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## RESOLUTION

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INITIATING AMENDMENTS TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED, TO CREATE THE CITY AND COUNTY OF HONOLULU DEFERRED COMPENSATION BOARD.

WHEREAS, pursuant to HRS Section 88E-14, the City and County of Honolulu Public Employer Deferred Compensation Plan holds, on behalf of current and former City employees, contributions made by the employees to be invested and to be used by the employees upon their retirement; and

WHEREAS, the Mayor created a Deferred Compensation Committee whose role is to select and manage the entity which administers the Deferred Compensation Plan on behalf of the city; and

WHEREAS, the Deferred Compensation Committee is a five-member board made up of department heads and division chiefs, with no board member having been selected by City employees or retirees even though the monies in the Deferred Compensation Plan originate solely from contributions made by the employees and retirees; and

WHEREAS, HRS Chapter 92, Part I (the "Sunshine Law") applies to county boards, commissions and committees and requires that all meetings of such entities be open to the public and allows all interested persons to provide oral testimony on any agenda items; and

WHEREAS, because the administration does not consider the committee to be a county "board" under the "Sunshine Law," the committee has not been operating under that law and need not hold its meetings in public and is not required to take public testimony; and

WHEREAS, the Council believes that it is necessary to require that the board administering the Deferred Compensation Plan follow the Sunshine Law so that the participants in the plan will be able to monitor and have input into the decisions made by the board; and

WHEREAS, requiring the Deferred Compensation Committee to comply with the Sunshine Law does not imply that the other County boards and commissions are not subject to the Sunshine Law; and

WHEREAS, it is the Council's understanding that the committee holds meetings at hotels and other nongovernmental locations during city hours and that committee



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## RESOLUTION

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members attend mainland conventions related to the work of the committee while on the City payroll; and

WHEREAS, Resolution 11-284, FD1, adopted by the Council on November 3, 2011, urged the Mayor to create a Deferred Compensation Board which would include board members recommended by employees and would be subject to the Sunshine Law;

WHEREAS, in an April 5, 2012 letter from the Director of Budget and Fiscal Services to Committee Chair Ann Kobayashi and the members of the Council's Budget Committee, the Director stated that the current Deferred Compensation Committee, which includes no board members recommended by City employees, will continue to administer the city employees' and retirees' Deferred Compensation Plan; and

WHEREAS, the committee, a body that oversees more than \$400 million dollars of city employees' and retirees' personal funds, should be accountable to and representative of the employees whose monies are invested in the plan, and the discussions, deliberations, decisions and actions of the committee should be conducted as openly as possible; and

WHEREAS, in order to restore public trust and confidence in government, and to ensure that the body which administers the Deferred Compensation Plan serves the plan participants and is fully accountable to them for the actions that it takes on their behalf, the committee should be abandoned in favor of a board that is subject to the Sunshine Law and includes representatives from among the City's employees and retirees; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That the following question be placed on the ballot at the 2012 general election:

"Shall the Revised City Charter be amended to establish a separate and independent board, whose members will include current and former employees, to oversee and manage their voluntary contributions to the City Deferred Compensation Plan?"

2. That Article IX, Revised Charter of the City and County of Honolulu 1973, as amended ("Financial Administration"), is amended by adding a new Chapter 4 to read as follows:



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## RESOLUTION

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**"CHAPTER 4  
CITY AND COUNTY OF HONOLULU DEFERRED COMPENSATION BOARD**

**Section 9-401. Organization --**

There shall be a City and County of Honolulu Deferred Compensation Board.

**Section 9-402. Powers, Duties and Functions --**

The City and County of Honolulu deferred compensation board shall select and manage the entity which administers the Deferred Compensation Plan. All actions taken by the board shall be on behalf of the participants of the plan and the board shall be fully accountable to the participants.

**Section 9-403. Selection of the Board Members --**

1. The board shall consist of seven voting members. The board shall be governed by Section 13-103 except as provided otherwise in this Chapter or Section 16-\_\_\_\_.

2. Five of the seven members shall be appointed by the mayor and confirmed by the council and shall be current and former employees who are plan participants. These board members shall be selected from a list of three names of current or former employees of the city who are plan participants provided by each of the following organizations, or successor organizations, to the mayor prior to January 1, 2013 for initial appointments and, for subsequent appointments, six months prior to the expiration of a board member's term:

- (a) The Board of Directors of the Hawaii Government Employees Association;
- (b) Hawaii State Executive Board of the United Public Workers union;
- (c) State Board of Directors of the State of Hawaii Police Officers Union;
- (d) Executive Board of the Hawaii Fire Fighters Association; and



## RESOLUTION

(e) The city council, who shall select current or former employees who are or were employees excluded from collective bargaining.

In the event the mayor fails to appoint or reappoint a member for confirmation by the council within three months of the end of a board member's term, the council shall appoint and confirm a member from the lists provided by the organizations.

At least one of the five members shall have an educational and professional background in finance and a knowledge of asset allocation and managing investments.

3. Two of the seven remaining members shall be the director of budget and fiscal services, or designee, and the director of human resources, or designee, serving ex officio.

### **Section 9-404. Compliance with Sunshine Law --**

The board shall comply with all provisions of Chapter 92, Part I, of the Hawaii Revised Statutes or any successor legislation."

3. That Article XVI, Revised Charter of the City and County of Honolulu 1973, as amended ("Transition Schedule"), is amended by adding a new section to be appropriately designated by revisor of the Charter and to read as follows:

### **"Section 16- . Transitional Provisions Concerning the City and County of Honolulu Deferred Compensation Board --**

The initial appointments of the five appointed members of the City and County of Honolulu deferred compensation board shall be for one member each to serve for five, four, three, two and one year, respectively. The initial appointments shall be made by the mayor prior to January 1, 2013."

4. Except with respect to the new Chapter 4 of Article IX, new Charter material is underscored. When revising, compiling or printing these Charter provisions for inclusion in the Revised Charter of the City and County of Honolulu 1973, as amended, the Revisor of the Charter need not include the underscoring.
5. If these Charter provisions are amended by any other Charter amendment(s) approved by the electors in the 2012 general election, the Revisor of the Charter,



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## RESOLUTION

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in revising, compiling or printing the Revised Charter: (a) May designate or redesignate articles, chapters, sections or parts of sections, and rearrange references thereto; and (b) Shall, except as otherwise expressly provided in this resolution or in the other resolution(s) amending these Charter provisions, give effect, to the extent possible, to all of the amendments approved. The Revisor of the Charter may also change capitalization or the form of numbers and monetary sums for the sake of uniformity.

6. That the City Clerk be and is hereby directed:
  - a. To prepare the necessary ballots with the question contained in this resolution and with spaces for "yes" and "no" votes on the question for presentation to the electors at the 2012 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other Charter amendment questions presented to the electors at the same election; and
  - b. To publish the above-proposed Charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to their submission to the electors at the 2012 general election.



**RESOLUTION**

- 7. That upon approval of the Charter amendment question posed in this resolution by a majority of the electors voting thereon, as duly certified, Sections 2 and 3 of this "Be It Resolved" clause shall take effect.

INTRODUCED BY:

*Ann H. Kobayashi*

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DATE OF INTRODUCTION:

**MAY 31 2012**

Honolulu, Hawaii

Councilmembers