

**SB 1773, SD1**



# HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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February 12, 2008

The Honorable Clarence K. Nishihara, Chair  
The Honorable Donna Mercado Kim, Vice Chair  
Senate Committee on Tourism and Government Operations  
Hawaii State Capitol, Room 213  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 1773, S.D. 1, Relating to Procurement**

Hearing: Tuesday, February 12, 2008, 1:15 p.m.  
State Capitol, Conference Room 229

Testifying: Daniel J. Mollway  
Executive Director and General Counsel  
Hawaii State Ethics Commission

The Honorable Clarence K. Nishihara, Chair; The Honorable Donna Mercado Kim, Vice Chair; and Honorable Members of the Senate Committee on Tourism and Government Operations:

Thank you for the opportunity today to testify on S.B. No. 1773, S.D. 1, Relating to Procurement. The purpose of this bill is to require advisory committees that make recommendations to expend public monies on the procurement of goods, services, or capital projects to be subject to the sunshine, public records, and financial disclosure laws.

Our comments with regard to this bill relate to the requirement that members of advisory committees, boards, commissions, or similar groups, designated in this bill, would be required to file financial interests disclosure statements with our office in accordance with chapter 84, HRS, the State Ethics Code. Chapter 84, HRS, contains the State Ethics Code for state officials and state employees (including board members), and includes financial interests disclosure requirements for certain state officials, state employees, and state board members.

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Our first concern with this bill relates to the jurisdiction of the State Ethics Commission with respect to S.B. No. 1773, S.D. 1. In accordance with Article XIV of the Constitution of the State of Hawaii (attached), the State Ethics Commission has jurisdiction only over state officials and state employees. State employees include members of state boards, commissions, and committees. Article XIV of the Constitution of the State of Hawaii creates a separate county ethics board for each of the four counties in Hawaii. S.B. No. 1773, S.D. 1, as written, would appear to require advisory committees, boards, commissions, or similar groups that are county agencies to be subject to the financial interests disclosure requirements of chapter 84. We believe that this would conflict with Article XIV of the Constitution of the State of Hawaii, which creates a separate ethics board for each of the four counties of the State of Hawaii, and also mandates that the counties shall adopt financial interests disclosure requirements for certain county officials, county employees, and county board or commission members.

Even if this bill were to make adjustments with respect to filing financial disclosure statements for state advisory committees, we still have concerns about this bill.

Currently, the financial interests disclosure law of the State Ethics Code, HRS section 84-17(c)(9), requires that members of state boards or commissions whose original terms of office are for periods exceeding one year and whose functions are not solely advisory, are required to file financial interests disclosure statements. For this reason, the State Ethics Commission has not required state advisory committees, state boards, or state commissions to file financial interests disclosure statements if the terms of office for the members of such boards, commissions, or committees are for one year or less, or if the functions are "solely advisory."

The fact that state boards that are "solely advisory" are excluded from the requirement to file financial interests disclosure statements is consonant with the requirements of Article XIV of the Constitution of the State of Hawaii. Article XIV provides as follows: "Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures." [Emphasis added.]

With regard to S.B. No. 1773, S.D. 1, it appears that the members of state advisory committees will not have the requisite "significant discretionary or fiscal powers" because the committees' or boards' or commissions' duties would be "solely advisory" in the sense that the duties of the advisory committees, boards, and commissions would be to make "recommendations" for a procurement, or "recommendations" regarding the making of decisions to procure goods or services in an amount in excess of \$100,000.

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While the Hawaii State Ethics Commission is aware of the reasons for requiring financial interests disclosure statements to further transparency in government, at the same time, it appears that Article XIV of the Constitution of the State of Hawaii requires more than the mere making of "recommendations" to justify the filing of financial disclosures by a board, commission, or committee. Further, from our experience, members of the public generally believe that the filing of a disclosure statement of financial interests is overly burdensome if their duties are only advisory in nature.

In summary, for the purposes of the State Ethics Commission, even if this bill made adjustments so that the applicable ethics boards had the proper jurisdiction, the filing of financial interests disclosure statements by state committees that are solely advisory for the purpose of making only recommendations for procurement and other purchases, may be too burdensome and unwarranted in terms of the requirement in Article XIV of the Constitution of the State of Hawaii that boards have "sufficient discretionary or fiscal powers" in order to warrant the filing of a disclosure statement. This requirement is currently set forth in HRS section 84-17(c)(9), which excludes from the disclosure requirements the members of state boards whose duties are "solely advisory."

Please note that our comments relate only to the jurisdiction of the State Ethics Commission, and not to the jurisdiction of other county ethics boards.

Thank you for this opportunity to testify on this bill today. I would be happy to address any questions that the Members of this Committee may have.

## ARTICLE XIV CODE OF ETHICS

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**Revision note.** — This article, entitled "Code of Ethics," is new, added by the Constitutional Convention of 1978 and the election on November 7, 1978. The former Article XIV, entitled "General and Miscellaneous Provisions," now appears as Article XVI.

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The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government. To keep faith with this belief, the legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of the boards, commissions and other bodies.

Each code of ethics shall be administered by a separate ethics commission, except the code of ethics adopted by the constitutional convention which shall be administered by the state ethics commission. The members of ethics commissions shall be prohibited from taking an active part in political management or in political campaigns. Ethics commissioners shall be selected in a manner which assures their independence and impartiality.

Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, use of position, contracts with government agencies, post-employment, financial disclosure and lobbyist registration and restriction. The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies. [Add Const Con 1978 and election Nov 7, 1978]

**Cross references.** — As to code of ethics and standards of conduct for certain offices and public employees of the state, see Chapter 84.

LINDA LINGLE  
GOVERNOR



PROCUREMENT POLICY BOARD  
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LESLIE S. CHINEN  
DARYLE ANN HO  
GREGORY L. KING  
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**TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE  
SENATE COMMITTEE  
ON  
TOURISM AND GOVERNMENT OPERATIONS**

February 12, 2008

SB 1773, SD 1

**RELATING TO PROCUREMENT.**

Chair Nishihara, Vice Chair Kim and committee members, thank you for the opportunity to testify on SB 1773, SD1. This bill requires advisory committees that make recommendations to expend public moneys on the procurement of goods, services, or capital projects to be subject to the sunshine, public records, and financial disclosure laws.

The State Procurement Office (SPO) supports the intent of this bill that requires disclosure of information for members of a committee that have a role in preparing recommendations on certain procurements in excess of \$100,000. However, as the bill acknowledges, there are committees in HRS Chapter 103D that should not be subject to disclosure requirements in this bill. We are requesting that this bill also not apply to committees established pursuant to HRS §§103D-213, 103D-303 and 103D-304.

Under HRS §103D-213, advisory groups appointed by a chief procurement officer may assist in the development of specifications or procurement in specific areas, and any other matters within the authority of the chief procurement officer.

Under HRS §103D-303, evaluation committees may be formed to evaluate proposals submitted in response to a request for proposals. This committee consists of at least three (3) government employees and may, at the option of the procuring agency, include non-government personnel. Committee members sign an affidavit attesting to being qualified to serve as a committee member that includes a declaration of having no personal, business, or any other relationship that will influence their decision in the evaluation process.

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Under HRS §103D-304, selection committees are also used in the procurement of professional services. Similarly, as with the review committee in this process, selection committee members sign an affidavit attesting to being qualified to serve as a committee member that includes declaration of having no personal, business, or any other relationship that will influence their decision in the evaluation process. In addition, posting requirements for the professional services awards available at <http://www6.hawaii.gov/spo2/source/> for contracts exceeding \$5,000 includes the names of review and selection committee members utilizing this process.

Thank you.