



HAWAII STATE ETHICS COMMISSION

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

LATE TESTIMONY

MEMORANDUM

DATE: January 26, 2012

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor
State Capitol, Room 407
415 South Beretania Street
Honolulu, Hawaii 96813

FROM: Hawaii State Ethics Commission

SUBJECT: SB 2240, Relating to the State Code of Ethics

Testimony from the Hawaii State Ethics Commission

Written Testimony to: Senate Committee on Judiciary and Labor

Measure Number: SB 2240, Relating to the State Code of Ethics

Hearing Date and Time: Friday, January 27, 2012; 9:30 a.m.

Number of Copies: 2 copies



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January 27, 2012

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The Honorable Maile S. L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor
Hawaii State Capitol, Room 407
415 South Beretania Street
Honolulu, Hawaii 96813

COMMENTS

Re: **Testimony on SB No. 2240, Relating to the State Code of Ethics**

Hearing: Friday, January 27, 2012, 9:30 a.m.
State Capitol, Conference Room 016

Written Testimony From: **Hawaii State Ethics Commission**

The Honorable Clayton Hee, Chair; The Honorable Maile S.L. Shimabukuro, Vice Chair;
and Honorable Members of the Senate Committee on Judiciary and Labor:

Thank you for the opportunity to testify on Senate Bill 2240, Relating to the State Code of Ethics. This bill amends the definition of "employee" in the State Ethics Code to exclude members of groups convened by a statute or resolution, an executive order or proclamation, or by the invitation of the legislature, the governor, or another state officer, solely for the purpose of providing advice or comments to, or formulating recommendations for, the legislature, the governor, or a state department, agency or officer. The State Ethics Commission has no position with respect to the intent of the bill but has concerns that the bill, as drafted, will unintentionally result in exempting numerous members of state boards and commissions from the requirements of the State Ethics Code.

The State Ethics Code applies to all state employees. "Employee" is broadly defined by the State Ethics Code to include all nominated, appointed, or elected officers or employees of the State, including members of state boards, commissions, and committees.¹ The State Ethics Commission is mandated to "liberally construe[]" the statute and, in that light, interprets the term "employee" to include volunteer members of legislatively created task forces and working groups. These individuals are subject to the State Ethics Code, including the conflicts of interest law and the provisions protecting against the misuse of position.

¹ Haw. Rev. Stat. section 84-3.

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Last year, the State Ethics Commission offered advice to members of the Mortgage Foreclose Task Force, a task force created during the 2010 legislative session by Act 162, about the application of the conflicts of interests law to their ability to lobby the legislature on behalf of a business, for pay, on legislation proposed by the Task Force.² This advice issued was consistent with and based upon the Commission's past precedent. In years past, members of various task forces have received similar advice from the Commission.

Specifically, the Commission advised that the State Ethics Code prohibits a member of the task force from being paid to represent a non-governmental organization, such as a business, a trade organization, or another group, on matters in which the task force participated or would participate. For example, if the task force recommended legislation, then a member of the task force could not be paid to privately lobby on that legislation, either as an employee lobbying on the legislation that was recommended by the task force, or as a lobbyist paid to lobby on behalf of a company, a trade organization, or another group.

The Commission also advised that the State Ethics Code did not preclude or prohibit: (1) a member of the task force from testifying on behalf of the task force; (2) any organization or business from lobbying on any matter, including the legislation recommended by the task force, as long as the person lobbying on behalf of the organization was not a member of the task force; or (3) a member of the task force from lobbying on other matters, unrelated to the legislation recommended by the task force. The Commission advised only that, in certain limited situations, the State Ethics Code prohibits a member of a task force from being paid to lobby on behalf of an organization on legislation proposed by the task force.

As drafted, Senate Bill 2240 amends the definition of "employee" to exclude individuals who are members of groups, such as the Mortgage Foreclosure Task Force. It also excludes from the definition of "employee" individuals who are members of other types of groups convened by the legislature, the governor, or any state officer where the groups exist for the purpose of providing advice or comments to, or formulating recommendations for, the legislature, the governor, or any state department or agency. The Commission is concerned that this language sweeps too broadly and arguably exempts a great many members of boards and commissions from the State Ethics Code.

² Haw. Rev. Stat. section 84-14(d) reads, in part:

No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee[.]

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There are approximately two dozen state boards or commissions that exist to provide advice or recommendations. These appear to include, among many others, the Tax Review Commission, The University of Hawaii Regents Candidate Advisory Council, the Correctional Industries Advisory Committee, and the Civil Defense Advisory Council. The recommendations provided by these bodies can have significant weight and impact on the ultimate decision maker. The members of these bodies take significant state action. The Commission is concerned that, as currently written, this bill may arguably exempt members of these boards and commissions from the State Ethics Code.

If the purpose of this bill is to exempt members of task forces such as the Mortgage Foreclosure Task Force from the State Ethics Code, then the Commission recommends that the language in the bill be amended to specifically define the "groups" which are intended to be captured by and included in the exemption to the definition of "employee". More specifically, if the legislature's intent is to exclude members of task forces from the definition of "employee" for purposes of the State Ethics Code, the Commission recommends that bill be amended to read as follows:

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices [and], judges[.], and members of task forces.

"Task force" means a group established by resolution, act or otherwise to study a specific subject or issue, for a specific defined period of time, and to report to, offer a recommendation to, or advise the legislature."

The State Ethics Commission believes that, as currently drafted, this bill is too broad in exempting members of State boards and commissions from the requirements of the State Ethics Code. The Commission recommends that this bill be revised to specifically achieve what the Commission understands to be the bill's intent.

We appreciate the opportunity to testify on SB No. 2240, Relating to the State Code of Ethics. We would like to thank this Committee for its consideration of our testimony.