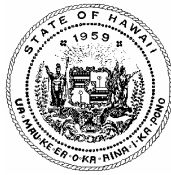


SB2959

NEIL ABERCROMBIE
GOVERNOR



BARBARA A. KRIEG
DIRECTOR

LEILA A. KAGAWA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

January 30, 2014

**TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR**

For Hearing on Friday, January 31, 2014
10:30 a.m., Conference Room 016

BY
BARBARA A. KRIEG
DIRECTOR

**Senate Bill No. 2959
Relating To Nepotism**

TO CHAIRPERSON HEE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. 2959 is to prohibit a public official or public employee from appointing, employing, promoting, or advancing within an agency over which the public official or public employee exercises control: 1) a relative; 2) a relative of another public official elected to or employed by the same agency; or 3) a relative of another public official who exercises jurisdiction or control over the same agency, except in cases where the relative is highly qualified. The bill also prohibits legislators from appointing, employing, or voting to confirm a relative and makes the Act applicable to justices and judges.

The Department of Human Resources Development (DHRD) **supports the intent of this bill but opposes the bill as drafted.**

Any bill to address nepotism in the public sector workforce should address concerns about a supervisory relationship between interested parties as well as restrictions on influence in hiring decisions. However, given the realities of relationships in our community, we believe any attempt to impose a broad anti-nepotism policy such

as proposed by this bill is not workable. In addition, before any anti-nepotism policy is implemented, consideration must be given to the current workforce and the enforcement of a new policy with respect to existing relationships among employees or relationships that may develop in the future, after the supervisory relationship has been established.

We also caution that in order to be effective and enforceable, a definition of the prohibited relationships should be carefully drafted. An appropriate nepotism policy should address situations in which a close personal relationship exists between a subordinate and a superior. That relationship may, but need not, result from a blood or marital relationship. Thus, relationships based on “hanai”, non-marital romantic relationships and/or close friends should be considered when drafting an anti-nepotism policy.

Thank you for the opportunity to provide testimony on this measure.



HAWAII STATE ETHICS COMMISSION

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

January 31, 2014

The Honorable Clayton Hee, Chair
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

Re: **Testimony on S.B. No. 2959, Relating to Nepotism**

Hearing: Friday, January 31, 2014, 10:30 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 The Honorable Members of the Senate Committee on Judiciary and Labor:

Thank you for this opportunity to testify on S.B. No. 2959, Relating to Nepotism. The Hawaii State Ethics Commission (“Commission”) strongly supports the intent of this bill, but recommends that the bill’s language be amended as explained in this testimony.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) chapter 84, the State Ethics Code, to prohibit a public official or public employee from appointing, employing, promoting, or advancing a relative within an agency over which the public official or public employee exercises control. The Commission believes that a law regulating nepotism in hiring practices is needed in Hawaii and the Commission therefore supports the intent of this bill. The Commission believes that state employees should not be involved in appointing or hiring close relatives for government office. This practice engenders charges of favoritism and preferential treatment, and erodes public confidence in government.

Although the Commission strongly supports the bill’s intent to prohibit nepotism, the Commission has concerns about the specific language in this bill. Some of the restrictions in the bill appear to be overbroad and may unfairly affect qualified applicants who seek state employment. For example, the bill prohibits a public employee from hiring a relative of a public official who is employed by the same agency. Under the bill, a person who is

qualified as a teacher could not be hired by the Department of Education if that person is a relative of the Superintendent of Education. The Commission is concerned that such a prohibition would be too broad.

The Commission is also concerned with some of the definitions in the bill. The bill defines “agency” as including county agencies. However, under the State Constitution, the Commission has jurisdiction only over state agencies. The bill also defines “public official” and “public employee.” Currently, however, the State Ethics Code does not recognize a distinction between an appointed state official and a state employee. Appointed and elected state officials (excluding legislators) are considered to be “state employees” for purposes of the State Ethics Code. These new definitions create confusion and are inconsistent with the current definitions. The Commission recommends that, rather than adopting these two new terms, the bill use the definition of “employee” that already exists in the State Ethics Code.

There are additional concerns regarding the definitions of “public official” and “public employee.” Both terms are defined as including only those who receive remuneration from public funds. Thus, the nepotism restrictions in this bill would not apply to any volunteer members of state boards, regardless of the board’s degree of influence or control over a state agency. Further, it is unclear whether the term “public official” is intended to include legislators.

This bill also creates an exception to the prohibition against nepotism where the relative is “highly qualified for the position.” There is no guidance on how to interpret this term. In most cases, the Commission would have neither the expertise nor the ability to determine whether or not an individual was highly qualified for a particular position. The Commission believes that this exception would make it problematic for the Commission to administer and enforce a prohibition against nepotism.

The Commission strongly supports legislation addressing nepotism in state employment. Because of the concerns with certain parts of the bill as noted above, the Commission suggests that the bill’s provisions be replaced with the following language:

“§84- Nepotism. No legislator or employee shall advocate for, appoint, employ, promote, supervise, or advance to public office or employment any relative who is the legislator’s or employee’s spouse, parent, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.”

The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
January 31, 2014
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Although the above language is narrower than the current language of the bill, the Commission suggests that the provision is clearer, more easily enforced, and addresses what the Commission understands to be the most common nepotism situations that may be occurring in state employment.

We appreciate the opportunity to testify on S.B. No. 2959, Relating to Nepotism. We would like to thank this Committee for its consideration of our testimony.



Senate Judiciary and Labor Committee
Chair Clayton Hee, Vice Chair Maile Shimabukuro

Friday 01/31/14 at 10:30AM in Room 016
SB2959– Relating to Nepotism

Testimony of Support
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Hee, Vice Chair Shimabukuro, and members of the Senate Judiciary & Labor Committee:

Common Cause Hawaii supports SB2959, which essentially prohibits legislators and government employees from naming, appointing, or hiring a relative, and extends this requirement to apply to judges and justices.

This policy, if passed, would prevent public officials from using her or his public position to secure a job for a family member. Further, SB2959 would prohibit that public official from using her or his influence with other public officers or employees, especially subordinates, to persuade them to hire her or his family member.

Part of Common Cause Hawaii’s role is to support Ethics policies which would help to mediate real or perceived conflicts of interest. We see the hiring of one’s relative as a clear conflict of interest.

An public official may be perceived as using the “authority or influence of” her or his public position to secure a job for a family member. Even if that recuses her or himself from decisions, there may be a false perception (from the public’s standpoint) that the official may have participated in discussing, recommending, or otherwise using the prestige of her or his office to secure a family member a job.

Thank you for the opportunity to testify on SB2959.