES

Statutory Compensation

OHA's trustees are statutorily entitled to compensation of \$100 per day for "each day's actual attendance at meeting".¹ This rate of compensation was increased from \$50.00 effective July 1, 1989.²

The potential compensable meetings which each trustee may attend are numerous:

Board Meetings

Board meetings may be convened by the Chairperson or by a quorum, as often as may be necessary for transaction of the Board's business. The Board is also required to meet at least once annually on each of the neighbor islands.³

Standing Committee Meetings

The Board of Trustees exercises its oversight through Standing Committees, the number of which has doubled over the past year. At OHA's inception, there were four Standing Committees: External Affairs; Programs; Operations and Development; and Reparations and Entitlements. In 1986, the OHA Board of Trustees had five Standing Committees: Budget and Finance; Culture and Education; Resource Development; Human Services; and Planning and Development. In 1990, the Board returned again to four Standing Committees.

In January, 1991, the Standing Committees were reorganized and expanded to include the following seven committees:⁴

1. Budget, Finance, Policy and Planning
2. Economic Development & Land
3. Education and Culture
4. Health & Human Services
5. Legislative Review
6. OHA Relations

7. Native Hawaiian Status and Entitlements and Housing

Effective July 26, 1991, an additional Standing Committee on Sovereignty was developed and two Standing Committees, Housing and Entitlements, were created out of the Standing Committee previously denominated "Native Hawaiian Status and Entitlements and Housing." Thus, there are presently nine Standing Committees. The functions of each Standing Committee, as provided in the most recently adopted OHA Bylaws are set out in Appendix B.

Each Standing Committee considers all matters referred to it by the Chairperson of the Board. Each Committee meets approximately once a month and is required to make appropriate recommendations and progress reports to the Board periodically or when requested by the Chairperson of the Board. Effective October, 1991, the minimum number of members required to serve on each Standing Committee was reduced from five to three.⁵

Until recently, each Standing Committee was comprised of a chairperson, a vice chairperson and a member, all of whom are members of the OHA Board of Trustees. The Chairperson and Vice-Chairperson of the Board of Trustees also served as ex officio members of each Standing Committee.⁶ Effective October, 1991, the Chairperson and Vice-chairperson of the Board of Trustees no longer serve as ex officio members of each Standing Committee.⁷

Advisory Committee Meetings

According to the OHA Board of Trustees Bylaws, each Standing Committee may create as many as three advisory committees to "assist in the resolution or study of issues arising in the specific areas of concern assigned to their respective Standing Committee."⁸ The Advisory Committee Chairperson and membership are appointed by the Chairperson of the Standing Committee, with the advice and counsel of the Standing Committee members.⁹ There may be as many as five members to each advisory committee,¹⁰ at least one of whom is a member of the Board of Trustees.¹¹

Ad Hoc Committee Meetings

There may also be ad hoc committees, the members of which are also appointed by the Chairperson of the Board, with approval of the Board. A minimum of three members serve on each Ad hoc Committee.¹²

Community Meetings, Informational Meetings, and Public Hearings

The Board may hold community meetings, informational meetings, and public hearings.¹³

The Trustees meet for Community meetings on the day prior to OHA Board meetings conducted on the neighbor islands, on the island upon which the Board meeting is held.¹⁴

For actual attendance at any of the above-referenced meetings, OHA Board members are presently compensated a total of \$100 per meeting per day.¹⁵ A board member's compensation is capped at \$100 per meeting per day, regardless of how many meetings are actually attended on any day.

Internal Methods of Compensating OHA Trustees

OHA's Interpretation of Statutory Mandate of "\$100 Per Meeting Per Day"

OHA publishes an Administrative and Financial Manual of Guides which contains internal operational guidelines.¹⁶

There is an apparent discrepancy between the statutory mandate for trustee compensation and that contained in the Administrative and Financial Manual of Guides. While the statute provides that compensation of \$100¹⁷ be provided for "each day's actual attendance at meeting", the internal guidelines have significantly expanded the circumstances under which a trustee can be compensated to include "each day's actual attendance at a board meeting, committee meeting, ad hoc committee meeting, or while on official business as authorized by the chairperson."¹⁸

What Constitutes Compensable "Official OHA Business"

OHA's internal guidelines provide that OHA trustees may be compensated \$100 per day for "official OHA business". "Official OHA business" is not defined under Title 1, Trustees Compensation and General Allowances, Administrative and Financial Manual of Guides. However, a definition of "official business" is provided under Title 2, Travel and Travel Allowances. "Official business" is defined, for purposes of Title 2, to include "any activity authorized by the Chairperson, and performed or conducted pursuant to the business of the board, committee, or office."¹⁹ The definition of "official business" appearing under Travel and Travel Allowances is also the working definition for determining whether trustees' "official business" is compensable at the \$100 rate. Accordingly, a trustee who is authorized travel expenses for "official business" is generally also authorized compensation of \$100 for the official business conducted.²⁰

"Official OHA business" which would appear to permit compensation of \$100 per day (assuming authorization by the OHA Chairperson) includes the following activities engaged in by a Trustee:

1. Attendance at a meeting relevant to the work of the Board, Board committee, or office;

2. Participation in a seminar or conference sponsored in whole or in part by the office;
3. Attendance either as a representative of the Board or office or as a participant to a meeting, seminar, or conference of a community, county, island, state, national or international organization on a subject matter of direct concern to the board, board committee, or office;
4. Participation in any training program to maintain or improve the skills of trustees or OHA employees in the performance of their duties;
5. Participation or attendance at a community meeting as a representative of the Board to discuss a subject matter of direct concern to the board;
6. Conducting studies and investigations on matters before the Board, Board committee or office.

The trustees are not permitted compensation for services rendered by a trustee to an individual constituent.²¹

The Operations Guide for OHA Board of Trustees, March 1991, specifies a different method of compensation than that contained in the Administrative and Financial Manual of Guides. Under the Operations Guide, OHA Trustees are eligible for compensation for meetings as specified in Hawaii Rev. Stat., sec. 10-9, and reimbursement for official business expenses which are clearly distinct. Although the definition of "official business" in the Operations Guide is identical to that provided in the Administrative and Financial Manual of Guides, there is no provision for allowance of \$100 per day for "official OHA business" in the Operations Guide. However, a review of OHA's Summary of Trustee Compensation and Personal Expense compilations for Fiscal Year 1990-1991 makes clear that such compensation is indeed regularly provided. This was also confirmed by an interview with the Chairperson of the OHA Board of Trustees, who stated that "official business" at \$100 is compensable.²² When asked for an example of "official business", he responded that attendance by a trustee at a ceremony commemorating the 153rd birthday of Queen Liliuokalani would be compensable as "official business" which would qualify an OHA trustee to receive \$100 compensation, independent from the possibility of associated per diem and traveling expenses.²³

Other examples of OHA trustees' "official business" which qualify for \$100 compensation include testifying at the legislature, attending City Council or Land Use Commission meetings if relevant to OHA's mission, attending informational meetings, study sessions, public hearings, advisory committee meetings, ad hoc committee meetings, and meetings of various organizations and associations such as the Native Hawaiian Culture and

Arts Program, the Governor's Council on Literacy, the Sovereignty Advisory Council, Task Force for Hawaiian Services, the Hawaii Visitors Bureau, and Hui Na'auao.²⁴

Compensation for time spent on "official OHA business" was not always available to OHA Trustees. According to one of the former members of the OHA Board of Trustees, the expansion of the compensatory system to include "official business" did not occur until after 1986.²⁵ It appears that it began in either 1988 or 1989.

Annual Allowance to OHA Trustees

Each OHA trustee is permitted an annual allowance which is appropriated "from time to time" by the Board of Trustees to be used "to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues."²⁶ Each trustee is required to submit a quarterly report on his or her annual allowance expenditures to the chairperson. These quarterly reports are to be included as a part of the financial report of OHA's expenditures as a whole.²⁷

In June, 1991, the OHA Board of Trustees approved a motion establishing an annual allowance of \$7,200 for each member of the Board of Trustees "to cover incidental expenses connected with trustee functions and duties and adopting governing guidelines."²⁸ The Board also specified that the allowance would be "allotted on a semi-annual basis with special funds designated as the source of funds."²⁹

The first half of the trustees' annual allowance was disbursed on August 8, 1991. An interoffice memorandum to the trustees specified that "[t]he use of funds is limited to official OHA business and governed by Section 3.1 to 3.4, Title 1, Administrative & Financial Manual of Guides, adopted by the Board on June 28, 1991."³⁰

The provision for an "annual allowance" is similar to the statutory provision allowing Hawaii's legislators an annual allowance of \$5,000 to cover incidental expenses connected with legislative duties. The legislative allowance, however, is specifically authorized by statute.³¹

In response to a question posed as to what the allowance may be used for, the Chairperson of the OHA Board of Trustees provided examples of a trustee using funds from the allowance to repair a computer in his office and stated that it could be spent on such things as purchasing a clock for one's office at OHA.³² In response to the same question, the OHA Deputy Administrator stated that a trustee could, for example, use the allowance to defray costs attendant to a nonprofit Hawaiian group setting up a meeting and requiring office space or logistical support.³³

Health Plan for OHA Trustees

In 1986, the OHA Board of Trustees approved a health insurance plan for board members whereby the total coverage cost for participating trustees, their spouses and children was paid by OHA. In contrast, state employees (including OHA's paid staff) were then required to pay a 40 percent share of their medical premiums. The plan covers hospital, surgical, and regular medical benefits. The trustees' coverage also included vision and dental insurance benefits that did not become available to the beneficiaries of the "Hawaii Public Employees Health Fund" under Chapter 87, Hawaii Revised Statutes until 1990. The health benefit plan is funded, in equal parts, from the special funds that derive from the public trust and from the general funds appropriated by the state Legislature.

Under Hawaii Rev. Stat., sec. 10-12, OHA officers and staff shall be included in "any benefit program generally applicable to officers and employees of the State." In the 1990 Management and Financial Audit of the Office of Hawaiian Affairs, the Legislative Auditor suggested that, while OHA may be statutorily authorized to transfer and spend funds as it determines, "it may be advisable for the board to clarify the criteria it used for deciding on a separate health benefit program."³⁴ In response to the Auditor's recommendation, OHA sought opinions from the Ethics Commission and the Office of the Attorney General as to the legality of the provision of the trustees' health plan.

According to information provided to the Attorney General's Office by then Chairperson of the OHA Board of Trustees, Thomas K. Kaulukukui, Sr., the Executive Director of the Ethics Commission informed OHA's administrator that "he was of the opinion that the health plan for trustees did not violate Chapter 84, Hawaii Revised Statutes."³⁵

OHA next sought a legal opinion from the Office of the Attorney General as to whether the OHA Trustees violated chapter 10, Hawaii Revised Statutes, by approving the health program providing health benefits to trustees at no cost to the trustees. The Attorney General's Office responded that although the health plan is not inconsistent with any specific provision of Chapter 10, Hawaii Revised Statutes, it is inconsistent with the provisions of the Hawaii Public Employees Health Fund under Chapter 87, Hawaii Revised Statutes.³⁶ The reasoning behind the Attorney General's opinion is that since there is no specific provision of law set out in Chapter 10, Hawaii Revised Statutes, which addresses the issue of health benefits, and since the trustees are required to exercise power "as provided by law", compliance with the mandates of Chapter 87, Hawaii Revised Statutes, is necessary.³⁷

The Attorney General's Office also suggested that if the Board finds that it is the best interest of the office for OHA to continue paying 100 percent of the premium costs for its trustees, section 10-9, Hawaii Revised Statutes, be amended to provide for such fringe benefits for Trustees.³⁸ To date, section 10-9, Hawaii Revised Statutes, has not been amended and OHA continues to provide full premium costs for its trustees and their families.³⁹ OHA's decision is based upon conclusions drawn from a comprehensive legal review of the powers of the Board provided by Jon M. Van Dyke.⁴⁰ OHA's reasoning is that

its payment of the full premium is permissible as part of OHA's administrative budget, based upon the statutory language providing that OHA, under the direction of its Board of Trustees, has the power "[t]o determine the character of and necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the office of Hawaiian affairs."⁴¹

Compensation for Travel-Related Expenses

The members of the OHA Board of Trustees are statutorily permitted compensation for transportation and personal expenses at the rates specified by section 78-15, while attending board meetings or while on official business as authorized by the chairperson, when the board meetings or official business require travel outside the island upon which the member resides.⁴²

The OHA Administrative and Financial Manual of Guides sets out guidelines for "allowable travel expenses, per diem advances, travel and car rental arrangements, and final accounting and settlement of travel expenses." The manual states that "all reasonable and necessary personal expenses while traveling in conducting official OHA business are payable by OHA."⁴³

The manual also provides that travel expenses are compensable. Such expenses include the cost of limousine, taxi, car rentals, bus, and other means of travel at a point of destination; registration; telephone and radiograms, secretarial services; baggage transfers, currency exchanges or traveler's checks for out-of-state travel to the extent that the currency or checks do not exceed the amount of per diem and allowable expenses; passports and visas; photographs; certificates of birth; health certificates; affidavits; and inoculations as may be reasonably and necessarily incurred while traveling in the conduct of official OHA business.⁴⁴

Amount of Compensation Received By OHA Trustees

In 1988-89, trustees' compensation ranged from \$950 to \$7,900 each a year.⁴⁵ During the ten-month period beginning July 1, 1990 and ending April 30, 1991, the five trustees that served during the full period each received an average total of \$11,780 (ranging from \$8,300 to \$16,100 per trustee) as compensation, excluding expenses associated with per diem and travel expenses.⁴⁶

The breakdown of the average compensation received by these five trustees during the ten-month period is as follows:

Board Meetings:	\$1,520	(range: \$1,300 to \$1,700)
Committee Meetings:	\$3,120	(range: \$2,000 to \$4,600)

Official Business:	\$7,140	(range: \$3,900 to \$9,800)
--------------------	---------	-----------------------------

For the five-month period beginning November, 1990 and ending April 30, 1991, the four trustees elected in November, 1990, received an average total of \$6,100 (ranging from \$4,700 to to \$7,600).⁴⁷ The breakdown of the average compensation received by these four trustees is as follows:

Board Meetings:	\$ 500	(\$500 each)
Committee Meetings:	\$3,375	(range: \$1,200 to \$2,500)
Official Business:	\$3,750	(range: \$2,500 to \$4,600)

OHA Trustee Compensation from May 1, 1991 through September 30, 1991

For the five-month period beginning May 1, 1991 and ending September 30, 1991, the nine OHA trustees received total compensation (for meetings and "official business") in the amount of \$65,000.⁴⁸ The average compensation for each trustee was \$7,222 and the range was from \$4,800 to \$10,300.

Problems Inherent with the Present System of Compensating OHA Trustees

The major problems associated with the present method of compensating OHA trustees are presented below.

- The present method of compensating the OHA trustees involves payments that are apparently unauthorized by the relevant statute.

Compensation for OHA trustees is statutorily set at the rate of "\$100 a day for each day's actual attendance at meeting."⁴⁹ The statute does not define "meeting." The OHA Board of Trustees Bylaws, however, define "meeting" as "the convening of a Board or Committee for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Board or Committee has supervision, control, jurisdiction, or advisory power."⁵⁰

OHA's internal policies and guidelines provide for compensation in the amount of \$100 for "official business" independent of personal expenses and transportation costs. Analysis of the compensation received by each Trustee during the ten-month period from July 1, 1990 to April 30, 1991 reveals that the Trustees received significantly more compensation for time spent on "official business" than for time spent attending either Board meetings or Standing Committee meetings.⁵¹

Although neither the statute itself nor the legislative history provide any definition of the term "meetings" for which the OHA trustees are to be compensated, the term is specifically defined in Hawaii Rev. Stat., sec. 92-2(3) (Public Agency Meetings and Records) and given the same meaning as that provided in the OHA Board of Trustees Bylaws. Clearly, the OHA internal policies and guidelines provide for compensation for activities which do not satisfy the requirements of this statutory and internal definition of the term "meeting."

The extent to which the present OHA practice exceeds statutory limits is illustrated by comparison with the practice for compensating members of the Board of Education, which operates under a virtually identical statutory mandate.⁵²

The Board of Education, with guidance from opinions sought from the Office of the Attorney General, has interpreted its statutory mandate to provide compensation for its members only when they are in attendance of Board of Education meetings and Standing Committee meetings.⁵³

On three separate occasions, the Board of Education sought informal opinions from the Department of the Attorney General regarding the legality of compensating members of the Board of Education for: (1) attending "agenda committee meetings"; (2) testifying at legislative hearings as official Board representatives; (3) attending School Advisory Council Meetings; and (4) attending ad hoc committee meetings. In each instance, the response of the Attorney General's Office was that the activities at issue were not "meetings" for which compensation was statutorily authorized.

The reasoning of the Attorney General's Office was as follows:

- (1) An "agenda committee" is not an official Standing Committee of the Board, does not constitute a quorum of the Board, and is not vested with any decision making authority by the Board. Therefore, attendance at an "agenda committee" meeting is not compensable.⁵⁴
- (2) The statute authorizes compensation "only [for] Board meetings at which Board official business is discussed and deliberated" and thus would not include testifying at legislative hearings as an official Board representative."⁵⁵
- (3) Although members of the Board of Education are statutorily required to be ex officio members of the district school advisory council, they are not entitled to compensation for attending school advisory council meetings since compensable meetings are limited to "scheduled meetings, special meetings, executive sessions and committee meetings of the Board."⁵⁶
- (4) An ad hoc committee meeting is neither a "meeting" within the meaning of the relevant statutes, nor is it "official business." Therefore, attending ad hoc committee meetings does not qualify members of the Board of Education for

the compensation due upon attendance at a "meeting" or even for per diem expenses.⁵⁷

These informal opinions by the Office of the Attorney General raise obvious questions about both the propriety and legality of OHA's present practice of compensating members of the Board of Trustees at the rate of \$100 per day for attendance at meetings other than Board Meetings and Standing Committee meetings and for activities deemed to be "official business." This concern is underlined by the fact that the bulk of the compensation actually received by the OHA Trustees is for attendance at meetings which may not be compensable "meetings" within the meaning of the statute.

- Compensation contingent upon attendance at meetings raises concerns that unnecessary meetings may be conducted as a means of increasing the trustees' total compensation.

Given the recent expansion of the number of OHA Standing Committees from four to nine, the OHA trustees are now attending a considerable number of meetings. More than doubling the number of Standing Committees was described by one trustee as beneficial to OHA because it "allows trustees to pinpoint the various policy issues with greater specificity."⁵⁸ It was also mentioned that the recent proliferation of meetings ties up staff, and greatly increases the per diem and transportation expenditures paid out of OHA's coffers, particularly with regard to the trustees residing on the Neighbor Islands.⁵⁹

It is clear that the significant increase in the number of Committee meetings OHA trustees attend has generated concern about the expanding time commitment required of the trustees. In fact, a 1986 Management Audit of the Office of Hawaiian Affairs recommended that the Standing Committees be reduced from five to three in order to reduce the number of meetings the trustees must attend.⁶⁰ This recommendation was justified in the Management Audit as follows:

While attendance [at meetings] appears to be generally good among trustees, the amount of time required appears to be unreasonable.

The frequency of meetings seem to be substantial, especially given the addition of community meetings, special meetings, work meetings, and extensions to regular board meetings. In addition, we have not included within this analysis the number of meetings held by individual Standing Committees. This number is important because so many of the trustees sit on two to three of the Standing Committees (plus the Planning Committee on which all trustees are members). It is possible then, that if a trustee had perfect attendance on all four Standing Committees plus the Planning Committee and the board meetings, he might have to attend a minimum of 72 meetings a year. More typically, if perfect attendance was achieved by a trustee on three Standing Committees, the Planning Committee and the board, 60 meetings would have to be attended. Given the number of meetings held in

addition to the basic monthly meetings, surely even greater attendance would be required.

...[The reduction of Standing Committees from five to three will] reduce the number of meetings that would be required to be held each month increasing the productivity of both trustees and professional staff.⁶¹

The concerns expressed in the Management Audit can only be magnified by the OHA Board's more than two-fold increase in the number of its Standing Committees. Contrary to the recommendation of the Management Audit, the Board has significantly increased the number of committee meetings its members are expected to attend.

- The present method of compensation appears to inadequately compensate the OHA Trustees for the time and energy devoted to the job.

Irrespective of the arguments concerning the appropriateness of the increased number of Standing Committees or the advisability of having OHA Trustees spend the time they are currently spending on the job, it is clear that the OHA Trustees, for whatever reasons, spend a large amount of time "on the job" and feel that they are inadequately and inappropriately compensated for the time commitments and demands that their job entails.

- Funding for OHA Trustees' Compensation under the present system creates significant budgetary constraints for OHA.

According to OHA's Deputy Administrator,⁶² OHA has been provided legislative funding for Personal Services, from which Trustee compensation is paid, for only 56 meetings per year per Trustee. For the 1991-1993 Biennium, OHA requested an increase in the appropriation based upon the fact that OHA Trustees had been compensated for an average of 98 "meetings" each during the course of the previous year.⁶³ OHA's request was denied and the personal service request was again slated for funding to cover a total of 56 meetings per Trustee per year. It is now estimated that funding for 56 meetings reflects only one-half of the amount that Trustees are actually compensated.⁶⁴

The legislative appropriations have created numerous problems for OHA. For instance, during the last quarter of the last fiscal year, OHA was running at a deficit of \$150,000. In order to compensate for this deficit, OHA froze all hiring for three months. At the time there were significant staff shortages (including a research, program evaluation and grants writing position in the Planning and Research Division; 3 secretarial positions in the Administrative Services Division; a Business Loan Officer position in the Business and Development Division; the Cultural Officer position in the Education & Culture Division; and the Health and Human Service Officer in the Health and Human Service Division).⁶⁵

Although specific provisos stipulated in the OHA budget have been strictly adhered to, inter-program funding transfers have been made to accommodate the budget deficit caused,

in part, by the insufficient legislative allocation of funds designated to compensate OHA Trustees.⁶⁶ Obviously, the necessity of such inter-program transfers and the freeze on hiring caused hardships with regard to OHA's operations.⁶⁷

ENDNOTES

1. Hawaii Rev. Stat., sec. 10-9.
2. Act 290, Session Laws of Hawaii, 1989.
3. Hawaii Rev. Stat., sec. 10-8; see also, Office of Hawaiian Affairs Board of Trustees Bylaws, October 1991, art. IX, Meetings, p. 8.
4. Hawaii, Office of Hawaiian Affairs Board of Trustees Bylaws, promulgated January 1991.
5. Ibid., p. 5; OHA Board of Trustees Bylaws, promulgated October 1991, p. 6.
6. OHA Bylaws, January, 1991, p. 6.
7. OHA Bylaws, October, 1991. p. 7.
8. Ibid., p. 6.
9. Ibid., p. 7.
10. Ibid.
11. Ibid. One of the recommendations made in the Management Audit of the Office of Hawaiian Affairs conducted by the Legislative Auditor (Final Report, November 26, 1986, p. 21) is that the bylaws of the board be amended to provide that no trustee serve as a member of an advisory committee.
12. OHA Bylaws, October, 1991, p. 7.
13. Ibid., p. 9.
14. Interview with Kamaki A. Kanahele, III, OHA Trustee, September 23, 1991.
15. Interview with Stanley H. L. Lum, OHA Deputy Administrator, November 22, 1991.
16. The guidelines are both incomplete and in some respects, outdated, despite the Office of the Legislative Auditor's recommendation, in February 1990, that completion of the manual be a high priority.
17. Although the Administrative and Financial Manual of Guides states that the compensation is \$50 a day, the amount has been increased to reflect the statutory amount of \$100.
18. Hawaii, Office of Hawaiian Affairs Administrative and Financial Manual of Guides, Title 1. Trustees Compensation and General Allowances; Chapter 1, Section 1.1, p. 1-2 (Board Approved 07/23/88). (Emphasis added.)
19. Ibid., Title 2, Travel and Travel Allowances, sec. 1.2, p. 2-3.
20. Lum interview, November 22, 1991.

EXPLANATION AND ASSESSMENT OF THE PRESENT METHOD

21. Manual of Guides, Title 2. Trustees Compensation and General Allowances, Chapter 1, Section 1.1, p. 1-2 (Board Approved 07/23/88). See also definition of "official business", OHA Bylaws, October 1991, p. 1.
22. Interview with Clayton Hee, Chairperson, OHA Board of Trustees, September 23, 1991.
23. Ibid.
24. Lum interview.
25. Telephone Interview with Hayden Burgess, September 30, 1991.
26. Manual of Guides, Title 1, Trustees Compensation and General Allowances, Chapter 1, secs. 3.2, 3.2, 3.3., 3.4.
27. Ibid.
28. Minutes of Board of Trustees Meeting, June 28, 1991, p. 4. (The motion carried with one dissenting vote, that of Trustee A. Frenchy DeSoto.)
29. Ibid.
30. Interoffice Memorandum from Martin Wilson, ASO, OHA, through Richard K. Paglinawan, OHA Administrator to all Trustees, August 8, 1991.
31. Hawaii Rev. Stat., sec. 24-1. The 1986 Commission on Legislative Salary recommended that the Legislature "review the necessity for and either repeal or reduce chapter 24-1, Hawaii Revised Statutes (which provides for an annual allowance of \$5,000)...."
32. Hee interview.
33. Lum interview.
34. Hawaii, Legislative Auditor, Management and Financial Audit of the Office of Hawaiian Affairs, Report No. 90-11, February 1990, pp. 43-44.
35. Hawaii, Attorney General, Informal opinion from then Deputy Attorney General Charlotte E. Libman to then OHA Chairperson, Board of Trustees, Thomas K. Kaulukukui, April 10, 1990, p. 3.
36. Ibid., p. 1.
37. Ibid., pp. 5-6.
38. Ibid., p. 6.
39. Lum interview.
40. Letter from Jon M. Van Dyke to then OHA Chairperson, Board of Trustees, November 5, 1990.
41. Hawaii Rev. Stat., sec. 10-4(3).
42. Hawaii Rev. Stat., sec. 10-9.

ALTERNATIVE METHODS OF COMPENSATING MEMBERS OF THE OHA BOARD OF TRUSTEES

43. Manual of Guides, Sec. 3.6.
44. Ibid., Sec. 1.5.
45. Management and Financial Audit of the Office of Hawaiian Affairs, p. 5.
46. Summary of Trustee Compensation & Personal Expenses, Fiscal year 1990-1991, as of April 30, 1991, OHA.
47. Ibid.
48. Office of Hawaiian Affairs Trustee Compensation (Amounts Per Payroll Register) for the Period May 1991 through September 1991. (The compensation breakdown of Board, Committee and Official Business designations is not presently available.)
49. Hawaii Rev. Stat., sec. 10-9.
50. OHA Bylaws, October, 1991, p. 1.
51. Compensation provided for "official business" activities at \$100 per meeting was 36% above the compensation received for attendance at Board and Committee meetings combined.
52. Pursuant to Hawaii Rev. Stat., sec. 296-5, members of the Board of Education are permitted compensation at the rate of \$100 per day for each day's actual attendance at meetings, as well as transportation fares and personal expenses. This is precisely congruent with the terms of Hawaii Rev. Stat., sec. 10-9.
53. Interview with Dr. Mitsugi Nakashima, Chairperson, Board of Education, September 30, 1991.
54. Letter from then Deputy Attorney General Gordon D. Lee to then Board of Education Chairperson William A. K. Waters, August 29, 1988.
55. Ibid., p. 2.
56. Letter from then Deputy Attorney General Maria Sousa to then Chairperson of the Board of Education, Hubert P. Minn, May 11, 1979, p. 3.
57. Letter from Deputy Attorney General Russell A. Suzuki to then Board of Education Chairperson Noboru Yonamine, July 16, 1984, p. 3.
58. Interview with Kamaki A. Kanahale, III, OHA Trustee, September 23, 1991.
59. For the ten-month period beginning July 1, 1990 and ending April 30, 1991, the average total per diem received by each of the three neighbor island Trustees that served the full term was \$8,240. An additional \$27,932 was spent on air and ground transportation for the Trustees during the same period.
60. Arthur Young, Management Audit of the Office of Hawaiian Affairs, Final Report, November 26, 1986, p. 21.
61. Ibid., pp. 21, 38-39.
62. Lum interview.

EXPLANATION AND ASSESSMENT OF THE PRESENT METHOD

- 63. Ibid.
- 64. Ibid.
- 65. Ibid.
- 66. Ibid.
- 67. Ibid.

CHAPTER 4

PAST PROPOSALS FOR OHA TRUSTEE COMPENSATION

1982 Trustee Salary Report

On January 15, 1982, the Honolulu Star-Bulletin reported that the OHA trustees referred a report on the matter of a request for \$17,500 salary for OHA trustees to their budget committee. Although the report is presently not available, the Star-Bulletin reported that the OHA Trustee Salary Report was prepared by Francis Kauhane, an OHA staff member then in charge of governmental affairs, and suggested that legislation should be passed to provide the trustees \$17,500 a year as compensation for Board and Committee meetings and forums.¹

OHA Trustee Compensation Bills Introduced in 1987 Legislative Session

In 1987, identical bills were introduced in the House and the Senate to increase the compensation for OHA trustees.² The bills proposed an increase in compensation from \$50 to \$100 a day and specified that the situations under which such compensation would be applicable would include attendance at board meetings, committee meetings or "while on official business as authorized by the chairperson." Funds for the compensation increases were to be appropriated from the general revenues of the State of Hawaii to the Office of Hawaiian Affairs, provided that the Office of Hawaiian Affairs match the general revenue appropriation.

Testimony provided by OHA in support of this bill makes clear that the proposed law would provide compensation at the \$100 rate for "chair-authorized attendance at functions requiring official representation on behalf of the board. Included in this category are official meetings, conferences or seminars, and legislative hearings."³

The House Committee on Water, Land Use Development, and Hawaiian Affairs found the request for additional compensation "consistent with increases being considered for the Board of Education". However, it deemed it "appropriate to put some upper limit on the total compensation each trustee can receive, regardless of how many meetings are held." The bill was thus amended to provide that no trustee would receive more than \$6,000 in compensation in any fiscal year.⁴ The bill was subsequently referred to the Committee on Finance. Neither the Senate or House bill passed.

1988 Legislative Session

Several bills proposing increased compensation for OHA trustees were considered and rejected in 1988. Companion bills were introduced in both the House and Senate to increase OHA trustee compensation to "\$125 per day for each day's actual attendance at official Board of Trustees meetings, \$100 per authorized Board of Trustees committee meetings, and \$100 for participation as the Board of Trustees' official representative at functions."⁵

In reviewing the proposed compensation increases for the OHA Board of Trustees, the House Committee on Water, Land Use Development, and Hawaiian Affairs noted that "[i]ncreased compensation would address the inordinate amount of time and energy expended by the Trustees in resolving issues while away from their regular work, families and personal commitments."⁶

The House Committee on Water, Land Use Development, and Hawaiian Affairs amended the bill by capping the maximum amount an OHA trustee could receive to \$7,500 in any calendar year and by permitting reimbursement for actual lodging expenses to OHA trustees in situations where a meeting or business is held in a location which makes it impracticable and undesirable to return home at the end of the meeting or business.⁷ Again, neither the House or the Senate bill passed.

1989 Legislative Session

In 1989, various legislative proposals for compensating OHA trustees were considered. The Senate Committee on Housing and Hawaiian Programs narrowly passed a bill providing compensation through an annual salary for the OHA trustees.⁸ Under the bill's original provisions, the OHA trustees would be provided with an annual salary of \$14,400 and be included (along with former trustees) in any benefit program generally applicable to officers and employees of the State, including the pension and retirement system.

Testimony in support of this bill was provided by then OHA Administrator, Kamaki Kanahele, who testified that the pay schedule for the Board of Trustees was modeled after the Board of Education model of 1979, which was established in 1966. Mr. Kanahele reasoned that inflation considerations necessitated the adjustment in pay for the trustees.⁹

The bill was next referred to the Senate Committee on Ways and Means. This Committee amended the bill to permit former and current trustees who participate in the State's pension and retirement system to apply for credit for their service as a trustee by adding the phrase: "provided that the person claims those years as prior service credit and pays for such prior service credit . . ."¹⁰ This amendment was deemed "necessary to prevent former trustees from receiving prior service credit at no cost."¹¹

An expansion of the circumstances under which a trustee would be eligible for compensation for personal expenses to include attendance at committee meetings other than board meetings was also proposed by Senate Draft 2 of Senate Bill No. 750.¹²

The companion House bill on OHA trustee compensation¹³ was amended by the House Committee on Economic Development and Hawaiian Affairs, to eliminate the annual salary and provisions for employee benefits and participation in the employee's retirement system; increase the compensation of trustees from \$50 per day to \$100 per day but place a limitation of \$5,200 per year for compensation to each trustee; and delete provisions relating to transportation fares and personal expenses to the original statutory language. Opposition to the salary proposal was based upon the rationale that it departed from the citizen's board envisioned by the framers of the State Constitution.¹⁴

Then Chairperson of the OHA Board of Trustees, Thomas K. Kaulukukui, Sr. provided testimony before the House Committee on Finance in support of the increase in the amount of compensation for attendance at meetings. However, he suggested that any cap on the amount of meetings which would be compensated "would make it difficult to service [OHA's] beneficiaries."¹⁵

Act 290, Session Laws of Hawaii 1989

Ultimately, the Legislature passed a bill which doubled the OHA trustees' compensation from \$50 to \$100 a day for "each day's actual attendance at meeting." The previously suggested annual cap placed on the amount a trustee could be paid was deleted.

1991 Legislative Session

Various bills providing for either increased compensation for each day's actual attendance at meeting¹⁶ or a full-time annual salary¹⁷ were proposed during the 1991 Legislative Session. All of them failed.

In light of the failed legislation, the Senate and House adopted Senate Concurrent Resolution No. 222, urging a study of alternative means of compensating the OHA Board of Trustees.

ENDNOTES

1. Honolulu Star Bulletin, January 15, 1982, pp. A-1, A-3.
2. Senate Bill No. 556, Fourteenth Legislature, 1987, State of Hawaii; House Bill No. 1460, Fourteenth Legislature, 1987, State of Hawaii.

PAST PROPOSALS FOR OHA TRUSTEE COMPENSATION

3. Testimony presented by the Office of Hawaiian Affairs to the House Committee on Hawaiian Affairs, February 23, 1987, re House Bill No. 1460, Relating to the Compensation of the Board of Trustees, Office of Hawaiian Affairs.
4. Hawaii, House Standing Committee Report No. 354 on House Bill No. 1460, H.D. 1, Fourteenth State Legislature, 1987, State of Hawaii.
5. Senate Bill No. 2509, Fourteenth Legislature, 1988, State of Hawaii; House Bill No. 3100, Fourteenth Legislature, 1988, State of Hawaii.
6. Hawaii, Standing Committee Report No. 168-88 on H.B. No. 3100, H.D. 1, Fourteenth State Legislature, 1988, State of Hawaii.
7. House Bill No. 3100, H.D. 1, Fourteenth Legislature, 1988, State of Hawaii.
8. Senate Bill No. 750, S.D. 1, Fifteenth State Legislature, 1989, State of Hawaii.
9. Testimony Presented by the Office of Hawaiian Affairs to the Senate Committee on Hawaiian Affairs, February 10, 1989, re Senate Bill No. 750, Relating to the Compensation of the Board of Trustees, Office of Hawaiian Affairs. (Testimony in opposition to the bill was submitted by Mr. Richard P. Kinney of the Hawaiian Political Action Council of Hawaii (HPACH).)
10. Hawaii, Senate Standing Committee Report. No. 674 on Senate Bill 750, S.D. 1, Fifteenth Legislature, 1989, State of Hawaii.
11. Ibid.
12. Senate Bill No. 750, S.D. 2, Sixteenth Legislature, 1989, State of Hawaii.
13. House Bill No. 759, Fifteenth Legislature, 1989, State of Hawaii.
14. Hawaii, House Standing Committee Report No. 995 on Senate Bill 750, S.D. 2, H.D. 1, Fifteenth State Legislature, 1989, State of Hawaii.
15. Testimony presented by Thomas K. Kaulukukui, Sr., Chairman of the Board of Trustees, Office of Hawaiian Affairs, before the House Committee on Finance, March 22, 1989,
16. S.B. No. 709, Sixteenth Legislature, 1991, State of Hawaii; H.B. No. 1732, Sixteenth Legislature, 1991, State of Hawaii; H.B. No. 2177, Sixteenth Legislature, 1991, State of Hawaii.
17. S.B. No. 710, Sixteenth Legislature, 1991, State of Hawaii; S.B. No. 1430, Sixteenth Legislature, 1991, State of Hawaii; H.B. No. 1273, Sixteenth Legislature, 1991, State of Hawaii; H.B. No. 2178, Sixteenth Legislature, 1991, State of Hawaii; H.B. No. 1731, Sixteenth Legislature, 1991, State of Hawaii.

CHAPTER 5

COMPARISON OF THE OFFICE OF HAWAIIAN AFFAIRS BOARD OF TRUSTEES WITH OTHER HAWAII BOARDS, COMMISSIONS, AND COUNCILS

In order to assess the relative extent of the OHA trustees' responsibilities (both in terms of functions and time demands) various Hawaii boards and commissions were reviewed. Members of several boards, commissions and the Honolulu City Council were surveyed through a mailed questionnaire asking the members about their duties, time demands, and perception of the adequacy of the method and amount of compensation they receive. (see Appendix C for questionnaire.)

Chart 1 shows the data from the survey. The responses are of limited statistical significance because many members of the various boards and commissions (including the Office of Hawaiian Affairs board itself) failed to respond to the surveys. They do, however, provide a framework for analyzing the responding members' perceptions about their respective job demands. Several of the boards and commissions, as well as the Hawaii State Legislature and Honolulu City Council, are discussed in this chapter. Their respective compositions, responsibilities and compensation systems are discussed, and a narrative examination of some of the answers provided by their members in response to the questionnaire are provided.

Bishop and Campbell Estates

Unlike the other entities discussed in this chapter, the Kamehameha Schools/Bernice Pauahi Bishop Estate and the Estate of James Campbell are purely private and not government entities.

Bishop Estate

Responsibilities: Five trustees of the Kamehameha Schools/Bernice Pauahi Bishop Estate ("Bishop Estate") are responsible for the trust fund's performance in carrying out the mandate of the 1884 will of Princess Bernice Pauahi Bishop which bequeathed vast land holdings to the Estate and directed that the property and income generated by it be used to educate the children of Hawaii. The primary mission of the Bishop Estate is to provide educational opportunities for the Hawaiian people, enabling them to become meaningful contributors in society; and supporting the educational mission in perpetuity by wise and far-sighted management of the Estate's assets.¹

Chart 1
Data from Questionnaire

Questions	Name of Board					
	Board of Education	Hawaii Labor Relations Board	Hawaii Paroling Authority	Honolulu City Council	Office of Hawaiian Affairs	University of Hawaii Board of Regents
No. of Board Members	13	3	3	9	9	11
Responses Received	5	3	3	1	2	3
Present Workload Exceed Expectations	Yes-3 No-2	No-3	Yes-2 No-1	*	Yes-2	Yes-2 No-1
Believes Methods of Compensation is Appropriate	Yes-5	Yes-3	Yes-3	Yes-1	No-2	N/A
Believes Amount of Compensation is Adequate	Yes-3 No-2	Yes-3	*	Yes-1	No-2	N/A
Time Demands & Job Requirements Have Increased Over Years	Yes-5	No-3	Yes-3	*	Yes-2	Yes-3
Compensation is a Factor in Deciding Whether to Retain Position	No-5	*	No-3	No-1	Yes-1 No-1	No-3
Method of Compensation	(1)	(2)	(3)	(4)	(5)	(6)
Approximate Amount of Compensation	\$8,600/ Annually	\$75,000	Chair: \$65,000 Others: \$32,000	\$35,000	*	No Comp.
Average Monthly Hours	80	160	147	200	173	45

(1) \$100 per meeting.

(2) Chairperson: annual salary; other members: 95% of chairperson's salary.

(3) Chairperson (full-time): annual salary; others (part-time): hourly wage of 80% of chairperson.

(4) Annual salary for part-time work set by salary commission of the City & County of Honolulu.

(5) \$100 per meeting.

(6) No Compensation.

* Insufficient data provided.

The trustees are charged with managing the trust by protecting the trust corpus, ensuring an adequate income flow to provide for the needs of the schools and protecting and managing the assets to provide a perpetual endowment.²

Compensation: The commissions of the Estate's trustees are computed according to a formula set by state law. Trustees are paid approximately two percent of all income flowing into the Bishop Estate. Trustees' salaries have been controversial for years, particularly when they rose to almost \$1,000,000 per trustee in 1986-87³ because of the state-forced sales of the fee interest in leasehold residential estate land to individual lessees.⁴

During the 1989-1990 fiscal year, the five Bishop Estate trustees earned total commissions in the amount of \$5,124,117 (i.e. \$1,024,823 each).⁵ Of this amount, the trustees waived \$2,071,449 (i.e. \$414,289 each) and accepted a total of \$3,052,668 (i.e. \$610,534 each) or 60 percent of their legal entitlement.⁶

Various legislative measures have been proposed to cap the amount that trustees of charitable trusts such as the Bishop Estate can receive.

Responses to Questionnaire: None.

Campbell Estate

The Estate of James Campbell ("Campbell Estate") was established for the benefit of James Campbell and his offspring. While the Bishop Estate is a nonprofit, "perpetual" institution, the Campbell Estate is a profit-making "dynastic" institution and will be terminated in the year 2007.⁷ Its four trustees are permitted, under state law, to collect five percent of the estate's annual income. In 1987, the four trustees of the Campbell Estate each collected approximately \$570,000 in commissions and waived another \$100,000 each during the same period.⁸

Board of Education

Responsibilities: The Board of Education formulates policy and exercises control over the public school system through its executive officer, the Superintendent of Education.⁹

Composition: The Board of Education consists of 13 elected members. There is also a nonvoting student member.

Compensation: The statutory scheme for paying Board of Education members is identical to that provided for OHA trustees. Board of Education members are provided compensation at the rate of \$100 per day¹⁰ for each day's actual attendance at meetings, transportation fares between islands and abroad, and personal expenses while attending

board meetings or while on official business as authorized by the Chairperson when such board meetings or official business requires a member to leave the island where the board member resides."¹¹

Recent legislative attempts to increase the compensation for Board of Education members have been premised upon the argument that the Board of Education members "have experienced a multifold increase in duties and responsibilities, addition (sic) of a large number of new programs . . . and a large number of policy issues to deal with and policy problems to resolve. Also, the public is holding the Board of Education more accountable than in the past years and a larger amount of time is spent by members related to unforeseen circumstances Clearly, the magnitude of the policy decisions the Board of Education must now make certainly requires far more time, effort, and commitment on the part of Board of Education members than it did a decade or two ago."¹²

A bill proposing that Board of Education members receive an annual salary of \$13,500 was introduced, and defeated, in 1990.¹³

Responses to Questionnaires: Five of the thirteen voting members of the board submitted responses to the questionnaire. The average time served on the board by those responding was 7 1/2 years. Two of the respondents have no other jobs aside from their board membership. Three have full-time jobs outside of their board membership and one has two part-time jobs in addition to membership on the board. The reported average amount of hours spent on board-related duties each month over the past year was 80. There was unanimous agreement that the duties and demands of their position have significantly expanded over the years.

The average annual amount of compensation reportedly received by each Board of Education member in fiscal year 1989-1990 was \$8,600. All of the respondents agreed that the present method of compensation is appropriate, but two felt that the amount should be increased. All five reported that neither the manner nor the amount of compensation affects their interest in continuing in their positions in the future.

Comparison with OHA Regarding Compensation

The statute controlling compensation for members of the Board of Education is virtually identical to that for the OHA Board of Trustees. However, as discussed in Chapter 3, it is clear that the Board of Education strictly interprets the circumstances under which board members may be compensated. For instance, a board member testifying as an official Board representative at a legislative hearing would not be eligible for compensation.¹⁴ Nor is a Board member attending an ad hoc committee meeting eligible for compensation.¹⁵ Under OHA's policies, however, a trustee's attendance at either of these events is compensable.¹⁶

Under the Board of Education's policies, members of the Board of Education who recently attended a joint conference with the University of Hawaii Board of Regents were not

entitled to compensation. Nor were the four Board of Education members who attended a training workshop regarding strategic planning, compensated for the six hours they spent each day for two days attending the workshop.¹⁷ Conversely, OHA trustees who recently attended a training seminar on "presentation skills" were compensated for each of the six three-hour sessions they attended at the seminar.¹⁸

The Board of Education members represent the Board at a variety of committee and council meetings which include: the Adult Education Advisory Council; the Commission on Children & Youth Advisory Council; the University of Hawaii Liaison; Athletic Liaison; Vocational Education Coordinating Advisory Council; Lieutenant Governor's Committee on Drug Education; Dialogue Committee; Early Education Committee; Waiver/Exception Review Committee; Round Table Liaison; Legislative Liaison; and the Facility Inspection Committee. The Board members do not receive compensation for their attendance at these meetings.¹⁹ The OHA trustees are also expected to serve on a host of committee and council meetings (such as the Governors Literacy Committee, the Hawaii State Visitors Bureau and the State Preservation Task Force), which constitutes "official business" for which they receive \$100 compensation.²⁰

**Type and Number of Meetings for which
Board of Education Members Receive Compensation**

The Board of Education generally meets between three to five times each month. Various board members sit on the following standing committees and subcommittees:²¹

1. Curriculum
 - Adult Education (subcommittee)
 - Special Education (subcommittee)
2. Discipline & School Safety
3. Facilities
4. Federal Programs
5. Hawaiian Education Affairs
6. Personnel
7. Student Affairs
8. Vocational Education
9. Collective Bargaining

Each committee consists of a chairperson, vice chairperson and three voting Board members.²²

For the nine-month period from January to September 1991, there were a total of 31 board meetings (an average of 3.4 each month), and a total of 88 standing committee meetings (an average of 9.8 each month). During this period, each member received average compensation of \$5,908.²³

By comparison, during the eight-month time period from February 1 to September 27, 1991, OHA held a total of seven Board of Trustee meetings (an average of 1 each month) and a total of 83 standing committee meetings (an average of 10.4 each month).

Department of Commerce and Consumer Affairs Regulated Industries Boards and Commissions

The Department of Commerce and Consumer Affairs staffs and administers 30 Boards and Commissions, each of which is responsible for the enforcement of the statutes, rules, and regulations associated with their respective regulated industries. The various boards are provided with an executive secretary to administer the board's activities.

Compensation: Members of the various boards and commissions do not receive any compensation for their services, but are reimbursed for reasonable travel expenses incurred in the performance of their duties.

Composition: The composition of several of these boards and commissions are as follows:

Contractors License Board -- 13 members appointed by the Governor, 10 of whom are contractors.²⁴

Board of Medical Examiners -- 9 members, 7 of whom are physicians or surgeons. In addition to the executive secretary, an employee administers the medical claims conciliation panels.²⁵

Motor Vehicle Repair Industry Board -- 7 members appointed by the Governor, 3 of whom are connected with the motor vehicle repair industry.²⁶

Board of Psychology -- 7 members, 5 of whom represent varied specialties of the profession and 2 lay members from the community at large.²⁷

Real Estate Commission -- 9 members, at least 4 of whom are licensed real estate brokers.²⁸

Hawaii Labor Relations Board (HLRB)

Responsibilities: The HLRB is a highly specialized quasi-judicial entity. The board's duties include administering the laws relating to collective bargaining in public employment and the Hawaii Employment Relations Act,²⁹ which deal with collective bargaining in both the private and public sectors, affecting an estimated 60,000 employees. The members conduct full evidentiary hearings on matters arising under these laws.

Composition: Three members, one a representative of management, one a representative of labor, and the chairperson, who represents the public. The chairperson is also responsible for the administrative functions of the board. Members are appointed to six year terms by the Governor. The board appoints an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers and employs other assistants.³⁰

Compensation: Pursuant to statute, the members devote full time to their duties as members of the board. The salary of the chairperson of the board is set by the governor within the range from \$72,886 to \$77,966, and the salary for each of the other members is 95 percent of the chairperson's salary.³¹

Responses to Questionnaires: All of the HLRB members submitted responses to the questionnaire. The average time served on the Board by those responding was three years. Pursuant to statute, none of the board members hold jobs aside from their board membership.

Board members reported spending an average of 160 hours per month on Board-related duties. The members unanimously agreed that: (1) the duties and demands of their position have not significantly expanded over the years; (2) the job demands do not exceed their expectations; and (3) the method and amount of their compensation is adequate.

Hawaii Paroling Authority

Responsibilities: Hawaii's Paroling Authority sets minimum sentences, approves, denies or revokes paroles, conducts pardon investigations, and supervises parolees.³²

Composition: The paroling authority consists of three members who are nominated by a panel consisting of seven members and appointed by the Governor. The members are appointed for four year terms.³³

Compensation: The chairperson of the Hawaii Paroling Authority serves on a full-time basis. The other two members serve on a part-time basis. The annual salary of the chairperson is \$65,683. For each hour engaged in the official duties of the Authority, each part-time member of the authority is paid an hourly wage 80% of the chairperson's (i.e. approximately \$25 an-hour), provided that such compensation may not exceed 80% of the

total regular working hours in a month. Part-time members are not entitled to any vacation or sick leave. Members receive their necessary expenses for travel and incidentals.³⁴

Responses to Questionnaires: All of the members of the Hawaii Paroling Authority submitted responses to the questionnaire. The members have served an average of five years. The average number of hours spent each month by board members was 147. The members agreed unanimously that their job duties and time demands have increased over the years, and two of the three respondents felt the workload and time commitment exceeded their expectations. All three felt that the method of compensation is appropriate. All three responded that compensation is not a factor in their continuing their position.

In a newspaper article discussing the departure of former paroling authority chairman Marc Oley, it was reported that Mr. Oley had not had a vacation in six years. As he stated about the position: "It just grinds you down to a frazzle. It's clearly the toughest job I've ever had."³⁵

Hawaii State Legislature

Composition: The Hawaii Legislature is comprised of 25 members of the Senate³⁶ and 51 members of the House of Representatives,³⁷ each elected by voters of the respective senatorial and representative districts. The term of office of members of the house of representatives is two years and the term of office of members of the senate is four years.³⁸

Compensation: Hawaii Legislators are compensated through a constitutionally devised system³⁹ in which a Commission on Legislative Salary was appointed by the Governor in November, 1978, and every eight years thereafter.

The Commission on Legislative Salary is expected to consider every aspect of the compensation and benefits issue to ensure that a cross section of the community would not be discouraged from seeking legislative office.⁴⁰ One of the members of the 1975 Legislative Salary Commission, Delegate Lewis, suggested that "legislative salaries be set at a level commensurate with legislative responsibilities, and this salary level should be reviewed periodically and adjusted for inflation and other factors which have a bearing on salary levels."⁴¹

The Commission submits recommendations for a salary for members of the Legislature to the Legislature and the Governor. The recommendation takes effect unless the Legislature or the Governor disapproves.⁴²

Pursuant to this mandate, a Report of the 1986 Commission on Legislative Salary was submitted in March, 1987. The report was the product of commission deliberations and the consideration of public testimony.⁴³

The Commissioners' views and findings are summarized in detail below, since the findings appear to be highly relevant for purposes of this study:

- (1) Although the legislature meets in session for only four months each year, legislators' constituents expect them to be available all year round. A legislative survey indicated an average time commitment of 60.2 hours per week during session (with some members exceeding 90 hours per week) and an interim average of 24.7 hours per week.⁴⁴
- (2) There is a correlation between the time spent by a legislator and his/her effectiveness. The complex issues and demands require legislators to take the initiative to do the necessary work.⁴⁵
- (3) The role of legislatures is changing. The issues are becoming more complex and time-consuming. Major legislation cannot receive adequate consideration within the four month session.⁴⁶
- (4) One of the key elements of a democratic legislature is its "representativeness." A legislature's ability to remain representative is most strongly influenced by salary because too little salary will eliminate all but high income earners.⁴⁷
- (5) Salary is not the criteria for people seeking elective office. Candidates run to be spokespersons of a viewpoint or sector. They reap the rewards of involvement, advocacy, and sense of mission.⁴⁸
- (6) Previously, those running for office were honored by their communities for their commitment. "Prestige" was a reward for serving. The public's view has since changed. Now elected officials are the subject of much cynicism and criticism, and often are not considered good role models.⁴⁹
- (7) Practicality is a necessity. Legislators have families and other responsibilities. Being in elective office should not be an overriding financial burden. Financial needs should not compel legislators to obtain jobs that may present the appearance of or actual conflicts of interests.⁵⁰

Pursuant to the Commission's recommendations, each member of the Legislature presently receives an annual salary of \$27,000, except the Senate President and the Speaker of the House, who each receive an annual salary of \$32,000.⁵¹

Each member of the Legislature is also permitted an annual allowance of \$5,000, to cover "incidental expenses connected with legislative duties".⁵² However, while the Report of the 1986 Commission on Legislative Salary acknowledges the right of the Legislature to establish "allowances reasonably related to expenses," it also recognizes that "such allowances have the appearance of supplementing legislative salaries" and therefore

recommends that the legislature review the necessity for and either repeal or reduce the statutory provision allowing for a Legislative annual allowance of \$5,000.⁵³

Honolulu City Council

Responsibilities: Pursuant to the Honolulu City Charter, the city council is vested with the legislative power of the city.⁵⁴

Composition: The Council consists of nine members, each elected from one of nine districts.⁵⁵

Compensation: The salaries of the council members are established by an independent salary commission consisting of seven members.⁵⁶

Under the charter, the Salary Commission of the City and County of Honolulu was created. The Salary Commission solicits testimony from the elected officials as to work performed, the adequacy of compensation and the relationship of their salaries with those of other city employees.⁵⁷

Testimony from the various elected officials led to the following conclusions by the Salary Commission:⁵⁸

Differences of opinion were apparent in the testimony of these elected officials, one contending that the present salaries are adequate . . . and one contending that salaries of \$100,000 might be appropriate for members of the City Council. The Mayor argued against any salary schedule for the Council which would in effect make for a full-time Council, since the position as he viewed it is only "part-time". Other testimony was that the work is "full-time", and deserves higher salaries.

Members of the City Council and members of the public who testified were of one voice that the Council position is not a Monday through Friday, eight to four job. It transcends that kind of schedule, and includes Saturdays, Sundays, as well as night-time activities. Because of increased population there are now roughly 90,000 people living in each district. Preparation for Council meetings takes up a lot of time. Preparation for committee meetings and the numerous agenda items takes much more time than just showing up at a meeting and listening. Some 60 to 80 hours per week are spent by some members of the City Council and by the Chair.

Presently, the annual salary of the Chairperson of the Honolulu City Council is set at \$42,000 and the members' annual base salary is \$35,000.⁵⁹

Responses to Questionnaires: Only one member of the Honolulu City Council responded to the questionnaire.⁶⁰ The respondent answered that the method and amount of compensation (i.e. \$35,000) was adequate. The estimated average amount of time devoted to council-related duties each month was 200 hours.

Public Utilities Commission

Responsibilities: The Public Utilities Commission has general supervision over all public utilities.⁶¹ The Public Utilities Commission and each commissioner has the power to examine such things as the condition of each public utility, the manner in which it is operated with reference to the safety and accommodation of the public, the safety, working hours, and wages of its employees, and the fares and rates charged by it.⁶²

Composition: The Public Utilities Commission consists of three members, each appointed by the Governor for six-year terms. The commissioners must have experience in accounting, business, engineering, government, finance, law, or other similar fields. The commissioners must devote full time to their duties.⁶³

The chairperson of the commission appoints and employs a chief administrator, research assistants, hearings officers and such staff as necessary for the performance of the commission's functions.⁶⁴

Compensation: The chairperson is paid a salary within the range of \$72,886 and \$77,966 a year, and each of the other commissioners is paid a salary equal to 95% of the chairperson's salary. The commissioners are members of the state employees retirement system and are eligible to receive the benefits of state employee benefit programs.⁶⁵

Response to Questionnaires: None.

University of Hawaii Board of Regents

Responsibilities: The Board of Regents formulates policy, exercises control over the university through its executive officer, the President of the university. The board has exclusive jurisdiction over the internal organization and management of the university.⁶⁶

Composition: The Board of Regents consists of eleven members. No more than six of the members may be members of the same political party and at least part of the membership must represent various geographic subdivisions of the State.⁶⁷ The Board members are appointed and may be removed by the Governor.⁶⁸ The term of each member is four years. The board meets not less than ten times annually, and may from time to time meet in the counties of Hawaii, Maui, and Kauai.⁶⁹

Compensation: The members of the board serve without pay but are entitled to expenses for travel within the State when attending meetings of the board or when actually engaged in business relating to the work of the board.⁷⁰

Responses to Questionnaires: Completed questionnaires were submitted by 3 of the 11 members of the Board of Regents. The average time served on the Board by those responding was five years. All of the members have jobs aside from their Board membership.

The average number of hours spent each month by Board members was 45. All agreed that the job and time demands have increased significantly over the years. None felt that lack of compensation would be a factor in future decisions regarding the retention of their position. Two of the three felt that the position was more demanding than originally anticipated.

ENDNOTES

1. Annual Report to the Community 1989-1990, Kamehameha Schools/Bernice Pauahi Bishop Estate, p. 4.
2. Ibid., p. 19.
3. Honolulu Advertiser, May 20, 1989, p. A-2.
4. Honolulu Advertiser, May 15, 1990, p. A-1; Honolulu Star-Bulletin, May 15, 1990, p. A-4.
5. Annual Report, supra n. 1, p. 45.
6. The commissions actually accepted by trustees constitute a percentage of the amount permitted by state law. The trustees voluntarily waived their right to the commissions on the sales of single family residential lots, commissions on educational income (such as tuition and fees), and on final payments of cash principal for capital assets (such as buildings, equipment and land). Ibid.
7. The Estate of James Campbell, 1990 Annual Review.
8. Honolulu Advertiser, October 31, 1989, p. A-3.
9. Hawaii Rev. Stat., sec. 296-2.
10. The compensation for board members was increased from \$50 to \$100 in 1989. Act 198, Session Laws of Hawaii 1989.
11. Hawaii Rev. Stat., sec. 296-5.
12. Justification Sheet, House Bill No. 710, Fifteenth Legislature, 1989, State of Hawaii.
13. House Bill No. 2135, Fifteenth Legislature, 1990, State of Hawaii.
14. Letter from then Deputy Attorney General Gordon D. Lee to then Board of Education Chairperson William A.K. Waters, August 29, 1988.

ALTERNATIVE METHODS OF COMPENSATING MEMBERS OF THE OHA BOARD OF TRUSTEES

15. Letter from Deputy Attorney General Russell A. Suzuki to then Board of Education Chairperson Noboru Yonamine, July 16, 1984, p. 3.
16. Interview with Stanley H. L. Lum, OHA Deputy Administrator, November 22, 1991.
17. Interview with Dr. Mitsugi Nakashima, Chairperson, Board of Education, September 30, 1991.
18. Lum interview.
19. Nakashima interview.
20. Lum interview.
21. Nakashima interview.
22. Ibid.
23. January - September 1991 Board of Education payroll.
24. Hawaii Rev. Stat., sec. 444-3.
25. Hawaii Rev. Stat., sec. 453-5.
26. Hawaii Rev. Stat., sec. 473B-3.
27. Hawaii Rev. Stat., sec. 465-4.
28. Hawaii Rev. Stat., sec. 467-3.
29. Hawaii Rev. Stat., chaps. 89 and 377.
30. Hawaii Rev. Stat., sec. 89-5.
31. Ibid.
32. Hawaii Rev. Stat., sec. 353-62.
33. Hawaii Rev. Stat., sec. 353-61.
34. Hawaii Rev. Stat., sec. 353-63.
35. Honolulu Star-Bulletin, June 19, 1991, p. A-14.
36. Hawaii Const. art. III, sec. 2.
37. Hawaii Const. art. III, sec. 3.
38. Hawaii Const. art. III, sec. 4.
39. Hawaii Const. art. III, sec. 9.
40. Hawaii, Constitutional Convention, 1978, Proceedings, Vol. I, Standing Committee Report No. 46, p. 602.

41. Ibid., p. 299.
42. Hawaii Const. art. III, sec. 9.
43. Letter from the 1986 Commission on Legislative Salary to the Honorable John Waihee, the Honorable Richard S. H. Wong, President and Members of the Senate, the Honorable Daniel K. Kihano, Speaker and Members of the House of Representatives, March 27, 1987, p. 1.
44. Report of the 1986 Commission on Legislative Salary, March 27, 1987, Part III.
45. Ibid.
46. Ibid.
47. Ibid.
48. Ibid.
49. Ibid.
50. Ibid.
51. Ibid., Part VI.
52. Hawaii Rev. Stat., sec. 24-1.
53. Report of the 1986 Commission on Legislative Salary, part VI.
54. Honolulu Charter, art. III, sec. 3-101.
55. Ibid., sec. 3-102.
56. Ibid., sec. 3-122.
57. Final Report and Salary Schedule, Salary Commission of the City and County of Honolulu, (Honolulu, June 1988).
58. Ibid., p. 8.
59. Ibid., p. 12.
60. In order to preserve this member's confidentiality, only nonidentifying information is provided.
61. Hawaii Rev. Stat., sec. 269-6.
62. Hawaii Rev. Stat., sec. 269-7.
63. Hawaii Rev. Stat., sec. 269-2.
64. Hawaii Rev. Stat., sec. 269-3.
65. Hawaii Rev. Stat., sec. 269-2.

- 66. Hawaii Rev. Stat., sec. 26-11.
- 67. Ibid.
- 68. Hawaii Rev. Stat., sec. 304-3.
- 69. Ibid.
- 70. Ibid.

CHAPTER 6

COMPARISON OF OHA WITH INDIAN TRIBAL COUNCILS AND STATE COMMISSION AND BOARDS FOR OTHER STATES' NATIVE GROUPS

At the time OHA was conceived, the rights granted to other native peoples of the United States were reviewed and OHA was modeled in part after existing systems designed to promote self-determination for native groups:¹

. . . If one looks to the precedent of other native peoples, one finds that they have traditionally enjoyed self-determination and self-government. They have power to make their own substantive rules in internal matters. Although no longer possessed of the full attributes of sovereignty, they remain a separate people with the power of regulation over their internal and social problems. The establishment of the Office of Hawaiian Affairs is intended to grant similar rights to Hawaiians.

Indian Tribal Councils

Indian Tribal Councils are each headed by a tribal "chairman," "governor" or "chief" who is generally recognized as the tribal government's chief executive officer. The tribal chiefs or chairmen are mostly chosen by their councils, which are democratically elected, but they have wide and arbitrary powers that are not restricted by a separate judiciary or legislative branch.²

The "chairman" of the Indian councils usually also serves as the tribes' chief executive officer and is generally compensated with an annual salary.³

The number of members on the various Indian Tribal Councils ranges from approximately 5 to 25.⁴ The compensation provided to the chief executive officer and/or the tribal council members also varies, generally depending on the economics of the particular tribe.⁵ The Navajo and Hopi tribes, for instance, each have approximately 100 tribal council members, each compensated on a per diem basis. Council members usually serve both the legislative and executive branch of tribal government.⁶ There is an increasing sentiment that tribal chairmen and executive committee members should be compensated with salaries and provided a full panoply of employment benefits.⁷

State Boards and Commissions Designed to Promote Indigenous Native Groups

Many state statutes and constitutional provisions provide for commissions and boards designed to assist native groups in their own cultural development. The mandates under which these boards and commissions operate are comparable to that of OHA with regard to their purpose of bettering the condition and welfare of their respective native groups. The members of these boards and commissions are appointed as opposed to OHA's elected trustees. The compensation methods vary from no compensation to reimbursement for travel expenses. Many also permit per diem expenses for commission members. The composition, responsibilities and compensation systems of the various state boards and commissions are set out in Appendix D.

The Indian Self-Determination and Education Assistance Act and Indian Tribal Councils

The Indian Self Determination and Education Assistance Act (Pub. L. 93-638) was enacted in 1975 in order to promote "maximum Indian participation in programs that would be "responsive to the needs and desires" of native communities.⁸ The Act grants tribes the power to sign contracts with federal agencies to administer government programs in order "to facilitate increased self-determination for American Indians by providing a means through which they may plan, conduct, and administer programs and services to Indians."⁹ Under the Act, grant authority is provided to assist Indian tribes in improving their governing capabilities, increase their ability to effectively administer programs under contract, and enable them to provide direction to the federal programs designed to serve Indian people.¹⁰

The years following the passage of the Indian Self-Determination Act have been plagued with controversy and scandals, culminating in the assembly of A Special Committee on Investigations of the Select Committee on Indian Affairs, authorized by the United States Senate in 1988. The Special Committee was assembled to conduct a comprehensive and intensive investigation of the entire spectrum of the federal government's relationship with indian affairs. The Special Committee held public hearings in 1989. Specifically, the Committee was asked to uncover fraud, corruption, and mismanagement in American Indian affairs, "no matter where or to who it led."¹¹

The Committee indeed found fraud, corruption and mismanagement pervading the institutions that were designed to serve American Indians.¹² The Committee reported that Indian tribal governments have acquired increased federal resources and statutory powers and that, even with limited empowerment, tribes have established innovative programs that are tribally conceived and directed and greatly benefit the tribal members themselves.¹³ However, federal funds were conferred on tribal entities without effective federal sanctions

and enforcement against corruption, permitting some tribal officials¹⁴ to engage in corrupt practices.¹⁵

The Committee's investigation revealed a larger question: Why is this pattern of abuse endemic? In dealing with this question, it was suggested that the self-determination legislation of the 1970's was an empty promise. "Red tape and the perpetuation of federal bureaucracies, inadequate authority, and condescending attitudes restricted Native American efforts to take control of their communities."¹⁶

In the words of the Cherokee Professor of Law Rennard Strickland:¹⁷

The Indian leader has figured out both how to manipulate, and yet is being manipulated by . . . bureaucrats Today the Indian is in another medicine show--one where he is not given rations but one where he is given per diem, and plane tickets, and programs to manage. And in the process the administrator and the administered feed upon each other.

Congress' final answer to why such problems appeared endemic was as follows: "Because Congress has never fully rejected the paternalism of the 19th century, the U.S. government maintains a stifling bureaucratic presence in Indian country, and fails to deal with tribal governments as responsible partners in our federalist system."

These sentiments are similar to those expressed by both OHA insiders and OHA critics. One such critic, Mililani Trask, has argued that "OHA will never escape from its state-sponsored dependence nor will it be able to transform itself into . . . a sovereign Hawaiian nation. [Although OHA talks about] sovereignty, what they're practicing is wardship for the state. Wardship is not sovereignty."¹⁸

As Congress concluded in its Final Report:¹⁹

It is the Committee's firm conviction that accountability follows responsibility. If Indian tribal governments are afforded true self-government within our federal system, any misdeeds will rest squarely on their shoulders, not left unaccountable in a maze of shared responsibilities between federal and tribal governments.

Although it is beyond the scope of this report to address fundamental issues related to Hawaiian sovereignty, it is clear that in determining the method of compensating the OHA Board of Trustees, the Legislature should be aware of not only fiscal considerations but also the extent to which the method of compensation alters and affects perceptions of the State's commitment to enabling OHA to fulfill its responsibilities to the Hawaiian people.

ENDNOTES

1. Hawaii, Constitutional Convention, 1978, Proceedings, Vol. I, Committee of the Whole Report No. 13, p. 1019.
2. The Economist, February 25, 1989, p. 26.
3. Interview with Paul Alexander, former Staff Director, Senate Select Committee on Indian Affairs, Washington, D.C., October 22, 1991.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
8. 25 Code of Federal Regulations, Chapter 1 (4-1-91 Ed.).
9. Ibid.
10. Ibid.
11. U.S., Congress, Senate, Special Committee on Investigations of the Select Committee on Indian Affairs, Final Report and Legislative Recommendations, 101st Cong., 1st Sess., 1989, Report 101-216, part IV, p. 4.
12. For instance, the Committee revealed that the hundreds of millions of dollars spent on the government's program to promote Indian economic development were largely drained by shell companies posing as legitimate Indian-owned firms. Ibid., p. 4-5.
13. U.S., Congress, Senate, Special Committee on Investigations of the Select Committee on Indian Affairs, Final Report and Legislative Recommendations, p. 12-15.
14. The escapades of Peter MacDonald, former chairman of the Navajo Nation, for instance, are well-chronicled. MacDonald was convicted in January, 1991, of dozens of bribery, ethics and conspiracy charges by a tribal court. MacDonald and his son were found to have solicited over \$400,000 in bogus loans, consulting fees, plane rides and other favors from businesses seeking lucrative Navajo contracts. He even persuaded the tribe to purchase desert land worth less than \$26,000,000 for more than \$33,000,000 so that, through a shell corporation, he could enjoy a share of the \$7,000,000 markup. New York Times National, January 31, 1991, p. A-18.
15. U.S., Congress, Senate, Special Committee on Investigations of the Select Committee on Indian Affairs, Final Report and Recommendations, pp. 181-213.
16. Ibid., p. 60.
17. Ibid., p. 6.
18. Interview with Mililani Trask, Ka Wai Ola O Oha, September 1991, p. 14.

19. U.S. Congress, Senate, Special Committee on Investigations of the Select Committee on Indian Affairs, Final Report and Recommendations, p. 20.

CHAPTER 7

ANALYSIS OF ALTERNATIVE METHODS OF COMPENSATING OHA TRUSTEES

Part I. Alternative Methods of Compensation

There are several possible methods of compensating OHA trustees. Some of these alternatives have been considered by the Legislature in the past. The advantages and disadvantages of possible methods of compensation are discussed in Part 2 of this chapter. The potential methods of compensation reviewed are as follows:

1. Annual salary for all OHA Trustees
2. Annual salary for the OHA Chairperson only
3. Payment of commissions based upon a percentage of the income generated by OHA
4. Maintaining the present system (i.e. payment of a specified amount per meeting per day) as conceived by the Legislature
5. Maintaining the present system but amending the statutory scheme for compensating OHA trustees to make it consistent with OHA's present internal policies and guidelines
6. Maintaining the present compensation method with an increased rate of compensation per meeting per day
7. Maintaining the present compensation method while placing a cap on the total compensation available per year
8. Other considerations
 - A. Amount of Compensation
 - B. Compensation for full or part-time work?

Part II. Analysis of Alternative Methods of Compensating OHA Trustees

1. Annual Salary for all OHA Trustees

Personal interviews with 8 of the 9 present OHA trustees revealed that the trustees believe and desire that they should all be compensated with an annual salary. Their reasons why this method of compensation is most desirable are fairly diverse. They all feel, however, that the present compensatory system is inadequate, for the reasons discussed at length in Chapter 3.

Arguments in Favor of Annual Salary Method

- Performance and effectiveness of OHA trustees will improve if financial burden inherent in present system is replaced with salary.

Several of the past and present OHA trustees have reported that they have been financially unable to afford to put the time necessary to perform optimally and, therefore, the agency suffers.

- Provision of salary will enhance "representativeness" of the OHA board.

Presently, the average age of the OHA trustees is fifty-four. It has been suggested that a large percentage of those who run for OHA are either retired or do not have financial obligations requiring pursuit of a more lucrative position.¹ It is possible that the availability of a salary would result in a more chronologically diverse range of ages and experiences on the board.²

- Payment of a salary will enable OHA to attract the most capable, competent and experienced trustees.

Under the present system, it is possible that competent and able prospective candidates for OHA office may be reluctant to run because of considerations regarding the time commitment and financial strain associated with service on the Board. As one OHA trustee stated, "OHA gets what OHA pays for." If top-quality, highly qualified candidates are to be attracted to elective office, they need to be compensated in a manner and amount that reflects their ability, expertise and commitment to serving the Hawaiian people.

- Provision of a salary will express recognition of OHA's worthiness and provide OHA trustees with the type of dignity necessary if OHA is to operate at its full potential.

One of the prevalent sentiments expressed by OHA trustees and individuals knowledgeable of OHA operations is that OHA has been provided with a lot of "paper power" and its trustees have been given great responsibilities, but have never been provided with the

resources necessary to fulfill these responsibilities. Providing a salary might be appropriate given the incredible array of responsibilities and concomitant time demands placed on OHA's trustees and would reflect a legislative commitment to ensuring that OHA is provided with the assistance it needs to operate at its full potential.

- A salary for OHA's trustees will enable OHA to realize its potential.

Compensation by salary will enable the trustees to devote more time and energy to fulfilling their duties as trustees. As OHA will soon be the recipient of significantly increased assets, the time commitments required of the trustees will be greater and a salary will permit them, without undue sacrifice, to spend the time necessary to deal effectively with their greatly increased responsibilities.

- Internal factionalism and tension among OHA trustees may be reduced if trustees are paid salaries.

Based on sentiments expressed during personal interviews, it appears that internal strife among the trustees and between OHA staff and trustees sometimes impedes the day-to-day operation of OHA business. One source of tension is a perception that some trustees spend more time on OHA-related matters than others. There is also a perception that some trustees abuse the present compensatory system. One of the trustees expressed a feeling that the OHA trustees need to be available to make sure that the staff does not try to "take over" their functions. Another trustee expressed feelings of "denigration" because the staff are paid "healthy" salaries while the trustees are not. Although it is debatable whether a change in compensation will necessarily alter such perceptions, the possibility may be considered.

- A salary will reduce or eliminate budgetary hardships arising from the uncertainties of funding for OHA trustees' compensation.

As discussed in Chapter 3, the uncertainties of the amounts involved in compensating OHA trustees have created budgetary problems which would be reduced or eliminated if set salaries were provided.

- A salary will serve as greater inducement for OHA trustees to put in the time necessary to deal with OHA's expanding responsibilities.

Lack of a salary amounts to a disincentive for the trustees to devote the time and effort they believe is necessary to improve the agency and realize its goals since financial demands may require working fewer hours at OHA.

- The Hawaiian beneficiaries of OHA deserve the more effective service and performance which will presumably be provided by trustees who are fairly compensated.

When the OHA trustees are not provided with the financial resources to allow them to fulfill their responsibilities effectively, it is the Hawaiian people who ultimately suffer the consequences.

- Substantial time demands inherent in OHA trusteeship should be compensated as a matter of fairness.

Trustees have families and other responsibilities and should not be required to make a financial sacrifice to devote the time necessary to contribute to OHA.

Board members have unparalleled responsibilities as trustees with fiduciary duties exposing them to the very real possibility of lawsuits. Under section 10-16(a), Hawaii Revised Statutes, the State is not liable for any acts of OHA except in matters of tort. In the past several years, OHA trustees have been sued in their individual and/or official capacities in at least six cases.³ Many of the OHA trustees mentioned that the possibility of being named in a lawsuit is of deep concern to them. Provision of a salary may be perceived as appropriate recognition of the unique situation of OHA trustees vis-a-vis their fiduciary responsibilities.

- A salary will reflect the appropriate recognition of the inordinate amount of time and energy expended by trustees in attending to OHA business while away from their regular work, families, and personal commitments.⁴
- A salary will be uniformly applied and may end the perceived and/or real abuses under the present compensatory system.

As discussed in Chapter 3, the present method of compensating the OHA trustees involves payments that appear statutorily unauthorized. Moreover, there is a perception that the compensatory plan is being taken advantage of in terms of the number of meetings held and the nature of some of the "official business" requests for which trustees request and receive compensation. These concerns would be reduced or eliminated if OHA trustees were provided with a salary.

Arguments in Opposition to Annual Salary Method

- Provision of a salary will reduce incentive of trustees to attend meetings.

Presently, the attendance rate by trustees at OHA Board and Committee meetings is high. It is possible that attendance at such meetings would decline if trustees did not rely upon attendance at these meetings as a primary basis for their compensation.

- Payment through an annual salary will encourage OHA trustees to become unnecessarily involved in the daily operation of the agency they are required to oversee.

In an editorial appearing in the Honolulu Advertiser, it was suggested that salaried compensation for OHA trustees would result in "the ideal of part-time, citizen boards setting general policies [being replaced] by 'politician' boards where many members can afford to spend full-time dabbling in the organizations they oversee."⁵

- Provision of a salary will be the first step toward making the OHA trusteeship position a full-time job.⁶
- The OHA trustees' performance thus far does not merit compensation with a salary.⁷
- OHA trustees' responsibilities do not warrant an annual salary.⁸
- Providing a salary to OHA trustees could lead to similar proposals for salaries for elected members of the Board of Education.⁹

2. Annual Salary for the OHA Chairperson Only

Argument in Favor of Chairperson Compensation Method

- More than any other trustee, an OHA chairperson's position is particularly time demanding and strenuous.

One possibility for an alternative compensatory method at OHA would be to provide for a salary for the OHA Chairperson for either part- or full-time work. This approach is used by the Hawaii Paroling Authority which consists of three members, the Chairperson who serves on a full-time basis and receives an annual salary and two members who serve on a part-time basis and receive hourly compensation.

OHA's job demands are particularly strenuous for the chairperson. The duties of the chairperson are set out in the OHA bylaws to include appointing members of all standing and ad hoc committees; approving agenda items for board meetings; authorizing warrants for payments of compensation, travel and expenses for OHA trustees, serving as the primary liaison with the governor, the congressional delegation, the legislature, and agencies and organizations.¹⁰

In addition to handling a wide variety of administrative details, the chairperson's position necessitates a significant amount of time spent each day at the office "being available" to the administrator, the trustees, and the beneficiaries.¹¹ For instance, several past and present OHA trustees spoke in awe of the countless hours spent "on the job" by former OHA chairperson, Thomas Kaulukukui, Sr. (Ironically, the compensation payroll reflects relatively minimal compensation received by him.)

Arguments in Opposition to Chairperson Compensation Method

- The provision of a salary for the OHA chairperson will not alleviate the financial pressures and time demands experienced by other OHA trustees.
- OHA trustees should know at the time they seek election, how they will be compensated.

The OHA chairperson is elected by the Board. Accordingly, a trustee running for office would not know whether the position will ultimately be one for which a salary may be expected.

3. Payment of Commissions Based Upon a Percentage of the Income Generated by OHA

Argument in Favor of Percentage Method

- Compensation based upon a percentage of OHA income may provide an incentive for optimum use of OHA's assets.

Arguments in Opposition to Percentage Method

- This method does not take into account the fact that an OHA trustee's position is far more complex than simply serving as a "financial manager"
- This method would use funds that should be used to directly benefit the Hawaiian people.

4. Maintaining the Present System (i.e. Payment of a Specified Amount Per Meeting Per Day) as Conceived by the Legislature

Argument in Favor of Present System

- The legislature has previously determined that payment for OHA trustees should be at a specified rate for meetings only, based upon its assessment that this amount is sufficient for OHA trustees to perform their duties.

Argument in Opposition to Present System

- A significant amount of time spent by OHA trustees is devoted to the performance of services which would not be compensable under a strict interpretation of the statutory scheme.

One of the primary functions perceived by OHA trustees is being responsive and "on call" to their beneficiaries. They spend a vast amount of time attending functions, meetings, and performing OHA-related duties which would not be compensable under a strict interpretation of the statutory scheme for compensation. However, most feel strongly that these responsibilities are integral to the effective and efficient operation of OHA.

5. Maintaining the Present System but Amending the Statutory Scheme for Compensating OHA Trustees to Make it Consistent with OHA's Present Internal Policies and Guidelines (Modified System I)

Argument in Favor of Modified System (I)

- This approach would maintain the status quo while at the same time resolving concerns regarding the statutory legitimacy of OHA's present internal policies and guidelines.

Argument in Opposition to Modified System (I)

- There is a widespread perception among the OHA trustees that the present system of compensation for OHA trustees is ineffective and unacceptable.

6. Maintaining the Present Compensation Method With an Increased Rate of Compensation Per Meeting Per Day (Modified System II)

Argument in Favor of Modified System (II)

- This approach offers an uncomplicated means of increasing the total compensation paid to OHA trustees without requiring implementation of a new statutory scheme.

Argument in Opposition to Modified System (II)

- This approach does not address or relieve present concerns related to the present method of compensation for OHA trustees (discussed in Chapter Three).

7. Maintaining the Present Compensation Method (At Either Current or Increased Rates) While Placing a Cap on the Total Compensation Available per Year (Modified System III)

Arguments in Favor of Modified System (III)

- This approach resolves uncertainties regarding the total amount which OHA trustees may receive in a given year, and would relieve budgetary problems associated with compensating the trustees when the legislative allocation for compensation is insufficient.
- This approach may eliminate the perception of or potential for abuse inherent in the present system.
- Allows trustees to have a firm, fixed understanding as to the maximum amount of compensation they may receive yearly.

Arguments in Opposition to Modified System (III)

- A cap will in effect require restriction of the number of compensable meetings a trustee may attend which may make it more difficult for the trustees to deal effectively with the growing number of issues facing OHA.
- A cap on available compensation for OHA trustees fails to take into account the time-consuming nature of the duties and responsibilities expected of OHA trustees, which will not be decreased even if compensation is limited.

8. Other Considerations

Amount of Salary

Most of the OHA trustees believe that their job requirements and time demands are most analogous to that of the Honolulu City Council and that payment should thus be in an amount comparable to City Council members. Their individual comments about the factors to consider in determining the amount of compensation are in accord with the following statement:¹²

Pay should be "just, adequate, reasonable, dignified and meaningful of the amount of work performed. It should be reflective of professional standards."

Full-Time or Part-Time Work?

Most of the OHA trustees would like to be compensated for full-time work. However, one concern is that full-time employment would encourage the trustees to become involved in the day-to-day implementation of the programs which they oversee. Another concern is that there may not be enough work to justify full-time employment.

One of the primary benefits of making the OHA trustee position a full-time position is that it would simplify the task of finding times, places, and dates to schedule meetings with board members. One of the potential disadvantages is that it might reduce the availability of qualified candidates who would have to give up their present jobs (and possibly careers) in order to serve.

Under the present system, many of the trustees have full or part-time jobs beside their OHA trusteeship. With the new system of nine standing committees, each of which meets at least once a month, it has become increasingly difficult to schedule meeting times which accommodate the various trustees' schedules. As the number of meetings has increased, fewer adjustments have been made for the scheduling of the meetings to accommodate the respective trustees' schedules. Making the trustees' positions full-time would alleviate this problem.

In addition to the problems inherent in working out the scheduling to accommodate the various trustees' time commitments, the present system also often presents problems in achieving a quorum at OHA meetings. Full-time employment for OHA trustees would alleviate problems related to scheduling meetings and insuring quorums.

ENDNOTES

1. Interview with Sherry Broder, Esq., September 12, 1991.
2. Notwithstanding this concern, it should be noted that OHA's report of the Population Survey/Needs Assessment study shows that Hawaiians polled ranked "respect for elders" as the most important ingredient of a Hawaiian lifestyle. (June 1986 Report of the Population Survey/Needs Assessment, as reported in Ka Wai Ola O Oha, August 1991, p. 11.)
3. See e.g. Hoohuli v. Ariyoshi, et al., 741 F.2d 1169 (9th Cir. 1984); Price v. Akaka, et al., 928 F.2d 824 (9th Cir. 1991); Kepoo v. Burgess, et al., No. 88-2987-09 (Haw. Dir. filed Sept. 23, 1988).
4. Testimony of Sherry P. Broder in support of Senate Concurrent Resolution No. 222, Sixteenth Legislature, 1991.
5. Honolulu Advertiser, February 27, 1989, Editorial, p. A-6.
6. Honolulu Star-Bulletin, March 20, 1989, Editorial, p. A-6.

ANALYSIS OF ALTERNATIVE METHODS OF COMPENSATING OHA TRUSTEES

7. Interview with Richard P. Kinney, Hawaiian Political Action Council of Hawaii (HPACH), September 8, 1991.
8. Honolulu Advertiser, Editorial, February 27, 1989, p. A-6.
9. Ibid.
10. Hawaii, Office of Hawaiian Affairs Board of Trustees Bylaws, October, 1991, p. 3.
11. Interview, Stanley H. L. Lum, OHA Deputy Administrator, November 22, 1991.
12. Testimony presented by Rowena Akana, Vice-Chairperson, OHA Board of Trustees, before the Committee on Hawaii Affairs supporting House Bill No. 1273, February 13, 1991.

CHAPTER 8

FINDINGS AND RECOMMENDATIONS

Senate Concurrent Resolution No. 222 (1991) requests the Legislative Reference Bureau to study alternative means of compensating the Board of Trustees of the Office of Hawaiian Affairs. Underlying this request is a recognition that OHA has grown over the past decade and will continue to grow both in terms of budget and expansion of the board members' duties.

The primary focus of this chapter is to summarize the findings of this study and to provide recommendations for the most appropriate method of compensating OHA trustees.

Facts and Findings

1. There is widespread dissatisfaction among the OHA trustees with the present compensatory method.

The OHA trustees believe that significant time is involved in accomplishing their statutorily and constitutionally mandated responsibilities.

The OHA trustees believe that the present compensatory system fails to adequately compensate them for time expended in fulfilling their responsibilities.

2. Actual Time Spent by OHA Trustees:

- a. Board and Standing Committee Meetings: From February 1, 1991 to September 27, 1991 a total of 89 OHA Board and Standing Committees were held, each requiring the attendance of at least 3 OHA trustees. The duration of each of these meetings was generally several hours.
- b. "Official Business" Time: Based on a five-month period from May to September, 1991, OHA trustees each received compensation for an average of 14 "meetings" or instances of "official business" per month.
- c. Noncompensable Time: Personal interviews with OHA trustees reveal that the OHA trustees believe that significant noncompensable time is spent by the trustees on OHA-related tasks. However, the amount of time spent in such matters is unavailable since only two of the nine trustees returned the questionnaires (requesting estimates as to time spent on various OHA duties).

FINDINGS AND RECOMMENDATIONS

3. The present method of compensating OHA trustees involves payments which appear to be statutorily unauthorized.

Compensation for OHA trustees is statutorily set at the rate of "\$100 a day for each day's actual attendance at meeting." Internal OHA policies, however, provide for compensation in the amount of \$100 for "official business" independent of personal expenses and transportation costs. Under OHA policies, "official business" includes a wide range of activities in addition to attending meetings. This interpretation is very different from the Attorney General's office in interpreting and applying a similarly worded compensation scheme applicable to the Board of Education.

The thrust of this study, however, is not the propriety or impropriety of the way OHA has interpreted its statutory compensation scheme, but rather reviewing alternative methods of compensating OHA trustees. As such, an assessment of the legality or propriety of the existing internal methods of compensation is beyond the scope of this study.

4. A comparison of OHA to other policy making boards, commissions and councils reveals that although the OHA trustees are statutorily compensated on the same scale as the Board of Education, the OHA trustees' duties are most comparable to those of members of the county councils in several important respects:

- a. Functions of the job: The responsibilities and duties of county council members and OHA board members are many and diverse and often involve complex and controversial issues. While Board of Education members deal with a range of matters that ultimately relate to public education, the OHA trustees' duties run the gamut from health, housing and education to ceded land disposition and water and mineral resource rights. Accordingly, the issues faced by OHA trustees appear to more closely parallel those confronted by members of the county councils.
- b. Time demands: Neither county council positions nor the OHA trusteeship positions are Monday through Friday, 8 to 4 type jobs; these positions often require an open ended time commitment from those who fill them. Preparation for and attendance at meetings and being responsive and available to one's constituents take up much of the trustees' and council members' time. Although an OHA trusteeship entails, like the county council positions, ostensibly part-time work (and OHA trustees, like county council members, are essentially policy makers), OHA trustees feel responsible for being available and responsive to their constituents on a full-time, year-round basis. OHA's beneficiaries expect the OHA trustees to be available to them and are resistant to responses from the Administrator or other staff members.

- c. Composition: Both the OHA trusteeships and the county council positions are elective positions and board/council members are considered to serve on a part-time basis.
- d. Financial Considerations: The 1988 Final Report and Salary Schedule provided by the Salary Commission of the City and County of Honolulu reported the sentiment that council members who do not have outside income have a hard time financially.¹ Similar sentiments were expressed by OHA trustees who feel that their outside jobs suffer based on the amount of time they spend performing OHA-related duties.
- e. Policy Concerns: In the past, one of the primary objections to providing OHA trustees with a salary has been a concern that this would increase the likelihood of their involvement in the daily operations of the office. In considering the amount and method of compensating Honolulu City Council members, the Salary Commission also considered arguments that the council was performing executive functions which should be left to the Administration (e.g. handling complaints which take much of the council members' time and should be left to the Managing Director's office).²
- f. Expansive Role of OHA/County Council Chairperson: It has long been recognized that the expansive role of the county council chairperson's position merits a salary larger than those of the county council members. It has even been suggested that "the way the council chairperson's position has developed, it is almost a full-time job right now."³ Similarly, it is clear that the OHA chairperson's duties require the performance of administrative tasks and substantial availability at the office to both the trustees and constituents.
- g. Debate Between Full-Time and Part-Time Status: There has been long debate as to whether county council member positions should be considered part or full-time positions. The 1976 Salary Commission Final Report concluded that the work of the Honolulu City Council was de facto "full-time." Neither the 1978 nor the 1988 Salary Commissions expressed positions on the matter. However, in considering the possibilities, the 1988 Salary Commission reported the following opposing views:⁴
 - (i) The Founding Fathers of the country felt that a representative form of government was necessary for democracy to work. This implied that the legislative function should be served by citizen-legislators who are amateurs in the political process. High turnover may even be encouraged to obtain fresh viewpoints in the representative of government. A full-time designation would be contrary to the concept

that the council consists of people who have their own outside professions or businesses.

- (ii) Council members spend the equivalent of full-time hours despite the fact that the Charter of the City and County of Honolulu designates the council as a part-time body.

5. The role of the OHA trustees is expanding. The issues OHA trustees are required to face are complex, controversial and have been "festerling" for many decades prior to OHA's inception. The trustees' statutory and constitutional responsibilities are numerous and broad. It is not clear how expanding responsibilities will affect the time commitments required of the trustees.

6. The intended design of OHA was to have the trustees be representative of the Hawaiian people. Their ability to remain "representative" is strongly influenced by compensatory considerations because insufficient compensation for time expended runs the risk of eliminating all but those with alternative sources of income.

7. Research and personal interviews reveal a concern that providing the OHA trustees with a salary will encourage the trustees to become increasingly involved with the day-to-day management of OHA activities. However, this concern of over-reaching by the trustees has been prevalent since OHA's inception and appears to be less related to the method of compensation and more related to the individuals involved and the nature and degree of their experience. (It may also be noted that the same concern was voiced with regard to whether county council members should be provided full- or part-time employment.)

8. One concern expressed during interviews for this report was that paying the trustees a salary would reduce the trustees' incentive to attend meetings, resulting in a reduction in the present attendance rate. However, this appears unlikely, as it is clear that the trustees' presently high attendance rate is a product of their commitment to OHA and its mission. Moreover, OHA trustees are elected and thus "directly accountable to the people electing them."⁵

9. Compensating the OHA trustees with a salary will ensure that OHA is able to attract qualified, talented and experienced candidates for OHA trusteeships.

Personal interviews revealed that OHA trustees run for their positions based on their desire to improve conditions for the Hawaiian people; the compensatory system is generally not a factor in their decisions. However, the time requirements are considered significant and are generally greater than originally anticipated. Although the present OHA trustees reported that they did not consider compensation as a factor in deciding to run for their respective trusteeships, several felt that the time commitments were far more extensive than anticipated

and fear that in the future prospective trustees will be deterred from running because of the significant, uncompensated, time requirements.

10. Many of the present OHA trustees and individuals familiar with OHA's operations consider the perceived inadequate compensation of OHA trustees to be a reflection of the State's failure to take OHA's work and mission seriously.

In Chapter 6 of this study, it was suggested that in determining the appropriate method of compensating the OHA Board of Trustees, the Legislature should be aware of not only fiscal considerations, but also the extent to which the method of compensation alters and affects perceptions about the State's commitment to enabling OHA to fulfill its responsibilities to the Hawaiian people. One of the sentiments expressed repeatedly during the course of personal interviews for this report was that the trustees have been given a plethora of responsibilities and a paucity of resources necessary to fulfill these responsibilities. Compensating OHA trustees with a salary may well be seen as reflecting the State's commitment to ensuring that OHA is provided the assistance and resources necessary for it to operate at its full potential.

Recommendations

1. OHA trustees should be salaried. The present method of compensation based on a "per meeting per day" basis should be eliminated, as it does not provide compensation commensurate with the time required to fulfill the trustees' responsibilities and has led to either perceived or real abuses of the present statutory scheme.

2. Alternatively, at minimum, the OHA chairperson should be provided with a salary. The OHA chairperson's responsibilities are particularly demanding and time consuming as they entail a multitude of administrative details and significant time spent "being available" to the trustees and OHA beneficiaries.

3. Although the vast majority of OHA trustees believe that they should be compensated on a full-time basis, the data and information gathered for this report are presently insufficient to warrant a present recommendation that the trustees be paid on a full-time basis. However, the imminent expansion of OHA's budget and responsibilities may lead to circumstances in which full-time compensation for the trustees would be appropriate.

4. For the same reasons that the Report of the 1986 Commission on Legislative Salary recommended that the Legislature review the necessity for and either repeal or reduce section 24-1, Hawaii Revised Statutes (providing for an annual allowance of \$5,000 for each Legislator), OHA should also eliminate the present annual allowance of \$7,200 permitted OHA trustees via internal policies and guidelines, particularly if the trustees are provided with salaries.

5. In April, 1990, the Attorney General's Office suggested to OHA that if the board finds that it is in the best interest of the office for OHA to continue paying the full premium costs for trustees' (and their families') health benefits, section 10-9, Hawaii Revised Statutes, should be amended to provide for such fringe benefits for the trustees. Presently, OHA pays the full costs of the health care premiums for participating trustees and their families and the statute has not been amended to authorize this expenditure. This issue should be resolved.

6. OHA trustees have personal financial obligations and their commitment to serve effectively should not require them to endure financial hardship. The thrust of this study is the alternative methods of compensation, as opposed to the level or amount of compensation. Accordingly, although this report makes no recommendations concerning the actual amount of compensation, the method of compensating trustees should provide for sufficient income so that the amount of income is not perceived as being a deterrent to service by prospective trustees.

ENDNOTES

1. Honolulu, Salary Commission of the City and County of Honolulu, Final Report and Salary Schedule, June 27, 1988, p. 10.
2. Ibid.
3. Statement of Mayor Frank Fasi, Salary Commission Final Report, p. 9.
4. Salary Commission Final Report, p. 10.
5. Hawaii, Senate Standing Committee Report No. 773 on House Bill No. 890, 10th Legislature, 1979, State of Hawaii. (At the 1978 Constitutional Convention, it was decided that OHA's trustees should be elected "to insure accountability and opportunity for scrutiny of the trustees by the beneficiaries." Hawaii, Constitutional Convention, 1978, Proceedings, Vol. I, Committee of the Whole Report No. 13, p. 1018.)

THE SENATE
SIXTEENTH LEGISLATURE, 1991
STATE OF HAWAII

S.C.R. NO. 222

MAR 15 1991

SENATE CONCURRENT RESOLUTION

URGING A STUDY OF ALTERNATIVE MEANS OF COMPENSATION OF THE BOARD
OF TRUSTEES OF THE OFFICE OF HAWAIIAN AFFAIRS.

WHEREAS, in 1978, Article XII of the Constitution of the State of Hawaii established the Office of Hawaiian Affairs (OHA) to hold title to all real and personal property set aside or conveyed to it which shall be held in trust for Native Hawaiians and Hawaiians; and

WHEREAS, Sections 5 and 6 of Article XII further created a Board of Trustees, who shall be Hawaiian, to be elected by qualified voters of Hawaiian ancestry, and to exercise power as provided by law to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for Native Hawaiians and Hawaiians, including all income and proceeds from the pro rata portion of the Public Trust set aside for Native Hawaiians; to formulate policy relating to affairs of Native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the Board for Native Hawaiians and Hawaiians; and

WHEREAS, Hawaii Revised Statutes, Section 10-3, delineates the considerable and substantive purposes of OHA, including the betterment of conditions of Native Hawaiians and Hawaiians, and in establishing general powers of the office (Hawaii Revised Statutes, Section 10-4), the statute clearly places OHA under the direction of the Board of Trustees; and

WHEREAS, the powers and duties of the Board in accordance with Hawaii Revised Statutes, Section 10-5, states that trustees shall:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for Native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in Hawaii Revised Statutes, Section 10-7;

- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for Native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of Native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of Native Hawaiians under Article XII, Section 4, of the State Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, and its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to public or private agencies for pilot projects, demonstrations, or both, where such projects or demonstrations fulfill criteria established by the board;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for Native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the Office of Hawaiian Affairs. Financial assistance may be rendered through such contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated; and

WHEREAS, in addition to the above, the board as designated in Hawaii Revised Statutes, Section 10-6, has general duties which shall be:

- (1) To develop, implement, and continually update a comprehensive master plan for Native Hawaiians and Hawaiians which shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on Native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of Native Hawaiians and Hawaiians;
 - (C) Establishment of immediate and long-range goals pursuant to programs and services for Native Hawaiians and Hawaiians;
 - (D) Establishment of priorities for program implementation and of alternatives for program implementation; and,
 - (E) Organization of administrative and program structure, including the use of facilities and personnel;
- (2) To assist in the development of state and county agency plans for Native Hawaiian and Hawaiian programs and services;
- (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and Native Hawaiians and act as a clearinghouse and referral agency;
- (4) To advise and inform federal, state, and county officials about Native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to Native Hawaiians and Hawaiians;
- (5) To conduct, encourage, and maintain research relating to Native Hawaiians and Hawaiians;
- (6) To develop and review models for comprehensive Native Hawaiian and Hawaiian programs;

- (7) To act as a clearinghouse for applications for federal and state assistance to carry out Native Hawaiian or Hawaiian programs or projects;
- (8) To apply for, accept, and administer any federal funds made available or allotted under any federal act for Native Hawaiians or Hawaiians; and
- (9) To promote and assist the establishment of agencies to serve Native Hawaiians and Hawaiians; and

WHEREAS, in addition, the board shall have powers which may be necessary for the full and effective performance and discharge of the duties imposed by Chapter 10 and which may be necessary to the duties imposed by Chapter 10 and which may be necessary to fully and completely effectuate the purposes of the chapter; and

WHEREAS, OHA has developed into an increasingly complex organization growing from a one-year appropriation of \$150,000 in 1980 to a biennium budget of \$20 million in 1990; and

WHEREAS, OHA will soon be acquiring significant funds and/or land based on legal entitlements owed to the trust by Act 395, Session Laws of Hawaii 1988 and Act 394, Session Laws of Hawaii 1990, which will result in a tremendous increase of \$100,000,000 in the assets to be managed by OHA, and a concomitant increase in the scope of programs to be funded by the increased assets; and

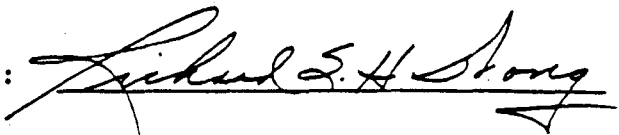
WHEREAS, it is now an appropriate time for a review of the compensation of the Board of Trustees in light of the increasing scope of their responsibilities in managing and administering the trust; now, therefore,

BE IT RESOLVED by the Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1991, the House of Representatives concurring, that a study be conducted by the Legislative Reference Bureau of alternative means to compensate the Board of Trustees in view of their increased responsibilities; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau report its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 1992; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Board of Trustees of the Office of Hawaiian Affairs and the Director of the Legislative Reference Bureau.

OFFERED BY:



By Request

Appendix B

COMMITTEES OF THE BOARD

The office of Hawaiian Affairs Bylaws, promulgated October 1991, lists the nine Standing Committees of the Board as follows:

1. A Committee on Budget, Finance, Policy and Planning to: recommend OHA goals; establish general priorities relating to those goals; develop planning; formulate policy; handle budget and financial matters; and carry out the selection and evaluation of the Administrator.
2. A Committee on Economic Development and Land to: monitor the economic conditions of the native Hawaiian or Hawaiian; to review and where feasible to recommend policies which will establish programs that will enhance the economic conditions of the native Hawaiian or Hawaiian collectively or individually; review laws, ordinances or conditions which negatively impact on the economic conditions of the native Hawaiian or Hawaiian and to recommend action to reverse such situations; monitor the use of the Office of Hawaiian Affairs' real estate including land and to recommend policy for the proper use of such items; monitor the use of condition of any real estate including land to which the Office of Hawaiian Affairs shall have an interest in whether by joint ownership, proprietary ownership, partnership or third party interest by way of receipt of income or potential income therefrom and to make recommendation of action to be taken to ensure that the asset as determined yields the highest and best interest on behalf of the native Hawaiian and Hawaiian.
3. A Committee on Education and Culture to: review and recommend establishment of specific programs to implement the goals and priorities established by the Master Plan; monitor educational programs throughout the State of Hawaii as it impacts on the native Hawaiian and Hawaiian; recommend policy which shall raise the awareness of the value of education in the Hawaiian community; explore methods by which the Office of Hawaiian Affairs can assist native Hawaiians and Hawaiians to achieve their educational goals; monitor the condition and use of properties under the control of the Office of Hawaiian Affairs, the county, the State, the federal government, private or public foundations or any other such properties that contain significant Hawaiian cultural sites or fixtures; and recommend policy regarding the treatment of significant cultural assets, values, and or other such items which impact on the cultural identity of the native Hawaiian or Hawaiian.
4. A Committee on Health and Human Services to: monitor health statistics and other information indicating the overall health patterns of native Hawaiians and Hawaiians; identify significant health problems being encountered by the Hawaiian community; review and recommend establishment of specific programs to implement the goals and priorities established by the Master Plan; monitor the access of native Hawaiians and Hawaiians to health care facilities and providers; monitor health and human service providers and [to] recommend policies and programs that shall result in the enhancement of service delivery to native Hawaiians and Hawaiians; monitor the condition of the native Hawaii and Hawaiian ohana and recommend policies and programs

to improve the condition of the ohana; coordinate efforts in the field of health and human services on behalf of native Hawaiians and Hawaiians.

5. A Committee on Legislative Review to: review all legislation or ordinances generated by the county and/or state government or its agents to determine its impact on the native Hawaiian and Hawaiian; recommend changes to existing or proposed laws that assist the native Hawaiian or Hawaiian achieve the betterment of conditions; recommend policy with regards to lobbying efforts on behalf of the native Hawaiian and Hawaiian on the state and county level.
6. A Committee on OHA Relations to: improve, expand, and coordinate relations among county, state, and federal government bodies and their agencies in an effort to bring improved services to the native Hawaiian and Hawaiian; conduct advocacy and unify constituents; oversee public relations and recommend policy to improve public relations and communications with the native Hawaiian and Hawaiian and among the various non-Hawaiian communities; review proposed OHA policy statements in terms of how they would impact the perception of OHA and how they may affect OHA's relations with other agencies and organizations; identify and recommend opportunities to form relationships with government and private organizations to share information and to advocate for the benefit of native Hawaiians and Hawaiians; recommend policy with regards to relations with other state governments or agencies, foreign governments or municipalities and other such areas of interaction.
7. A Committee on Entitlements to: provide oversight and conduct advocacy efforts in matters specifically relating to federal and state land claims and trust entitlements. Such matters shall include (but not be limited to) the retroactive and prospective monies due OHA.
8. A Committee on Sovereignty to: conduct advocacy efforts in matters specifically related to sovereignty, including conducting a thorough and systematic examination of various national and international sovereignty models and recommending and overseeing OHA's role in related educational processes and consensus building efforts toward the identification of a model sovereign entity.
9. A Committee on Housing to: monitor and recommend policies and programs in all areas of the provision of housing for native Hawaiians and Hawaiians to implement the goals and priorities established by the master plan; identify housing needs; coordinate efforts for the development of housing, particularly partnerships with other housing agencies.

Appendix C
SAMPLE QUESTIONNAIRE
FOR MEMBERS OF THE OHA BOARD OF TRUSTEES

Name _____

Note: All responses will be kept confidential.

1. How long have you served as a member of the OHA Board of Trustees?
2. What are your primary duties and responsibilities as a board member?
3. Have the duties or demands of your job changed over the years? If so, how?
4. Do you hold any other office or job other than your position with OHA? Is it a full- or part-time position?
5. For each year that you have served as an OHA Board member, please provide an approximation of the hours per month you spent on OHA-related duties (including attendance at board meetings).

1991:

1990:

1989:

1988:

6. Please provide an approximation of the hours you spend in a typical month on OHA-related tasks (i.e., time spent in fulfilling your duties and responsibilities as an OHA Board member) and a breakdown of the hours spent:

Total hours spent per month:

Breakdown of average monthly hours spent on OHA-related duties:

Hours spent in attendance at Board meetings (not including travel time):

Hours spent on committee work:

Hours spent in attendance at committee meetings:

Hours spent meeting with OHA beneficiaries on OHA-related matters:

Hours spent on administrative responsibilities:

Hours spent in attendance at community planning meetings:

Hours spent educating yourself on OHA-related matters:

Other:

7. Does your present workload and time commitment to OHA exceed the expectations you had when you first became a member of the OHA Board of Trustees?

If so, please explain.

8. What was the total compensation you received as a member of the OHA Board of Trustees in 1990?
9. What, if any, work-related benefits do you receive for your work with OHA?
10. Do you feel that the compensation amount you receive as a member of the OHA Board of Trustees is adequate given the nature of your work and the hours spent in fulfilling your duties and responsibilities?

If not, what do you feel would be a fair amount for compensation?

11. Do you feel that the method of compensation for OHA Board members is adequate given the nature of your work and the hours spent in fulfilling your duties and responsibilities?

If not, what do you feel would be an appropriate method of compensation?

12. To what extent does the manner and amount of your compensation as an OHA trustee affect your interest in continuing in your position in the future?

13. Please include any additional comments, ideas, or suggestions regarding alternative means of compensating the OHA Board of Trustees.

Please return to:
Legislative Reference Bureau
State Capitol, Rm. 004
Honolulu, HI 96813-2407

By: September 30, 1991.

Appendix D

STATE INDIAN BOARDS AND COMMISSIONS

Alabama Indian Affairs Commission¹

Composition: 11 members, 7 of whom are Indian representatives from the tribes in Alabama.

Purpose: Implements programs for Indian citizens; provides aid for Indians; assists Indian communities in social and economic development; promotes recognition of the Indians' right to pursue cultural and religious Indian traditions.

Compensation: None other than travel-related.

Arizona Commission of Indian Affairs²

Composition: 6 ex officio members and 9 members (2 non-Indian members, and 7 Indians) appointed by the governor.

Purpose: Assists and supports state and federal agencies in assisting Indians and tribal councils in Arizona; studies and makes recommendations to the governor and the legislature about Indian needs and goals; works for greater understanding and improved relationships between Indians and non-Indians by creating an awareness of the legal, social and economic needs of Indians in this state; promotes increased participation by Indians in local and state affairs and assists tribal groups in developing increasingly effective methods of self-government.

Compensation: Members of the commission serving by virtue of their office serve without compensation. Appointed members receive compensation for each day of attendance at meetings.

California Native American Heritage Commission³

Composition: 9 members, at least 5 of whom are elders, traditional people, or spiritual leaders of California Native American tribes, nominated by Native American organizations, tribes or groups within the state.

Purpose: Requests and utilizes the advice and service of all federal, state, local, and regional agencies, makes recommendations relative to Native American sacred places located on private lands, inaccessible to Native Americans for the purpose of facilitating or assuring access thereto by Native Americans.

Compensation: Members serve without compensation but are reimbursed expenses.

Colorado Commission of Indian Affairs⁴

Composition: 5 ex-officio members, 4 representatives from the Ute tribes, and 2 at-large members, selected by the commission.

Purpose: Coordinates intergovernmental dealings between tribal governments and the state of Colorado; investigates the needs of Indians of Colorado and provides technical assistance in the preparation of plans for the alleviation of such needs; cooperates with and secures the assistance of the local, state, and federal governments in formulating and coordinating programs regarding Indian affairs; reviews legislation affecting Indians in Colorado; accepts and receives gifts, funds, grants, bequests, and devices for use in furthering the purposes of the commission; contracts with public or private bodies to provide services and facilities for promoting the welfare of the Indian people; makes legislative recommendations; and makes reports of findings and recommendations.

Compensation: No compensation for ex officio members. Others receive \$35 per day for each day the commission is in session.

Connecticut Indian Affairs Council⁵

Composition: 1 representative appointed from 5 Indian tribes, 3 persons appointed by governor not of Indian lineage.

Purpose: Reviews the regulations governing Indian affairs in Connecticut and advises the commissioner on promulgation of new regulations. Annually reports the activities of the council and the state of affairs of the Indian people in the state.

Compensation: Council members receive \$25 per day and are reimbursed their necessary expenses.

Northwest Florida Creek Indian Council⁶

Composition: Members are appointed by the governor, at least one-half of which are Creek Indians.

Purpose: Enables the Creek Indians residing within the state to enjoy the full benefits of state, local and federal programs for the economic, cultural, and social advancement of the Creek Indian.

Compensation: N/A

Georgia Department of Indian Affairs⁷

Composition: N/A

Duties: Studies, considers, and disseminates information on all aspects of Indian affairs; investigates relief needs of Indians of Georgia and provides technical assistance in the preparation of plans for the alleviation of such needs; encourages and implements coordination of applicable resources to meet the needs of Indians in Georgia; and preserves and fosters the culture and heritage of Indians in the state.

Compensation: N/A

Louisiana Governor's Commission on Indian Affairs⁸

Composition: 9 members.

Purpose: Coordinates state services for Indians and to administer the Indian Education Assistance Fund.

Maine Indian Tribal-State Commission⁹

Composition: 4 members appointed by the governor, 4 appointed by the Passamaquoddy Tribe and the Penobscot Nation.

Purpose: Reviews the social, economic, and legal relationship between the tribes and the state.

Compensation: Commission members are paid \$75 per day and reimbursed for reasonable expenses including travel.

Maryland Commission on Indian Affairs¹⁰

Composition: 9 members appointed by the governor, a majority of whom are members of the native American Indian communities of the State, and at least 3 of whom are appointed from Indian communities indigenous to Maryland. Each member must have a demonstrable knowledge of Indian culture and history, and be sensitive to the problems of the Indian communities.

Purpose: Initiates, directs and coordinates projects furthering the understanding of Indian history and culture, studies the status and economic and legal needs of the Indians; studies the status of all Indian groups, tribes and communities in the state and assists them in obtaining recognition from the federal government.

Compensation: Members receive no compensation, but may be reimbursed for proper and necessary expenses.

Massachusetts Commission on Indian Affairs¹¹

Composition: 7 members, appointed by the governor, all of whom are of American Indian descent and represent the major tribes of American Indian population located within the commonwealth.

Purpose: Investigates problems common to American Indians who are residents of the commonwealth. Assists tribal councils, Indian organizations and individuals in their relationship with state agencies; assists in all other rights or services concerning Indian residents of the commonwealth; and makes recommendations concerning programs and policies that will best serve the interest of the Indian residents of the commonwealth.

Compensation: N/A.

Michigan Commission on Indian Affairs¹²

Composition: 11 members appointed by the governor, 9 of whom having not less than 1/4 quantum Indian blood, 2 of whom from Indian reservations and recommended by the intertribal council, and 2 members at-large, not necessarily Indian.

Purpose: Investigates problems common to state Indian residents; assists tribal governments, Indian organizations and individuals with problems of education, employment, civil rights, health, housing, treaty rights and other rights or services due Indians of the state.

Compensation: The commission meets at least 4 times in each calendar year. Commission members receive \$35 for attending each meeting. The number of compensated meetings may not exceed 25 meetings in each year. Reimbursement for travel expenses is also permitted.

Montana Committee on Indian Affairs¹³

Composition: 2 members of the senate and 2 members of the house of representatives.

Purpose: Establishes and places Indian citizens in a position to take their rightful place in society and assume the rights, duties and privileges of full citizenship; seeks opinions of and information from Indian tribes in order to gain insight into Indian/non-Indian relations; holds hearings to promote better understanding, encourage and foster participation of Indian people; acts as a liaison between the Indian people and the legislature; and reports findings to the legislature.

Compensation: Committee members receive compensation and expenses under legislative rules.

Nebraska Commission on Indian Affairs¹⁴

Composition: 15 American Indians from different tribes, residing within the state.

Purpose: Joins representatives of all Indians in Nebraska to enhance the cause of Indian rights and develop solutions to problems common to all Nebraska Indians.

Compensation: Commission members each receive \$35 for each day spent in the performance of their duties and receive reimbursement for actual expenses incurred.

Nevada Indian Commission¹⁵

Composition: 5 members appointed by governor, 3 of whom are Indians and 2 representatives of the general public.

Purpose: Studies matters affecting the social and economic welfare and well-being of American Indians residing in Nevada, including matters and problems relating to Indian affairs and to policy and operations affecting Indians.

Compensation: Commissioners receive a salary of not more than \$80 for each day spent on commission work, as well as per diem allowance and travel expenses.

New Mexico Office of Indian Affairs¹⁶

Composition: 10 members, 8 of whom are Indians, appointed by the governor.

Purpose: Serves as coordinating agency for intergovernmental programs concerning tribal governments and the state; investigates and studies Indian conditions and relations within the state, relating to health, economy, and education; and provides an opportunity for the presentation and exchange of ideas in respect to Indian affairs of the state.

Compensation: No compensation other than per diem and mileage when engaged in commission business.

North Carolina State Commission of Indian Affairs¹⁷

Composition: 2 persons appointed by the General Assembly, 4 ex officio members and 15 representatives of the Indian community.

Purpose: Deals fairly and effectively with Indian affairs, assists Indian communities in social and economic development and promotes recognition of and the right of Indians to pursue cultural and religious traditions; studies and disseminates information on any aspect of Indian affairs; investigates relief needs and provides technical assistance.

Compensation: Indian commission members receive \$15 per diem for each day of service and receive reasonable expenses.

North Dakota Indian Affairs Commission¹⁸

Composition: 8 ex officio members, 5 tribal chairmen and representatives of each reservation appointed by the tribal council.

Purpose: Assists and mobilizes the support of state and federal agencies in assisting Indian individuals and state groups, especially the 4 tribal councils, in developing their own goals; projects plans for achieving those goals; assists tribal groups in developing increasingly effective institutions of self-government; works for greater understanding and improved relationships between Indians and non-Indians.

Compensation: Mileage and travel expenses only.

Oklahoma Indian Affairs Commission¹⁹

Composition: 9 members appointed by the governor representing the geographic areas and the various tribes of the state, as well as a Director who must be at least one-fourth Indian.

Purpose: To promote unity, purpose, and understanding among the Indians of Oklahoma.

Compensation: N/A.

Oregon Commission on Indian Services²⁰

Composition: 2 legislators and 11 Indians. An executive officer and other staff are employed.

Purpose: Compiles information relating to services available to Indians; develop and sponsor programs to inform Indians of available services and to make Indian needs known to the agencies to expand and improve activities affecting the Indians.

Compensation: Members who are not members of the legislative assembly are provided compensation in the amount of \$30 per day for each day engaged in the performance of official commission-related duties.

Narragansett Indian Land Management Corporation²¹

Composition: 9 directors, 5 of whom are appointed by the Indian corporation, 2 of whom are appointed by the governor, 1 appointed by the legislature and 1 appointed by the town council.

Purpose: Receives the settlement lands designated in a 1978 law and suit won by the Indians for lands previously lost, invests funds and accepts grants and contributions.

Compensation: N/A.

South Dakota Commission of Indian Affairs²²

Composition: 14 members, including 2 members at-large, 9 appointed by the governor, from each of the 9 recognized state Indian tribes.

Purpose: Aids in securing and coordinating federal, state and local resources to help solve Indian problems and to serve as an advocate of the Indian people. (South Dakota also has an Indian Business Development Organization, which provides grants to persons of Indian descent and promotes business development by people of Indian descent).

Compensation: The coordinator of Indian affairs, appointed by the governor, is provided an annual salary. The board receives compensation on a per diem basis.

Tennessee Commission of Indian Affairs²³

Composition: 5 members appointed by the governor, at least 3 of whom are not less than 25% native American lineage. An executive director and additional staff and consultants are employed to carry out the day-to-day business of the commission.

Purpose: Assists Indian communities in social and economic development; to promote recognition of and the right of Indians to pursue their cultural and religious traditions; and assists local, state and federal resources for the implementation or continuation of meaningful programs for Indian citizens.

Compensation: Commission members are compensated in accordance with state travel regulations.

Utah Board of Indian Affairs²⁴

Composition: 7 members, 3 of whom are Indians, 4 members selected from the state at-large.

Purpose: Expends moneys to promote, encourage, and assist Navajo industrial, agricultural, or business enterprise for the improvement of economic conditions and employment prospects of Indians.

Compensation: Each member receives per diem and expenses incurred in carrying out their official duties.

Virginia Council on Indians²⁵

Composition: 13 members appointed by the governor, 8 of whom are Indians, 2 members at-large from Indian population, 2 legislators and 1 member from public at-large.

Purpose: Gathers information on and make studies and conducts research into the Indian tribes and suggest ways in which Indians may reach their potential and make full contribution to the state.

Compensation: N/A.

Wyoming Indian Affairs Council²⁶

Composition: 7 members appointed by the governor.

Purpose: Collects and provides information regarding matters of common interest to Indians including wildlife concerns; water rights; educational matters; economic development; and the delivery of health and social services.

Compensation: Members of the board serve without compensation but receive travel expenses and per diem for attending and traveling to and from board meetings.

ENDNOTES

1. Ala. Code, sec. 41-9-708 et seq. (Supp. 1990).
2. Ariz. Rev. Stat. Ann., sec. 41-541 et seq. (Supp. 1990).
3. Cal. Pub. Res. Code, sec. 5097.91 et seq. (1984).
4. Colo. Rev. Stat., sec. 24-44-101 et seq. (1988).
5. Conn. Gen. Stat., sec. 47-59 et seq. (1991).

6. Fla. Stat. Ann., sec. 285.19 (1991).
7. Ga. Code Ann., sec. 40-813 et seq. (1989).
8. La. Rev. Stat. Ann., sec. 46:2302 (1991).
9. Me. Rev. Stat. Ann., sec. 6212 (1990).
10. Md. Code Ann., sec. 5-401 et seq. (Supp. 1990).
11. Mass. Gen. Laws Ann., sec. 38 (Supp. 1991).
12. Mich. Comp. Laws, sec. 16.711 et seq. (1981).
13. Mont. Code Ann., sec. 90-11-101 et seq. (1991).
14. Neb. Rev. Stat., sec. 81-1214 et seq. (1989).
15. Nev. Rev. Stat., sec. 233A.010 et seq. (1987).
16. N.M. Stat. Ann., sec. 28-12-4 et seq. (Supp. 1990).
17. N.C. Gen. Stat., secs. 138-5 and 143B-404 et seq. (1990).
18. N.D. Cent. Code, sec. 54-36-01 et seq. (1989).
19. Okla. Stat., tit. 74 sec. 201 et seq. (1983).
20. Or. Rev. Stat., secs. 172.100 et seq. and 292.495 (1989).
21. R.I. Gen. Laws, sec. 37-18-1 et seq. (1990).
22. S.D. Codified Laws Ann., secs. 1-4-1-1 et seq. and 4-7-104 (1991 Supp.).
23. Tenn. Code Ann., sec. 4-34-101 et seq. (1990 Supp.).
24. Utah Code Ann., sec. 63-36-1 et seq. (1990).
25. Va. Code, sec. 9-138.1 et seq. (1990 Supp.).
26. Wyo. Rev. Stat., sec. 9-2-1901, et seq. (1989).

