



House Judiciary Committee
Chair Karl Rhoads, Vice Chair Sharon Har

Friday 02/07/2014 at 02:00PM in Room 325
HB449– Relating to the Code of Ethics

TESTIMONY OF OPPOSITION
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Rhoads, Vice Chair Har, and members of the Committee:

Common Cause Hawaii opposes the proposed HB449 HD1 on the basis that this is a gut-and-replace bill.

As you may know, Common Cause Hawaii strongly opposes the “gut-and-replace” practice, and bills that have been subject to this – including bills whose new language supports our goals for stronger transparency and government accountability. Gut-and-replace, whereby the bill’s original content is removed and replaced with new content unrelated to the bills original intent, undermines the public’s trust in our legislative process.

The original purpose of HB449 was to make financial disclosure statements of members of state boards and commissions which have authority over permitting, land use permitting, water use, and regulation of public utilities and public documents, available for public inspection and duplication.

The proposed HD1 clarifies the fair treatment provisions of the ethics code by separating out certain limitations placed on task force members from those placed on legislators, and clarifies that legislators are not prohibited from taking action in the exercise of legislative functions.

We ask that you defer this gut-and-replace measure indefinitely.

Thank you for the opportunity to testify on HB449.



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JUDICIARY COMMITTEE
Friday, February 07, 2014, House Conference Room 325
HB 449, HD1 Relating to the Code of Ethics
TESTIMONY
Janet Mason, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Har, and Committee Members:

This is a "Gut and Replace" bill. It has been amended by replacing the original content with new content unrelated to the intent of HB449. For this reason, **the League of Women Voters of Hawaii opposes HB449, HD1.**

The original HB449 states the purpose of the Act was to require that financial disclosure statements of certain **state board and commission members** be made public documents and available for public inspection, while HB449, HD1 says the purpose of the Act is separating various fair treatment requirements applicable to **task force members** from those applicable to legislators. The original bill amended HRS 84-17, "Requirements of Disclosure" while the HD 1 amends HRS 84-13, "Fair Treatment." The proposed HD1 draft is not even amending the same section of the Hawaii Revised Statutes.

"Gut and replace" actions undermine public confidence in government because it seems something sneaky is happening in the legislative process. While the material that replaces the original wording may have merit acting in a less than open manner undermines trust. The League of Women Voters is very disappointed, for we take an active interest in having reasonable, clear ethics laws, but "Gut and Replace" must stop.

Since this clearly is a "gut and replace" measure it should be held in Committee. Thank you for the opportunity to present our testimony.



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

February 6, 2014

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
Honorable Members, House Committee on Judiciary
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on House Bill 449, Proposed H.D. 1, Relating to the Code of Ethics**

Hearing: Friday, February 7, 2014, 2:00 p.m.
State Capitol, Conference Room 325

Testimony From: Hawaii State Ethics Commission

The Honorable Karl Rhoads, Chair; The Honorable Sharon E. Har, Vice Chair; and the Honorable Members of the House Committee on Judiciary

Thank you for this opportunity to testify on H.B. No. 449, Proposed H.D. 1, Relating to the Code of Ethics. The Hawaii State Ethics Commission ("Commission") supports this bill, but recommends that the bill's language concerning task force members be clarified.

This bill amends Hawaii Revised Statutes (HRS) section 84-13, the Fair Treatment section of the State Ethics Code. This section generally prohibits legislators and employees from using their official positions to obtain unwarranted privileges or advantages for themselves or others. Until 2012, the Fair Treatment section contained an exemption for legislators which stated that the law could not be construed to prohibit legislators from introducing bills, serving on committees, or making statements or taking action in the exercise of their legislative functions.¹ This legislative exemption was taken from Article III, Section 7 of the Hawaii Constitution, which provides that legislators shall

¹ Prior to 2012, this portion of HRS section 84-13, the Fair Treatment section, read:

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees, or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action.

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not be held to answer before any other tribunal for any statement made or action taken “in the exercise of [their] legislative functions.” The intent of this exemption was to preserve the legislature’s independence when its members were exercising certain core legislative activities, such as voting on bills or serving on legislative committees.

In 2012, Act 208 amended the Fair Treatment section to add an exemption for members of task forces. Act 208 also amended the exemption in the law for legislators, expanding the exemption well-beyond the original intent.² As a result of the 2012 amendment, the Fair Treatment law now applies to legislators only in very limited situations.

H.B. No. 449, Proposed H.D. 1, restores the legislative exemption in the Fair Treatment law to its original language. The Commission strongly supports this restoration.

H.B. No. 449, Proposed H.D. 1, retains the existing exemption in the Fair Treatment law for task force members. It requires that task force members file “a full and complete public disclosure of the nature and extent of the interest or transaction that the task force member or task force member’s designee or representative believes may be affected by the task force member’s official action.” This language exists in the current law and the Commission assumes that the intent of this language is to require task force members (who, as a result of Act 208, 2012, are exempt from most of the provisions of the State Ethics Code) to file a public financial disclosure statement with the State Ethics Commission as the “quid pro quo” for or to balance the broad exemption from the State Ethics Code. Assuming that is the legislative intent, the Commission strongly recommends that HRS section 84-17, the financial disclosure section of the State Ethics Code, be amended to add task force members to the list of state employees and officials who are required to file financial disclosure statements with the Commission.³ Currently, task force members are not listed in HRS section 84-17 as individuals who must file financial disclosure statements. This omission creates

² “Official action” is defined by HRS section 84-3 as:

A decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

³ The Commission recommends that 84-17 be amended as follows:

84-17 Requirements of disclosure. (c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

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confusion and ambiguity between HRS section 84-13 and HRS section 84-17. The Commission strongly recommends that the legislature clarify its intent in requiring public disclosure.

We appreciate the opportunity to testify on H.B. 449, Proposed H.D. 1, Relating to the Code of Ethics. We would like to thank the Committee for its consideration of our testimony.

(11) The administrator and assistant administrator of the office of Hawaiian affairs ; and
(12) Members of task forces.

(d) The financial disclosure statements of the following persons shall be public records and available or inspection and duplication:

....

(7) The administrator and the assistant administrator of the office of Hawaiian affairs; and
(8) Members of task forces.