



HAWAII STATE ETHICS COMMISSION

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

SENATE COMMITTEE ON JUDICIARY AND LABOR
The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

H.B. No. 813 HD3, Relating to the Code of Ethics

Hearing: Thursday, January 21, 2016, 9:00 a.m.

The State Ethics Commission **supports** HB No. 813, HD 3, Relating to the Code of Ethics, which amends the exemption from the State Ethics Code's fair treatment law, HRS section 84-13, applicable to legislators.

In 2012, the legislature amended the State Ethics Code to exempt members of task forces from many of the sections contained therein. More specifically, because of the exemptions, task force members may use their positions on the task force to give themselves or their private employer an unwarranted advantage or preferential treatment; task force members can take action in their official capacities that affect their own private businesses; task force members can use confidential state information that they obtain through their service on the task force and which is not available to the public to benefit themselves or their private employer.

In addition to exempting task force members from the fair treatment law, HRS section 84-13, the legislature also greatly expanded the exemption applicable to legislators. The fair treatment law, generally, prohibits a legislator from using or attempting to use his official position "to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others."

Prior to the amendment, legislators were exempt from the fair treatment law when exercising their "legislative function." The exemption was consistent with and intended to mirror the privilege afforded legislators in the State Constitution, which protects legislators from liability "for any statement made or action taken in the exercise of the member's legislative functions."¹ Generally, the phrase "legislative function" has been construed to relate to the enactment of laws and includes activities such as voting on bills and speeches made on the floor of the body or during committee hearings. The phrase does not include all of the activities that a legislator may deem to be part of his duties, such as constituent services.

Since 2012, legislators are exempt from the fair treatment law when taking "official action." The phrase "official action" appears much broader than "legislative

¹ State Constitution, Art. III, Sec. 7.

function” and most likely includes activities that are well beyond those relating to the making of laws.

Under the current exemption, a legislator, for example, may be able to “coerce” a private business to take certain action on behalf of a constituent, claiming that such “coercion” was taken in his capacity as a legislator and therefore was “official action.” Similarly, a legislator may be able to demand “preferential treatment” for himself (e.g., first class seating or free meals) when meeting with constituents or engaged in some other activity in his “official” capacity.

In both examples, the Commission very likely would closely examine whether such activities were and reasonably should be construed to be “official action;” however, the expanded exemption may allow a legislator to assert that his actions are exempt from the Commission’s authority. Under the earlier, narrower exemption, such conduct most likely violates the State Ethics Code, and the legislator would be subject to the Commission’s jurisdiction.

The Commission believes that the expanded exemption is inconsistent with and directly contrary to the purpose of the State Ethics Code: to preserve the public’s confidence in public servants.² The Commission respectfully suggests that the Committee should be mindful of the express statutory purpose (and the State Constitutional mandate).³ In the Commission’s view, the statute’s purpose dictates that the exemption be narrow and, absent extraordinary circumstances, should not be expanded.

The Commission urges the Committee to restore the exemption afforded legislators to be consistent with the Constitutional privilege which is limited to when a legislator is exercising his “legislative function.” The Commission further suggests that the Committee consider amending the bill to reverse the exemptions given to members of task forces. In the Commission’s opinion, the exemptions for task force members similarly are contrary to the clear statutory purpose and erode -- not preserve -- the public’s confidence that state business is being done for the “right” reasons.

If the Committee decides to maintain the status quo for members of task forces, i.e., to preserve the multiple exemptions from the State Ethics Code described above, the Commission requests that the requirement that task force members “file a full and complete public disclosure of the nature and extent of the interest or transaction which the task force member or task force member’s designee or representative believes may be affected by the task force member’s official action” be clarified. If the intent is for task force members to file the financial disclosure statement pursuant to section 84-17,

² HRS chapter 84, Preamble.

³ State Constitution, Art. XIV.

the section of the State Ethics Code identifying the persons whose disclosures are public, i.e., section 84-17(d), should be amended to include “members of task forces.”

Thank you for considering the State Ethics Commission’s testimony.



Senate Judiciary and Labor Committee
Chair Gil Keith-Agaran, Vice Chair Maile Shimabukuro

Thursday, 01/21/2016 at 9:00 AM in Room 016
HB813 HD3 – Relating to the Code of Ethics

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

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Judiciary and Labor Committee:

Common Cause Hawaii supports HB813 HD3.

HB813 attempts to clarify that legislators are not prohibited by Hawaii's State Ethics Code from taking action in the exercise of a legislator's functions. Additionally, HB813 also amends the Ethics Code to require Task Force members to file a "full and complete public disclosure" on interests or transactions that may be affected by the task force member's official actions.

The intent of this bill is to clear up legislators' exemptions from the Fair Treatment Code brought about in 2012 – Act 208, which inadvertently created a loophole that exempted legislators from the Hawaii Revised Statutes section 84-13, thus allowing legislators to essentially use their official capacity for personal gain. Simply put: Act 208 gave legislators a broad exemption from the Fair Treatment Code. HB813 clarifies that legislators are exempt from the fair treatment law "only in the exercise of the legislator's legislative functions."

Thank you for the opportunity to offer testimony **supporting HB813 HD3.**



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COMMITTEE ON JUDICIARY AND LABOR

Thursday, January 21, 2016, 9:00 a.m., Room 016

HB 813, HD3, RELATING TO THE CODE OF ETHICS
TESTIMONY

Piilani Kaopuiki, Legislative Committee, League of Women Voters of Hawaii

Chair Keith-Agaran, Vice-Chair Shimabukuro and Committee Members:

The League of Women Voters of Hawaii supports HB 813, HD3 which clarifies that legislators are not prohibited by the State Ethics Code from taking action in the exercise of the legislator's functions.

HB813, HD2 makes it clear that legislators are exempt from the fair treatment law "only in the exercise of a legislator's **legislative** functions." This is appropriate, and would hopefully make it clear that legislators should not use their position to secure unwarranted privileges, advantages or treatment for themselves or others.

The bill also proposes to amend the Ethics Code to require that a State Task Force member should file a "full and complete public disclosure of the nature and extent of interests or transactions which the task force member believes may be affected by the task force member's official actions." The League of Women Voters strongly opposed and continues to oppose giving task force members certain exemptions from the state ethics code. We have observed that nearly all members of the Mortgage Foreclosure Task Force of 2012 (which gave rise to this ethics exemption) were willing to continue serving on the Task Force after being informed they were subject to the Ethics Code. We conclude and it remains our position that there is no reason for this task force exemption. Volunteer members of State Boards and Commissions are subject to financial disclosure under the State Ethics Code. How is service on a Task Force substantially different from that provided by volunteers on a Board or Commission? It's not.

Please amend HB 813, HD2 to add clarification whether financial disclosure statements are required of Task Force members. This is not clear from the current language of the bill, yet financial disclosure is key to ethical conduct.

Fixing errors and loopholes in our ethics law would clear up any uncertainty about what's expected from our legislators and task force members when it comes to the State Ethics Code. We urge you to amend this bill as described and pass the measure. Thank you for the opportunity to submit testimony.