



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Education
Bill Number: SCR 140 / SR 61
Hearing Date/Time: Friday, March 24, 2017, 2:45 p.m.
Re: Testimony of the Hawaii State Ethics Commission with **COMMENTS** on SCR 140/SR61, Urging the Board of Education to Restrict Any Person from Applying for the Position of Superintendent of Education if that Person was a Member of the Board of Education when the Search and Hiring Process was Developed or Initiated

Dear Chair Kidani and Committee Members:

The Hawaii State Ethics Commission (“Commission”) takes no position on this measure, but hereby submits comments on how the Ethics Code applies in these types of situations.

The State Ethics Code prohibits an employee¹ from, among other things, using his/her position to give him- or herself an unwarranted advantage. Specifically, the statute’s “fair treatment” provision provides in relevant part: “No legislator or employee shall use or attempt to use the legislator’s or employee’s official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others[.]” Relatedly, the Ethics Code’s “conflicts of interest” provision, HRS section 84-14, prohibits an employee from taking any “official action” involving “[a] business or other undertaking in which the employee has a substantial financial interest[.]” For example, an unpaid Board/Commission member cannot vote to hire him- or herself (or the Board/Commission member’s spouse) for a paid position.

The Ethics Commission believes that the both the fair treatment and conflicts of interests laws may apply in a situation where a sitting Board/Commission member applies for employment with that Board or Commission. Together, these laws prohibit self-dealing and, generally, the misuse of one’s official position.

Several years ago, when similar questions arose regarding hiring a new President for the University of Hawaii (and several Regents were mentioned as potential candidates), the Ethics Commission issued Ethics Advisory 2013-03. In it, the Commission advised that a Board/Commission member interested in applying for employment with that agency “resign as a member of the board when he decides to apply for a position that is hired, selected or approved by the board.”² Ethics Advisory 2013-03 (July 15, 2013) at 1, available at <http://files.hawaii.gov/ethics/advice/EA2013-03.pdf>. The Commission continues to advise this course of action for anyone in this type of situation.

¹ “Employee” is defined to include members of boards, commissions and committees. HRS section 84-3. Accordingly, a board member is subject to the State Ethics Code and must adhere to the standards of conduct contained therein. HRS section 84-2.

² This Ethics Advisory does not have the force and effect of law, but does represent the Commission’s educational guidance to state officials in these situations to avoid ethics violations.

The Commission stresses that the Ethics Code does not necessarily prohibit an agency from hiring an individual who has recently served on that Board or Commission conducting the hiring. Indeed, the Commission supports agencies' efforts to employ the most highly skilled and qualified candidates; it may be the case that, for any given position, the best candidate for a particular position is an individual who has served on the Board/Commission responsible for hiring. The Ethics Code does not necessarily prohibit hiring an internal candidate, provided that the applicant complies with the fair treatment and conflicts of interests laws. The Commission also recognizes that the point in time at which an individual decides to apply for a position may not always be clear, and may depend upon an individual's subjective intent (though such intent may be gleaned from other sources, such as the individual's statements and/or actions). As such, the Commission strongly recommends that anyone in this type of situation consult with the Ethics Commission as early as possible.

Finally, the Commission respectfully reminds all state officials that the Ethics Code represents the minimum standard of ethical conduct for state employees. Agencies are permitted to set higher standards as they see fit.

Thank you for considering the Commission's testimony on SCR 140 / SR 61.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



Native Hawaiian Education Council

March 22, 2017

Senator Michelle N. Kidani, Chair
Senator Ka`aialii Kahele, Vice Chair
State of Hawai'i Senate
Committee on Education

Via: Electronic Upload - EDUtestimony@capitol.hawaii.gov

RE: SCR167-SR81 - URGING THE DEPARTMENT OF EDUCATION TO ESTABLISH A VOCATIONAL EDUCATION OUT-OF-SCHOOL PROGRAM.

Aloha 'olua mai,

The Native Hawaiian Education Council (NHEC or the Council) **SUPPORTS SCR140-SR6** based on its support of multi-faceted strategies for student learning, growth and achievement, transitions to careers and the role of families and communities in public education.

The Native Hawaiian Education Council was established in 1994 under the federal Native Hawaiian Education Act. The Council is charged with coordinating, assessing and reporting and making recommendations on the effectiveness of existing education programs for Native Hawaiians, the state of present Native Hawaiian education efforts, and improvements that may be made to existing programs, policies, and procedures to improve the educational attainment of Native Hawaiians.

Please feel free to contact the Council's Executive Director, Dr. Sylvia Hussey, directly via e-mail (sylvia@nhec.org), office (808.523.6432) or mobile (808.221.5477) telephone with any questions.

Sincerely,

Dr. Lisa M. Watkins-Victorino, Chair

cc: Policy & Advocacy and Executive Committees and staff



From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 22, 2017 5:16 PM
To: EDU Testimony
Cc: hawaiifishingfanatic@gmail.com
Subject: *Submitted testimony for SCR140 on Mar 24, 2017 14:45PM*

SCR140

Submitted on: 3/22/2017

Testimony for EDU on Mar 24, 2017 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 18, 2017 1:14 PM
To: EDU Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SCR140 on Mar 24, 2017 14:45PM*

SCR140

Submitted on: 3/18/2017

Testimony for EDU on Mar 24, 2017 14:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov