

har2-Samantha

From: mailinglist@capitol.hawaii.gov
ent: Thursday, January 26, 2012 3:46 PM
o: WLOtestimony
Cc: ddaavidson@dbedt.hawaii.gov
Subject: Testimony for HB1730 on 1/27/2012 9:00:00 AM
Attachments: Testimony_HB1730_1-26-2012.doc

Testimony for WLO 1/27/2012 9:00:00 AM HB1730

Conference room: 325
Testifier position: Comments Only
Testifier will be present: No
Submitted by: Orlando Davidson
Organization: State Land Use Commission
E-mail: ddaavidson@dbedt.hawaii.gov
Submitted on: 1/26/2012

Comments:

NEIL ABERCROMBIE
Governor

BRIAN SCHATZ
Lieutenant Governor

RICHARD LIM
Director



ORLANDO "DAN" DAVIDSON
Executive Officer

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

HB 1730 Statement of
ORLANDO "DAN" DAVIDSON
Executive Officer, State Land Use Commission
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

Friday, January 27, 2012
9:00 AM
State Capitol, Conference Room 325

in consideration of
HB 1730
RELATING TO THE LAND USE COMMISSION.

Chair Chang, Vice Chair Har, and Members of the House Committee on Water, Land and Ocean Resources.

The proposed bill would amend Chapter 205, Hawai'i Revised Statutes (HRS), to add a section on conflict of interest.

The Land Use Commission has not yet taken a position on HB 1730. These comments are my own and do not reflect a position of the LUC or of any of the individual commissioners. Speaking as the Executive Officer and staff to the Commission, I offer the following comments.

Conflicts of interest provisions are spelled out in an existing statute, specifically Chapter 84, HRS, titled Standards of Conduct. These provisions apply to all public officials, including members of the Land Use Commission, and are comprehensive in scope. In

addition, the Commission's existing administrative rules cover the process by which Commissioner's must declare a possible conflict of interest, consistent with Chapter 84, HRS.

Any perceived need to further define conflicts of interest would appear to be best served by amending the relevant portions of Chapter 84, HRS, not the State Land Use Law, Chapter 205, HRS, which is primarily substantive in nature.

Thank you for the opportunity to testify.



HAWAII STATE ETHICS COMMISSION

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

January 27, 2012

The Honorable Jerry L. Chang, Chair
The Honorable Sharon E. Har, Vice-Chair
House Committee on Water, Land, & Ocean Resources
State Capitol, Room 435
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on HB 1730, Relating to the Land Use Commission**

Hearing: Friday, January 27, 2012, 9:00 a.m.
State Capitol, Conference Room 325

Written Testimony From: Hawaii State Ethics Commission

The Honorable Jerry L. Chang, Chair; the Honorable Sharon E. Har, Vice-Chair; and
Honorable Members of the House Committee on Water, Land, & Ocean Resources

Thank you for the opportunity to provide written testimony on House Bill 1730, Relating to the Land Use Commission. This bill amends Hawaii Revised Statutes chapter 205, The Land Use Commission, to add a new section on conflicts of interests for members of the Land Use Commission. More specifically, this new provision would prohibit a member of the Land Use Commission from voting or taking any official action relating to a parcel of land if the member has had "material personal involvement" with that parcel of land. The bill defines "material personal involvement" with a parcel of land to be where the Commissioner has, at any time, had ownership or tenancy rights to the parcel, or if the Commissioner has one several defined relationships to the person or entity that controls the parcel.

The State Ethics Commission takes no position on this bill and is testifying to offer information and comment. The State Ethics Code, Hawaii Revised Statutes chapter 84, applies to all state employees, officials, and legislators, including members of the Land Use Commission.¹ The State Ethics Code contains several conflicts of interests provisions. Under the State Ethics Code, a member of the Land Use Commission is prohibited from taking official action directly affecting a parcel of land if the Commissioner, his spouse, or dependent child has a current ownership interest in

¹ Haw. Rev. Stat. 84-3.

the parcel. The State Ethics Code also prohibits the Commissioner from taking official action directly affecting a parcel that is owned by a business in which the Commissioner, his spouse, or dependent child is an owner, employee, officer or director.² The State Ethics Code defines "business" as including non-profit organizations.³ In such cases, the Commissioner, generally, is required to recuse himself from the consideration of, and action relating to, the parcel of land.

House Bill 1730 imposes more stringent conflicts of interests requirements than required under the State Ethics Code. More specifically, consistent with the State Ethics Code, the bill would prohibit a member of the Land Use Commission from taking action with respect to a parcel if the Commissioner has a current ownership interest in the parcel; however, in addition, the Commissioner would be prohibited from taking official action (i.e., would be required to recuse himself) if the Commissioner ever had an ownership interest in the parcel. The bill also requires recusal if any relative, civil union partner, reciprocal beneficiary, or household member controls the parcel. The State Ethics Code's conflicts of interests provision prohibits a Commissioner from taking official action relating to a parcel of land where such action would affect his spouse's or dependent child's financial interest. It does not extend as broadly as the relationships included in the bill.

With respect to section 205-____(b)(2)(C) of the bill, the State Ethics Commission is concerned that, as written, the language may create confusion as to whether recusal is required. This section prohibits a member of the Land Use Commission from taking action on a parcel where the parcel is controlled by an entity and the Commissioner, or an association of which the Commissioner is a director, officer, or manager, "owns beneficially or of record five per cent or more of the outstanding entity interests or outstanding shares of the equity."

The State Ethics Code prohibits, among other things, a Commissioner from taking official action "directly affecting a business or other undertaking in which he has a substantial financial interest[.]"⁴ "Financial interest" is defined to include an ownership interest in a business.⁵ In contrast to the bill, under certain circumstances, an employee may have "substantial financial interest" in a business in which he owns less than five percent of the business. Thus, the State Ethics Code may require recusal where a

² In addition, where a Commissioner has begun negotiation for prospective employment or has a loan or other debtor interest with a business, the Commissioner cannot take official action with respect to that business. Haw. Rev. Stat. 83-3.

³ Haw. Rev. Stat. 84-3.

⁴ Haw. Rev. Stat. 84-14(a)(1).

⁵ Haw. Rev. Stat. 84-3.

The Honorable Jerry L. Chang, Chair
The Honorable Sharon E. Har, Vice-Chair
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Commissioner owns less than five per cent of a business that controls the parcel. In those situations, the State Ethics Commission believes that section 205-___(b)(2)(C) may cause confusion as to whether a Commissioner is prohibited from participating in a Commission decision and taking official action. For that reason, the State Ethics Commission recommends that this section be amended to be consistent with the State Ethics Code or deleted.

Thank you again for the opportunity to provide testimony on this bill.

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Content: Wednesday, January 25, 2012 7:59 PM
To: WLOtestimony
Cc: smenor-mcnamara@cochawaii.org
Subject: Testimony for HB1730 on 1/27/2012 9:00:00 AM
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Testimony for WLO 1/27/2012 9:00:00 AM HB1730

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Sherry Menor
Organization: The Chamber of Commerce of Hawaii
E-mail: smenor-mcnamara@cochawaii.org
Submitted on: 1/25/2012

Comments:



**Testimony to the House Committee on Water, Land & Ocean Resources
Friday, January 27, 2012
9:00 a.m.
State Capitol - Conference Room 325**

RE: HOUSE BILL NO. 1730 RELATING TO THE LAND USE COMMISSION

Chair Chang, Vice Chair Har, and members of the committee:

The Chamber of Commerce of Hawaii ("The Chamber") opposes HB 1730 relating to the Land Use Commission.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber questions the need for H.B. No. 1730 which proposes to prohibit members of the land use commission from voting on action taken by the commission if there is a conflict of interest.

Chapter 84-14 HRS already contains a provision that prohibits an employee from taking any official action directly affecting a business or other undertakings in which the employee has a substantial financial interest.

It is unclear at this time why a similar prohibition is being required for members of the Land Use Commission. If the ethics laws need to be revised, we believe the appropriate revisions should be made to Chapter 84 HRS.

Thank you for this opportunity to express our views.