

Honolulu, Hawaii

MAR 01 2019

RE: S.B. No. 569

S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committees on Labor, Culture and the Arts and Judiciary,
to which was referred S.B. No. 569, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII CIVIL RIGHTS
COMMISSION,"

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Include programs and activities that also receive federal financial assistance within the meaning of programs and activities receiving state financial assistance; and
- (2) Ensure that claims of disability discrimination in state financially assisted programs fall under the jurisdiction of the Hawaii Civil Rights Commission.

Your Committees received testimony in support of this measure from the Hawai'i Civil Rights Commission, Disability and Communications Access Board, Hawaii Disability Rights Center, O'ahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i, and two individuals. Your Committees received comments on this measure from the Department of Education.

Your Committees find that when enacted, section 368-1.5, Hawaii Revised Statutes, was intended to provide a state remedy



for disability discrimination in addition to the federal remedies available under section 504 of the Rehabilitation Act, thereby providing an alternative state remedy in situations where federal remedies were also available. The intent was to provide those with disabilities non-discriminatory access to state financially assisted programs and activities, regardless of whether that program or activity also received federal financial assistance.

The Hawaii Civil Rights Commission has enforcement jurisdiction over Hawaii laws prohibiting discrimination in employment, housing, public accommodations, and access to state financially assisted programs and activities on the basis of disability. However, the Hawaii Supreme Court in *Hawaii Technology Academy and the Department of Education v. L.E. and Hawaii Civil Rights Commission*, 141 Hawaii 147, 407 P.3d 103 (2017), held that the Legislature did not intend the Hawaii Civil Rights Commission to have jurisdiction over disability discrimination claims under section 368-1.5, Hawaii Revised Statutes, if protections under section 504 of the Rehabilitation Act were also applicable.

This decision rendered section 368-1.5, Hawaii Revised Statutes, superfluous as nearly all state departments receive federal funds, and eliminated an avenue of redress for Hawaii residents who believed they had been discriminated against on the basis of disability.

Your Committees further find that this measure clarifies the original intent of the Legislature to give the Hawaii Civil Rights Commission jurisdiction over state funded program-related disability discrimination claims so that Hawaii residents may have a state remedy regardless of whether they may also be entitled to remedies under federal law.

Your Committees note the concerns raised in the Department of Education's testimony that this measure as drafted would give the Hawaii Civil Rights Commission jurisdiction over public school students' disability discrimination cases. According to the Department of Education, this measure as it applies to public school students with disabilities is duplicative of and would circumvent the remedies and procedures already established by applicable rules and policies required by federal law. Further, the Department of Education testified that this measure as



currently drafted could lead to the duplication of efforts by different government agencies. Amendments to this measure are therefore necessary to address some of the Department of Education's concerns.

Accordingly, your Committees have amended this measure by:

- (1) Inserting language in section 368-11, Hawaii Revised Statutes, to clarify that the Hawaii Civil Rights Commission shall not have jurisdiction over claims that would be cognizable under the Individuals with Disabilities Education Act, P.L. 101-476, as amended (IDEA), and its appeals process;
- (2) Updating the purpose section as appropriate; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Labor, Culture and the Arts and Judiciary that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 569, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as S.B. No. 569, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committees on Labor, Culture
and the Arts and Judiciary,



KARL RHOADS, Chair




BRIAN T. TANIGUCHI, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

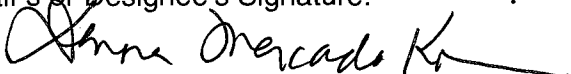
Record of Votes
Committee on Labor, Culture and the Arts
LCA

Bill / Resolution No.:*	Committee Referral:	Date:		
<i>SB 569 SDI</i>	<i>HMS, LCA/JDC</i>	<i>2/26/2019</i>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IHARA, Jr., Les (VC)				✓
CHANG, Stanley	✓			
GABBARD, Mike				✓
FEVELLA, Kurt	✓			
TOTAL	<i>3</i>	<i>0</i>	<i>0</i>	<i>2</i>
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes

The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 569, SD1	HMS, LCA/JDC	2/26/19		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312				
<input checked="" type="checkbox"/> Pass, with amendments 2311				
<input type="checkbox"/> Hold 2310				
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	/			
WAKAI, Glenn (VC)				/
GABBARD, Mike				/
KIM, Donna Mercado	/			
FEVELLA, Kurt	/			
TOTAL	3	—	—	2
Recommendation:				
<input checked="" type="checkbox"/> Adopted				
<input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
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