

Honolulu, Hawaii

FEB 28 2013

RE: S.B. No. 893  
S.D. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 893 entitled:

"A BILL FOR AN ACT RELATING TO ETHICS,"

begs leave to report as follows:

The purpose and intent of this measure is to retroactively exempt members and designees or representatives of members of task forces that existed on or after June 3, 2010, from certain provisions of the Code of Ethics.

Your Committee received testimony in support of this measure from the Hawaii Bankers Association, Hawaii Financial Services Association, Hawaii Credit Union League, and two individuals. Testimony in opposition to this measure was submitted by the Hawaii State Ethics Commission and League of Women Voters. The Department of the Attorney General submitted comments.

Your Committee finds that Act 162, Session Laws of Hawaii 2010 (Act 162), which was enacted on June 3, 2010, established the mortgage foreclosure task force. Of the seventeen members of the task force, eleven of the members were from specific organizations, including private organizations, trade associations, and government entities, whose representation was expressly required by Act 162. In May 2011, the Hawaii State Ethics Commission advised all of the members of this task force that the Code of Ethics prohibited the members from lobbying on legislative measures proposed by the task force, for pay, on



behalf of the private organizations of which some of the members represented.

Your Committee notes that Act 208, Session Laws of Hawaii 2012 (Act 208), amended section 84-14, Hawaii Revised Statutes, among other sections of the Code of Ethics, to exempt members of state task forces from certain requirements, restrictions, and prohibitions of the Code of Ethics. However, Act 208 did not apply retroactively to cover task forces, including the mortgage foreclosure task force, that existed prior to the effective date of Act 208. This measure retroactively exempts members and designees or representatives of members of task forces that existed on or after June 3, 2010, from certain conflicts of interest provisions of the Code of Ethics.

Your Committee further notes the discussion during the public hearing regarding this measure with the Executive Director and former Executive Director of the Hawaii State Ethics Commission. The Executive Director testified that this measure specifically applies to a single task force that no longer exists and suggested that this retroactive application is not a reasonable or prudent exercise of legislative power. Testimony also indicates that the purpose of this measure is to protect a single member of the mortgage foreclosure task force. The Executive Director purported that this member continued lobbying activities on bills reflecting the mortgage foreclosure task force recommendations during the Regular Session of 2012 on behalf of the member's private client despite the Commission's clear advice that these actions may violate the Code of Ethics. The Executive Director testified that this measure rewards an individual for repeatedly and intentionally ignoring and defying the Commission's advice and sets a precedent that allows state employees, legislators, and board members to seek retroactive amendments to excuse ethic code violations.

However, the former Executive Director of the Hawaii State Ethics Commission, testifying as a private individual, strongly supported this measure to correct a misinterpretation and misapplication of the Code of Ethics by the Commission. While Act 208 was enacted to address the Commission's misinterpretation and misapplication of the law to task forces, particularly section 84-14, Hawaii Revised Statutes, the former Executive Director believes that Act 208 should have applied retroactively to include the mortgage foreclosure task force. The former Executive Director noted to your Committee that the Commission has a statute



of limitations of six years under section 84-31(a)(6), Hawaii Revised Statutes, starting from the time of the alleged violation to file or accept a charge against a legislator or state employee, and investigate and take appropriate action. Thus, the members of the mortgage foreclosure task force as well as other task forces established prior to the enactment of Act 208 on July 3, 2012, may still be in jeopardy of being found by the Commission of being in violation of the Code of the Ethics based on the Commission's May 2011 interpretation and application of section 84-14, Hawaii Revised Statutes.

Your Committee does not find the testimony from the Hawaii State Ethics Commission compelling. Your Committee notes that the May 2011 advisory from the Commission to the members of the mortgage foreclosure task force created a disincentive for individuals to serve on task forces in general. The Legislature, Governor, and other state agencies and officials rely on the technical or experiential information that task force members from the community possess and are willing to offer, especially when government entities do not possess or cannot readily obtain such information. Your Committee believes that members from the community who possess the necessary information and expertise serve a vital role and should be afforded the opportunity to serve on task forces without fear that their participation or affiliation with the private sector may violate the Code of Ethics.

Accordingly, the purpose of Act 208 was to allow individuals that possess specific knowledge and expertise an opportunity to serve the State. Specifically, Act 208 allows individuals to serve as members of a task force that is convened on a temporary basis by the legislative or executive branch to study an issue, make recommendations, or offer advice on a specific subject by exempting these individuals from certain requirements, restrictions, and prohibitions of the State's Code of Ethics. Thus, while the Hawaii State Ethics Commission's advisory in May 2011 to the mortgage foreclosure task force may have been the impetus for Act 208, your Committee believes that this measure furthers the purposes of Act 208 rather than creating an exemption for a specific task force, as the Hawaii State Ethics Commission suggests. For further clarity, the Department of the Attorney General suggested to your Committee that section 1 of this measure be deleted to avoid specifying and referencing the mortgage foreclosure task force.



Your Committee is also concerned that if this measure is not applied retroactively, the members of the task forces established prior to the enactment of Act 208 may still be in jeopardy of violating the Code of Ethics pursuant to the six-year statute of limitations for the Commission to file a charge. This is particularly troubling in light of the former Executive Director testifying about the frequency of cases relating to conflicts of interest allegations brought to or filed by the Commission and that the Executive Director of the Hawaii State Ethics Commission would not comment on whether the Commission has any plans to bring a cause of action against a particular task force member. Your Committee believes this measure would prevent such causes of action from being brought to or filed by the Commission rather than reward a particular individual for possibly violating the Code of Ethics, as the Hawaii State Ethics Commission suggests.

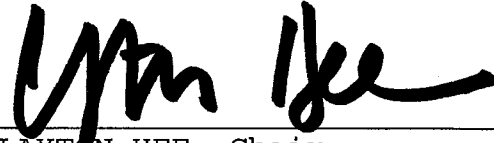
Accordingly, your Committee has amended this measure by:

- (1) Adopting the recommendation made by the Department of the Attorney General during the hearing to delete section 1 to clarify that the retroactive date applies to all members or representatives of a member of any task force existing on or after June 3, 2010;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion; 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 S.B. No. 893, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 893, 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,



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CLAYTON HEE, Chair



