

STAND. COM. REP. NO. 3200

Honolulu, Hawaii

APR 05 2012

RE: H.B. No. 2175
H.D. 2
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 2175, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO ETHICS,"

begs leave to report as follows:

The purpose and intent of this measure is to exempt members of groups convened by statute or resolution; executive order or proclamation; or invitation of the Legislature, Governor, or other state officer; solely for the purpose of providing advice or comments to, or to formulate recommendations for the Legislature, the Governor, a state department, or a state officer, from the requirements of the state ethics code.

Your Committee received testimony in support of this measure from the Department of the Attorney General, Hawaii Credit Union League, Hawaii Farm Bureau Federation, Hawaii Youth Services Network, and one private individual. Testimony in opposition to this measure was submitted by the Americans for Democratic Action/Hawaii, Common Cause Hawaii, and League of Women Voters of Hawaii. The Hawaii State Ethics Commission submitted comments.

Your Committee finds that the Legislature, Governor, and other state agencies and officials are dealing increasingly with issues and situations that require technical or experiential information that they do not possess or cannot readily obtain. In many instances, task forces consisting of members from the community who have and are willing to share information and their



expertise have been formed to address these types of issues or situations.

Recently however, ethical concerns have been raised about membership on task forces because it is unclear to some whether a task force is considered a board, commission, or committee of the State, and consequentially whether a task force member is deemed to be an employee under the State's ethics code and therefore precluded from acting on matters the task force was formed to address, if the task force member stands to gain financially. This measure addresses the ambiguity regarding task forces by opting in favor of informed decision-making, and exempting from the State's ethics code groups that are informally organized to provide government with specialized knowledge, expertise, advice, and recommendations.

However, your Committee also recognizes the concerns that providing task force members a full blanket exception from the state ethics code may invite unintended consequences. For example, such a broad exception may allow exempt task force members to accept gifts intended to influence their recommendations, disclose confidential information to the public or use such information for personal gain, or seek favors from themselves or others. As a result, your Committee requested the interested stakeholders to develop language to address these concerns.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the language developed by the Department of the Attorney General that:
 - (A) Deletes the amended definition of "employee" under the state ethics code;
 - (B) Allows a person who serves as a designee or representatives of an entity that is a member of a task force to disclose information that the person acquires as the entity's designee or representative to that entity;
 - (C) Allows a task force member or the task force member's designee or representative to make statements or take official action in the capacity as a task force member;



- (D) Requires task force members to file a full and complete public disclosure of the nature and extent of the interest or transaction that the task force member believes may affect the member's official action;
 - (E) Exempts a task force member from certain conflict of interest provisions if the task force member would not otherwise be considered an employee and complies with the state ethics code disclosure requirements;
 - (F) Exempts contracts awarded with a person or business represented or assisted by a person who was a member of a task force or designee or representative of a task force member; and
 - (G) Allows a task force member to represent, within twelve months of termination of service on the task force, a person or business for a fee or other consideration on matters in which the task force member participated in if, but for the task force member's service, the member would not be considered an employee;
- (2) Changing the effective date from upon approval to retroactive to June 1, 2010; and
 - (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2175, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2175, H.D. 2, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



