



HAWAII  
STATE  
ETHICS  
COMMISSION

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

March 13, 2008

The Honorable Tommy Waters, Chair  
The Honorable Blake K. Oshiro, Vice Chair  
House Committee on Judiciary  
Hawaii State Capitol, Room 302  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 945, H.D. 1 (Proposed H.D. 1),  
Relating to Ethics**

Hearing: Thursday, March 13, 2008, 3:15 p.m.  
State Capitol, Conference Room 325

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

The Honorable Tommy Waters, Chair; The Honorable Blake K. Oshiro, Vice Chair;  
and Honorable Members of the House Committee on Judiciary:

Thank you for this opportunity to testify today on S.B. No. 945, H.D. 1 (Proposed H.D. 1), Relating to Ethics. The Hawaii State Ethics Commission is only concerned with Sections 2, 3, and 4 of this bill.

With respect to Section 2 of this bill, Section 2 of this bill in essence creates something of a "nepotism" statute for legislators, at least with respect to spouses. Under Section 2, legislators would be prohibited from hiring their spouse for any position in the Legislature over which the legislator exercises jurisdiction. Further, the legislator could not advocate for the hiring or promotion of a spouse for another position within the Legislature.

While the Hawaii State Ethics Commission supports this section of this bill, the Hawaii State Ethics Commission would like to suggest that this committee consider adopting a general nepotism statute for state officials and state employees of the State of Hawaii.

000118

The Honorable Tommy Waters  
The Honorable Blake K. Oshiro  
March 13, 2008  
Page 2

It has been the experience of the Hawaii State Ethics Commission that nepotism is unfortunately wide-spread in this State. For this reason, we believe that the issue of nepotism in the State government of Hawaii should be addressed across the board, rather than be limited to the Legislature, and the spouses of legislators.

As to the wording of such a nepotism statute, I would recommend wording along the lines of a nepotism provision in the Constitution of the State of Missouri. Article VII, Section 6, of the Missouri State Constitution, regarding nepotism, states as follows:

Any public officer or employee in the state who, by virtue of his office or employment, names or appoints to public office for employment, any relative within the 4<sup>th</sup> degree by consanguinity or affinity, shall thereby forfeit his office or employment.

I would suggest that this language be amended to state something on the order that legislators, state officials, and state employees are prohibited from hiring or promoting any relative within the 4<sup>th</sup> degree of consanguinity or affinity, or recommending to any other state agency that such a relative be hired or promoted, and so forth.

The question of nepotism has come up as long as I have been with the Hawaii State Ethics Commission, since 1981. In the 1970's, the Legislature had rejected a nepotism statute suggested by the Hawaii State Ethics Commission. However, from what I have seen, especially within the last few years, regarding nepotism, I believe that it is time for Hawaii to adopt a nepotism statute applicable to state officials and state employees.

The other section of this bill of interest to our office is Section 4. Under this section of the bill, HRS section 84-15 of the State Ethics Code, would be amended to prohibit a legislator, or a business in which a legislator has a controlling interest, from entering into any contract for goods, services, or construction with any "entity" that receives any state funding where the contract involves goods, services, or property of a value in excess of \$10,000 in any fiscal year.

Currently, HRS section 84-15 would allow a legislator, or a company in which a legislator has a controlling interest, to enter into a contract with a state agency so long as the contract is awarded by competitive sealed bidding pursuant to Section 103D-302 or Section 103D-303, which relates to competitive sealed proposals. If these competitive processes are not utilized, the state agency is required to post a notice of its intent to award such a contract with the Hawaii State Ethics Commission at least ten days before the contract is awarded.

000119

The Honorable Tommy Waters  
The Honorable Blake K. Oshiro  
March 13, 2008  
Page 3

The purpose of amending HRS section 84-15 with respect to legislators appears to address the notion that legislators, or companies in which they have controlling interests, may be receiving preferential treatment in being awarded contracts. We assume that to some degree this is in fact occurring, and for that reason we would support this bill. However, we would like to note that legislators serve in a part-time capacity, and thus care should be taken that this bill not unfairly intrude upon a legislator's ability to earn a living. That being said, the underlying basis of the State Ethics Code is to promote the public's confidence in state officials and in state government, and thus if there is an appearance or actuality that legislators are receiving preferential treatment with respect to contracts for their personal services, or with regard to companies in which they have a controlling interest, we believe that an amendment to HRS section 84-15 is warranted.

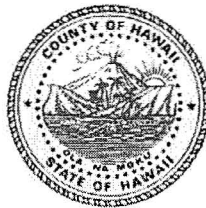
We note that in this part of the bill, legislators are being singled out, as opposed to all state officials and employees. This is a concern for us, since other state officials or state employees (including board members) may be involved in similar abuse. However, if a restriction with respect to only legislators seems warranted at this time, we have no objection.

We would like to point out that some aspects of the language that appears in the amendment to HRS section 84-15, barring legislators from entering into contracts, is somewhat confusing. One part of the provision refers to contracts for "goods, services, or construction" [emphasis added], while the other part of the sentence refers to "goods, services, or property" [emphasis added]. This discrepancy, we believe, should be addressed. Further, we are not sure what is meant by the term "entity." We are not sure whether this term is meant to include state agencies who use state funds in contracts or in awarding contracts, or entities that receive state funds and then in turn use such state funds to award contracts. The way this bill is currently written, it seems that a company in which a legislator has a controlling interest would be barred from contracting with an entity merely because that entity receives state funds via an unrelated contract, rather than the fact that it is the state funds that will be used with respect to the new contract. Thus, we believe that these concerns should be discussed and addressed.

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.

000120

Harry Kim  
Mayor



Michael R. Ben, SPHR  
Director of Human Resources

Ronald K. Takafashi  
Deputy Director of Human Resources

## County of Hawai'i Department of Human Resources

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March 13, 2008

The Honorable Tommy Waters, Chair  
And Members of the Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, HI 96813

Dear Chairman Waters and Members of the Committee on Judiciary:

### **Re: Proposed SB 945, HD 1 Relating to Ethics**

I am Michael R. Ben, Director of Human Resources for the County of Hawai'i. I have implemented and administered drug and alcohol testing of our County employees with commercial driver's licenses, and our fire fighters, beginning in 1996. I am testifying to request additional provisions are added, or clarification made to Section 1 of the proposed bill. Section 1 pertains to drug testing of elected officials and disqualification and forfeiture of office.

### **Statement of Public Interest**

I suggest that a clear statement be provided on the compelling public interest for drug testing of elected officials, so as to compel this invasion of privacy of these elected officials. All individuals are protected from government's invasion of their privacy under Article IV of the United States Constitution. The Supreme Court and other lower courts have repeatedly ruled that drug testing constitutes an unwarranted invasion of privacy. These courts have ruled that only a showing of compelling public interest would government be able to drug test individuals.

### **Cost**

Since Chapter 329B, HRS requires third-parties to pay for the cost of tests, may I suggest that the requirement that the test(s) be conducted at the expense of the elected official be amended to provide that notwithstanding Chapter 329B, HRS, the costs of the test(s) be borne by the elected official.

**Test upon Certification of Election and Prior to Taking the Oath of Office**

Upon the election of an individual to office, who is responsible for arranging for drug tests and for ordering the elected officials to a drug test?

**Reasonable Suspicion**

Who does the legislature envision:

1. making a "reasonable determination" that the governor, a mayor, or other elected official is possibly under the influence of illegal drugs, and,
2. ordering the governor, mayor, or other elected official to report for drug testing?

**Disqualification from taking office; forfeiting any office held**

Who is responsible for disqualifying the elected official from office or ensuring that the official forfeits an office? I do not believe the legislature is intending to give the personnel office this authority.

I do believe, however, that bill needs to be clear on this and that the bill be clear too that the personnel officer is permitted to provide a copy of the results of any and all drug tests done on elected officials to this individual who will then notify the elected official of the disqualification or forfeiture of office.

**Personnel officer**

To be clear on who this individual may be, I suggest that it be amended to designate that for the executive branch of government, it be the chief human resources executive, and that for the legislative branch of government, it be that individual task with human resources management for that legislative branch of government.

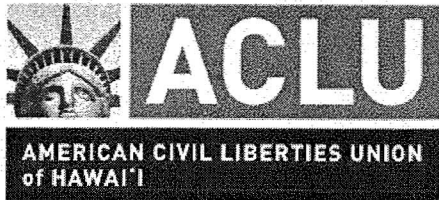
Thank you.

Sincerely,



Michael R. Ben, SPHR  
Director of Human Resources

000122



**BY EMAIL: JUDtestimony@Capitol.hawaii.gov**

Committee: Committee on Judiciary  
Hearing Date/Time: Thursday, March 13, 2008, 3:15 p.m.  
Place: Room 325  
Re: Testimony of the ACLU of Hawaii in Opposition to Sections 1 and 2 of SB 945, HD1, regarding drug testing of elected officials and restricting employment of spouses

Dear Chair Waters and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to Sections 1 and 2 of SB 945, HD 1.

Section 1 – requiring drug testing of elected officials – is unconstitutional. This exact type of drug testing scheme was struck down by the United States Supreme Court in *Chandler v. Miller*, 520 U.S. 305 (1997); the Court ruled that elected officials could not be required to undergo drug testing as a condition of taking office.

Section 2 – prohibiting employment of spouses – may be considered discrimination on the basis of marital status. Whereas an unmarried legislator could employ her or his longtime partner, a married legislator would be prohibited from doing the same thing. If this Committee is concerned about legislators profiting from their staff, the Committee may wish to consider language on conflicts of interest more generally.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck  
Senior Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawai'i  
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000123



the  
**Drug Policy  
Forum**  
of hawaii

March 13, 2008

To: Representative Tommy Waters, Chair  
Representative Blake Oshiro, Vice Chair and  
Members of the Committee on Judiciary

From: Jeanne Ohta, Executive Director

Re: SB945 Proposed HD1 Relating to Ethics  
Hearing: Thursday, March 13, 2008, 3:15 p.m., Room 325

Position: STRONG OPPOSITION

The Drug Policy Forum of Hawaii writes in opposition to SB945 Proposed HD1 which would require drug testing of elected officials after certification of election and prior to taking the oath of office and require forfeiture of office if test results are positive. This measure would also require that the expense of the drug test be borne by the elected official.

The most commonly used drug tests can result in false positives; any error can ruin the career of an elected official, in a highly public position. It will be virtually impossible to correct public impression should such an error occur.

Mandatory and random drug testing is an expensive and ineffective policy that provides a false sense of security. Drug testing is a lucrative industry which has added to the hype that drug testing is a solution to drug problems. It is estimated that the United States spends \$1 billion annually to drug test about 20 million workers,<sup>1</sup> in spite of research demonstrating the high cost and low effectiveness of this assault on privacy.<sup>2</sup>

The evaluation of elected officials should be based on their performance; their judgment on the job; and whether they fulfill the duties to which they were elected. The public has recourse should those duties not be fulfilled; they would not re-elect the official.

<sup>1</sup> Shepard, Edward M., and Thomas J. Clifton, *Drug Testing and Labor Productivity: Estimates Applying a Production Function Model*, Institute of Industrial Relations, Research Paper No. 18, Le Moyne University, Syracuse, NY (1998), Page 8.

<sup>2</sup> *Drug Testing: A Bad Investment*, American Civil Liberties Union, September, 1999

000124

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There are proven prevention and education program that will more effectively reduce drug use. I hope you will consider providing funds for effective programs that would truly reduce drug abuse and addiction in Hawaii.

000125



Testimony of Carol Abe  
( [REDACTED] Mililani, Hawaii 96789)  
on SB 945 to the  
House Judiciary Committee

Aloha Chair Waters, Vice Chair Oshiro and members of the committee,

As a citizen of Hawaii, I applaud the purpose of this bill and testify in my strongest support.

The proposed House Draft to this bill allows for open-government—a paramount for our democratic system. Our nation and state is based on the principle that our government is for and by the people. To discover that there is no limit on the legislature in regard to the hiring of relatives or spouses is appalling. It is a shame that our current legislature supports and allows for such nepotism! This bill allows for more clean government operation.

During times, in which our own governor is forcing our state teachers to be drug tested, I believe we should most certainly propose the same requirements on our local elected officials. Since these officials are our lawmakers, I would sincerely hope that they are not drug users.

Furthermore, I believe this bill again reinforces the ethical boundaries of being an elected official of this State. Legislators should most certainly be limited from entering contracts from state agencies valued at \$10,000 or more. This proposal again, reinforces our democratic values of balances and limitations in government. To allow for otherwise could potentially provide too much power to our elected officials and allow for the public—the people of Hawai'i- to suffer.

As we approach our 50<sup>th</sup> Statehood Anniversary I find this fitting and patriotic in a sense to pass this piece of legislation in honor of the true democratic values of our National and State Constitutions.

Thank you for allowing me this opportunity to testify as a concerned citizen of this State on behalf of this bill. I humbly ask the Judiciary committee to pass this measure.

000126