



# HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Judiciary  
Bill Number: S.B. 143  
Hearing Date/Time: February 12, 2019, 9:00 p.m.  
Re: Testimony of the Hawai‘i State Ethics Commission in **SUPPORT** of S.B. 143, Relating to Ethics

Dear Chair Rhoads, Vice Chair Wakai, and Committee Members:

The Hawai‘i State Ethics Commission (“Commission”) supports S.B. 143, which amends the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84, to clarify the Ethics Code’s applicability to Task Force members and to legislators. This bill would (1) ensure that Task Force members are exempted from certain Ethics Code requirements, in alignment with the Legislature’s intent in enacting Act 208 of 2012; and (2) restore pre-2012 language regarding legislators’ constitutionally protected “legislative functions.”

## 1. Task Force members and the Ethics Code

In 2012, the Legislature passed H.B. 2175 (enacted as Act 208) to exempt Task Force members from certain provisions of the Ethics Code. The legislative history of this measure indicates the Legislature’s clear intention to ensure that Task Force members could offer their expertise in a limited capacity without being subjected to the ethics restrictions imposed on state officials.

In so doing, however, the Legislature appears to have inadvertently created additional burdens for Task Force members. Specifically, Act 208 of 2012 required Task Force members to “file a full and complete public disclosure” of potential conflicts, and further suggested that Task Force members may be required to file financial disclosure statements (as required for many state officials in HRS § 84-17). In other words, in attempting to exempt Task Force members from some provisions of the Ethics Code, the Legislature appears to have subjected Task Force members to additional provisions of the Ethics Code (specifically, the provision requiring the filing of financial disclosures).

The Commission recognizes that Task Force members are often selected because of their positions within the community, and that these community ties should not prevent experts from serving on Task Forces. As such, the Commission respectfully suggests amendments to both HRS §§ 84-13 and 84-14 to make clear that (1) Task Force members need not file financial disclosures, and (2) that the Ethics Code should not be a barrier to Task Force members serving on Task Forces.

That said, the Legislature has indicated it wishes both Task Force members and legislators to disclose conflicts of interest in some manner. As such, the Commission respectfully proposes that it develop administrative rules to provide for this public disclosure for both Task Force members and for legislators. The Legislature may wish to establish these rules itself, particularly for its own members, and the Commission does not object if this Committee wishes to change the reference to “state ethics commission” (page 4, line 17 and page 5, line 18) to “legislature” in one or both instances.

## **2. “Legislative functions” and “official action”**

Act 208 of 2012 also changed the way the Ethics Code applies to legislators themselves. Language that existed prior to 2012 made clear that the Ethics Code would not interfere with a legislator’s “legislative functions,” which are protected by Article III, section 7 of the Hawai‘i Constitution.<sup>1</sup> In other words, the language prior to 2012 made clear that the Ethics Code did not supersede legislators’ constitutional right to exercise their “legislative functions.” The 2012 amendment, however, changed the phrase “legislative functions” (which derives from the constitution) to “official action” (which is defined by HRS § 84-3). The terms are not synonymous. “Official action” is a term of very broad applicability and may be interpreted as all actions taken in a legislative capacity. “Legislative functions” is more limited and, as indicated in the State Constitution and case law, refers to official action more specifically related to law-making, such as voting on matters, debating in committee, and giving a speech on the floor.

In reviewing the legislative history of Act 208 of 2012, the Ethics Commission does not believe that the Legislature intended to create a large exemption from the Ethics Code for its members; this issue is not mentioned anywhere in the legislative history, and the change may have been inadvertent. As such, the Commission respectfully suggests that the Legislature restore the pre-2012 exemption for “legislative functions” to demonstrate that the Legislature holds its members to high ethical standards.

Thank you for your continuing support of the Commission’s work and for considering the Commission’s testimony on S.B. 143.

Very truly yours,

Daniel Gluck  
Executive Director and General Counsel

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<sup>1</sup> In relevant part, Article III, section 7 of the Hawai‘i Constitution provides: “No member of the legislature shall be held to answer before any other tribunal for any statement made or action taken in the exercise of the member’s legislative functions. . . .”

COMMITTEE ON JUDICIARY

**LATE**

Tuesday, February 12, 2019, 9 AM, room 016

SB 143, Relating to Ethics

**TESTIMONY**

Nina Eejima, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice-Chair Wakai, and Committee Members:

**The League of Women Voters of Hawaii supports SB 143 that restores statutory protection for legislators when carrying out a legislative function and clarifies public disclosure requirements for task force members.**

We support this proposed act because the League of Women Voters strongly believes in the promotion of an open governmental system that is representative, accountable, effective, and responsive. We support these proposed provisions in that related statutory revisions with respect to task force members' financial disclosure statements were unclear. The proposed text now provides clear text regarding task force members' filing requirements. These proposed clarifying provisions strengthen the internal consistency of the act which in turn strengthen the promotion of an open governmental system.

Thank you for the opportunity to submit testimony.