



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Committee: Committee on Judiciary
Bill Number: H.B. 1673, H.D. 1
Hearing Date/Time: July 1, 2020, 12:15 p.m.
Re: Testimony of the Hawai‘i State Ethics Commission in **SUPPORT** of
H.B. 1673, H.D. 1, Relating to the State Ethics Code

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

The Hawai‘i State Ethics Commission (“Commission”) strongly supports H.B. 1673, H.D. 1

In 2012, the Legislature passed H.B. 2175 (enacted as Act 208), which amended Hawai‘i Revised Statutes (“HRS”) § 84-13. Language that existed in HRS § 84-13 prior to 2012 made clear that enforcement of HRS § 84-13 would not interfere with a legislator’s “legislative functions,” which are protected by Article III, section 7 of the Hawai‘i Constitution.¹ In other words, the language prior to 2012 made clear that statutory language in 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). In reviewing the legislative history of Act 208 of 2012, it appears this change may have been inadvertent: the Commission does not believe that the Legislature intended to create an exemption to the Ethics Code for its members, as this issue is not mentioned anywhere in the legislative history. Nevertheless, out of an abundance of caution, the Commission believes the proposed change to HRS § 84-13(b) would make clear that the Legislature did not intend to exempt legislators from the language of HRS § 84-13(a).

This measure also clarifies the rulemaking responsibilities of the 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 (which is consistent with legislators’ authority in Article III of the Hawai‘i Constitution).

Thank you for your continuing support of the Commission’s work and for considering the Commission’s testimony on H.B. 1673, H.D. 1.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

¹ 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. . . .”

Statement Before The
SENATE COMMITTEE ON JUDICIARY
Wednesday, July 1, 2020
July 1, 2020, 12:15 PM
State Capitol, Conference Room 016

in consideration of
HB 1673, HD1
RELATING TO THE STATE ETHICS CODE.

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports, with amendments, HB 1673, HD1, which would (1) restore statutory protections for legislators when carrying out a legislative function and (2) clarify that each house of the legislature shall adopt rules regarding disclosure of the nature and extent of any interest or transaction that the legislator believes may be affected by the legislator's official action.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy. Common Cause Hawaii works to restore faith in our government and our democracy that has been shattered in the last few years through ethics, accountability, and transparency reforms. These reforms are probably the most important tools to restoring the people's trust in their elected leaders and government – to show people that their government is acting for the people's interest versus serving their own interests.

Common Cause Hawaii supports HB 1673, HD1's efforts to restore statutory protections for legislators when carrying out a legislative function. This is akin to the legal doctrine of civil legislative immunity, which prevents legislators from being sued for actions performed and decisions made in the course of serving in government.

However, Common Cause Hawaii does not support amending section (d) of Section 84-13, Hawaii Revised Statutes, to permit each house of the legislature to adopt rules regarding disclosure of the nature and extent of any interest or transaction that the legislator believes may be affected by the legislator's official action. There will be no guardrails to prevent each house of the legislature from adopting very lax or sympathetic rules. The State Ethics Commission should continue to effectuate the purpose of HRS Section 84-13, and this section should not be amended.

Thank you for the opportunity to testify in support of HB 1673, HD1, as amended. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

HB-1673-HD-1

Submitted on: 6/30/2020 8:45:18 PM

Testimony for JDC on 7/1/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

HB-1673-HD-1

Submitted on: 7/1/2020 8:32:59 AM

Testimony for JDC on 7/1/2020 12:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor K. Ramos	Individual	Support	No

Comments:

Good to re-establish well defined boundaries of function.