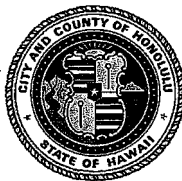


ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 Fax: (808) 527-6936 EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

MUFI HANNEMANN  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Testimony of the Honolulu Ethics Commission  
On SB No. 2937, Relating to Ethics  
Senate Committee on Intergovernmental and Military Affairs  
Monday, February 4, 2008  
1:15 p.m.  
Conference Room 229

Good afternoon Chair Inouye and Vice Chair Tsutsui, my name is Chuck Totto and I am the Executive Director and Legal Counsel for the Honolulu Ethics Commission.

The Commission strongly **supports** the passage of SB 2937. By an overwhelming majority (82%), the voters on Oahu authorized the Commission to impose civil fines on elected city officers who commit serious ethics violations.

Yet, there is a stumbling block to accomplishing this goal in the current wording of HRS Sec. 46-1.5(24)(A). This section eliminates the Commission's ability to impose civil fines unless the violator has been asked to stop the violation, but continues it. This law makes sense to protect the public from being fined without a notice to cease or correct a building code violation, but makes no sense in the context of serious ethics violations.

Limiting the Commission's power to fine by requiring a cease or correct notice would allow ethics law violators to escape civil fines and unjustly enrich themselves at the public's expense. Let me give you a real life example. Under current state law a councilmember could misuse \$150,000 of city resources for her political campaign, but would not be subject to a fine unless she was told to stop but continued violating the law. This is an absurd result that may easily be corrected by the Legislature.

Also, regarding HRS Sec. 46-1.5(24)(F) the bill requires that an appeal of a civil fine would go to the circuit court. Otherwise, the city would be required to create another city agency to conduct the same review.

For clarity, the Commission recommends combining the proposed changes into a new paragraph to the statute to read as follows:

(G) Notwithstanding any law to the contrary, the ethics commission of each county, as authorized by county charter or ordinance, may impose a civil fine for a violation of the county ethics laws after reasonable notice and opportunity for a hearing under chapter 91. Any appeal shall be made in accordance with chapter 91. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court.

This amendment ensures that:

1. Before a fine may be imposed, county law must authorize the ethics commission to impose a civil fine.
2. The independence of the county ethics boards is preserved as required by Article XIV of the Hawaii State Constitution;
3. Due process protections are followed; and
4. The public will be able to deter ethical misconduct and, when appropriate, punish violators.

Thank you for allowing me to testify in support of this measure. I would be happy to answer any questions.