



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813
50th ANNIVERSARY 1968-2018

Committee: Committee on Government Operations
Bill Number: H.B. 71 HD1
Hearing Date/Time: March 13, 2018, 2:45 p.m.
Re: Testimony of the Hawaii State Ethics Commission **SUPPORTING THE INTENT** of H.B. 71 HD1, Relating to Ethics

Dear Chair Kim and Committee Members:

The Hawaii State Ethics Commission (“Commission”) supports the intent of H.B. 71 HD1 as it relates to the governor. The Commission supports the Legislature’s efforts to strengthen Hawaii’s conflict of interest laws, as these types of measures help to ensure that state officials focus on serving the people of Hawaii with the utmost integrity.

The Commission does not have jurisdiction over county officials, such that the Commission takes no position as to whether the county mayors ought to be included in this type of provision. However, H.B. 71 HD1 places the restriction on mayors in Hawaii Revised Statutes (“HRS”) chapter 84; as such, the measure appears to give the *State* Ethics Commission jurisdiction to enforce violations of this provision against *county* mayors. The measure also appears to make county mayors subject to state-level fines and procedures for violations.

The Committee may wish to consider whether the county ethics commissions, rather than the State Ethics Commission, should enforce these provisions. See Hawaii Const., article XIV. Indeed, the Department of the Attorney General has raised concerns as to whether Article XIV of the Hawaii Constitution permits the State Ethics Commission to oversee the activities of the county mayors.

As for the Governor, the Commission notes that Hawaii’s fair treatment law, HRS § 84-13, already prohibits a governor from receiving a stipend or honorarium for doing work (for example, giving speeches) in his/her capacity as governor. Furthermore, Hawaii’s financial disclosure law, HRS § 84-17, already requires the governor to file a public disclosure of financial interests every year. Similarly, the governor is already prohibited from holding “any other office or employment of profit under the State or the United States” while in office. Hawaii Const. Art. V, section 1.

Thank you for considering the Commission’s testimony on H.B. 71. HD1.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 71, H.D. 1, RELATING TO ETHICS.

BEFORE THE:

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

DATE: Tuesday, March 13, 2018 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Robyn Chun, Deputy Attorney General

Chair Kim and Members of the Committee:

The Department of the Attorney General (“Department”) supports the intent of this bill but respectfully requests that the bill be amended as suggested below.

The purpose of this bill is to amend the State Ethics Code, chapter 84, Hawaii Revised Statutes (HRS), to include a provision that will prohibit any Governor or county Mayor, while serving in their respective capacities as Governor or Mayor, from maintaining any other employment or receiving any emolument beginning on the sixty-first calendar day after their election or appointment to office.

Article XIV of the State Constitution provides, in relevant part, that the “legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the state or the political subdivision, respectively, including members of the boards, commissions and other bodies.” See Art. XIV, State Constitution. Thus, the State, the counties, and the constitutional convention are mandated to adopt their own ethics code.

In accordance with article XIV, the State Ethics Code applies, pursuant to section 84-2, HRS, to “every nominated, appointed, or elected officer, employee, and candidate to elected office of **the State** and for election to the constitutional convention, but excluding justices and judges . . .” (emphasis added). Thus, based on the plain

wording of the statute, the State Ethics Code does not apply to the counties that are constitutionally mandated to adopt their own ethics code.

As a result, amending chapter 84, the State Ethics Code, to include a provision prohibiting a sitting Mayor from maintaining outside employment or receiving emoluments would be vulnerable to a legal challenge that the State Ethics Code does not apply to county officials and cannot therefore be enforced against a sitting Mayor. To avoid this potential challenge, this bill could be amended to add this provision to chapter 78, Public Service, HRS, which pertains to state and county officers and employees.

However, amending chapter 78 to add this new statute raises another legal question: Whether a state statute prohibiting outside employment by county officials is enforceable under article VIII, sections 2 and 6, of the State Constitution.

Article VIII, sections 2 and 6, provide in relevant part:

Section 2. Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. . . .

Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions

. . . .

Section 6. This article shall not limit the power of the legislature to enact laws of statewide concern.

Thus, each county may adopt its own charter that shall be superior to state laws with respect to its structure and organization except where the legislature enacts general laws "allocating and reallocating powers and functions" or "laws of statewide concern". See, e.g., *City and County of Honolulu, v. Ariyoshi*, 67 Haw. 412, 421, 689 P.2d 757, 763 (1984) ("the area of compensation of county officials is a matter of statewide concern where a salary structure integrated with that of the state structure will provide for more efficient and effective government for the people of Hawaii. It is a matter within

the powers of the legislature and does not intrude upon the executive, legislative or administrative structure or organization of the counties”).

With respect to House Bill No. 71, H.D. 1, it is uncertain whether a court would view a statute prohibiting a sitting governor or mayor from maintaining any other employment or receiving any emolument as a law involving a county’s structure and organization or whether the statute is a law of statewide concern. Our alternative suggestion is to amend the bill to delete the references to the mayors will obviate the foregoing issues. However, a bill that prohibits only a sitting governor from maintaining outside employment and receiving emoluments would seem to be unnecessary insofar as section 1 of article V of the State Constitution already provides that the “governor shall not hold any other office or employment of profit under the State or the United States during the governor’s term of office.”

In short, House Bill No. 71, H.D. 1, raises certain legal issues that may be addressed as described above; however, if challenged, we are uncertain as to how a court will view its applicability to the counties. Amending the bill to delete the references to the mayors will avoid that legal vulnerability but raises a question as to whether a statute pertaining only to the Governor is needed in light of section 1 of article V of the State Constitution.

Thank you for the opportunity to provide these comments.