



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
Hearing Date/Time: February 4, 2020, 2:05 p.m.
Re: Testimony of the Hawai‘i State Ethics Commission in **SUPPORT** of
H.B. 1673, Relating to the State Ethics Code

Dear Chair Lee, Vice Chair San Buenaventura, and Committee Members:

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

In 2012, the Legislature passed H.B. 2175 (enacted as Act 208), which 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.¹ 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” are more limited and, as indicated in the State Constitution and case law, refer 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 strongly supports this measure, which restores the pre-2012 exemption for “legislative functions,” to demonstrate that the Legislature holds its members to high ethical standards.

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

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. . . .”

In sum, this measure demonstrates the Legislature's firm commitment to high ethical standards in government, and the Commission strongly supports its passage.

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony on H.B. 1673.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

Statement Before The
HOUSE COMMITTEE ON JUDICIARY
Tuesday, February 4, 2020
2:05 PM
State Capitol, Conference Room 325

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

Chair LEE, Vice Chair SAN BUENAVENTURA, and Members of the House Judiciary Committee

Common Cause Hawaii supports, with amendments, HB 1673, 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'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, 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

Submitted on: 2/1/2020 2:54:11 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

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

Comments:

HB-1673

Submitted on: 2/3/2020 12:23:20 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Best	Individual	Support	No

Comments:

HB-1673

Submitted on: 2/3/2020 1:26:58 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

very important for public trust.

HB-1673

Submitted on: 2/3/2020 2:07:30 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Goljuch Jr	Individual	Support	No

Comments:

HB-1673

Submitted on: 2/3/2020 2:49:08 PM

Testimony for JUD on 2/4/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Ching	Individual	Support	No

Comments:

Aloha Chair Lee, Vice Chair San Buenaventura and members of the committee,

I support HB1673 with one amendment.

I do not support amending section (d) of HRS 84-13.

Please pass HB 1673 with the above amendment. Mahalo for the opportunity to testify.

Randy Ching

Honolulu (makikirandy@yahoo.com)

HB-1673

Submitted on: 2/3/2020 9:43:14 PM

Testimony for JUD on 2/4/2020 2:05:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments:

I am a volunteer for Common Cause HI as well as **California Clean Money Campaign. CCMC** has pioneered many of the greatest reforms in the US for campaign financing. Hawaii should follow CCMC's legislation on keeping \$\$\$ out of our political system. HB 1673, 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. . . .

HB-1673

Submitted on: 2/3/2020 9:54:24 PM

Testimony for JUD on 2/4/2020 2:05:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Lee and Members of the House Committee on Judiciary,

I am writing in support of HB1673 with amendments. HB 1673, 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.

I support HB 1673'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 I do 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.

Mahalo,

Caroline Kunitake