

STAND. COM. REP. NO. 3739

Honolulu, Hawaii

JUL 02 2020

RE: H.B. No. 1673
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1673, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE STATE ETHICS CODE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Restore statutory language to clarify that the fair treatment law does not prohibit a legislator from introducing legislation, serving on a committee, making statements, or taking action in the exercise of the legislator's legislative functions;
- (2) Clarify that every legislator must publicly disclose the nature and extent of the interest or transaction that the legislator believes may be affected by the legislator's official action in accordance with section 84-17, Hawaii Revised Statutes, and the rules of each house of the legislature; and
- (3) Require that each house of the Legislature adopt rules regarding the disclosure of the nature and extent of any interest or transaction that the legislator believes may be affected by the legislator's official action.



Your Committee received testimony in support of this measure from the Hawaii State Ethics Commission, Common Cause Hawaii, and one individual. Your Committee received testimony in opposition to this measure from one individual.

Your Committee finds that Act 208, Session Laws of Hawaii of 2012, amended the Fair Treatment law of the state Ethics Code, section 84-13, Hawaii Revised Statutes (section 84-13), by changing the phrase "legislative functions," which is derived from article III, section 7 of the Hawaii State Constitution, to "official action", which is defined by section 84-3, Hawaii Revised Statutes. This measure would restore the language that was in statute prior to 2012; however, your Committee finds that this proposed change is unnecessary. The Hawaii State Ethics Commission suggests that the exception provided by subsection (b) of section 84-13, might be read to swallow the rules of fair treatment in subsection (a), such that legislators could argue they are not bound by subsection (a) at all. However, your Committee believes that the exception in subsection (b) is a narrow one, designed only to accommodate the legislative immunity clause of article III, section 7 of the Hawaii State Constitution.

Your Committee finds that subsection (b) does not exempt legislators from the general rule that state officials shall not use or attempt to use their official position to secure unwarranted treatment for themselves or others. For example, if a legislator were to direct a legislative employee to conduct campaign activities on state time, that act would violate the Fair Treatment law, section 84-13(a). Similarly, if a legislator were to use the legislator's legislative allowance for campaign purposes or engage in a substantial financial transaction with a subordinate, such acts would likewise violate section 84-13(a), notwithstanding subsection (b). The Legislature's intent is already clear that subsection (b) is designed to protect a legislator from those core legislative functions contemplated by article III, section 7 of the Hawaii State Constitution, but does not insulate a legislator from engaging in the prohibited actions set forth in subsection (a).

Your Committee also finds that this measure should further clarify the rulemaking responsibilities of the Hawaii State Ethics Commission and the Legislature, tasking the former with adopting rules relating to the Fair Treatment law generally and the latter



with rules on how legislators are to disclose potential conflicts of interests, consistent with legislators' constitutional authority, by ensuring that rules of the Hawaii State Ethics Commission are applicable until the time at which each house of the Legislature has adopted its own rules regarding disclosures of interests.

Accordingly, your Committee has amended this measure by:

- (1) Retaining the existing statutory language that refers to taking official action as a legislator;
- (2) Specifying that rules adopted by the Hawaii State Ethics Commission shall apply until each house of the Legislature adopts its own rules regarding disclosures of interests and transactions; and
- (3) Making it effective upon its approval.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1673, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1673, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



