

SENATE COMMITTEE ON WAYS AND MEANS
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

**S.B. No. 3079, S.D. 1, RELATING TO APPROPRIATIONS FOR PUBLIC
EMPLOYMENT COST ITEMS**

Hearing: Thursday, February 20, 2020, 1:00 p.m.

The Office of the Auditor **supports** the intent of S.B. No. 3079, S.D. 1, which appropriates funds to certain legislative agencies, including the Office of the Auditor, to fund Hawai'i employer-union health benefits trust fund costs and other cost adjustments authorized by Chapter 89C, Hawai'i Revised Statutes, for legislative officers and employees excluded from collective bargaining.

We support the continued progress of this bill so that the option to make cost adjustments will continue to be available, should the Legislature determine that such cost items and adjustments are warranted.

Thank you for considering our testimony related to S.B. No. 3079, S.D. 1.



Robin K. Matsunaga
Ombudsman

Melissa Chee
First Assistant

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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON S.B. NO. 3079, S.D. 1, A BILL FOR AN ACT
RELATING TO APPROPRIATIONS FOR PUBLIC EMPLOYMENT COST ITEMS**

SENATE COMMITTEE ON WAYS AND MEANS

FEBRUARY 20, 2020

Chair Dela Cruz and Members of the Committee on Ways and Means:

Thank you for the opportunity to present testimony in support of S.B. No. 3079, S.D. 1.

The purpose of this bill is to provide the funds necessary to cover cost items and cost adjustments for employees of the legislative agencies for fiscal year 2020-2021. Your favorable consideration of this bill will allow it to continue to be available as a vehicle throughout this legislative session, should the Legislature later determine that the funding of such cost items and adjustments are warranted, and would be appreciated.

Thank you for your consideration.



HAWAI'I STATE ETHICS COMMISSION

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

Committee: Committee on Ways and Means
Bill Number: S.B. 3079
Hearing Date/Time: February 20, 2020, 1:00 p.m.
Re: Testimony of the Hawai'i State Ethics Commission in **SUPPORT** of
S.B. 3079, Relating to Appropriations for Public Employment Cost
Items

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

The Hawai'i State Ethics Commission ("Commission") supports S.B. 3079, which appropriates funds (in amounts yet to be determined) to the Commission for cost adjustments for staff salaries for FY2020-2021.

The Commission's 2019 Annual Report is attached. The Commission wishes to highlight two of its 2019 accomplishments:

- Developed and launched a 30-minute on-line training program for state employees and board/commission members, covering the basic rules in the State Ethics Code. The training program is now available to the more than 50,000 state officials subject to the Ethics Code: <https://ethics.hawaii.gov/ethiconlinetraining/>.
- Convened a one-day conference of Hawaii's state and county ethics officials, including board/commission members and staff of the Hawai'i State Ethics Commission, the Honolulu Ethics Commission, and the Ethics Boards for the Counties of Hawai'i, Kaua'i, and Maui. Participants exchanged information about the practical details of administering a code of ethics, including training tools, providing ethics advice, and enforcing the law.

The Commission is well aware that the Committee must consider requests from other state agencies for additional funding to support many worthy programs. The Commission, therefore, is committed to adjusting its budget, as necessary, to perform its statutory duties. The Commission also continues to explore different technologies and procedures to become more efficient, with the expectation that certain changes will reduce the Commission's operating costs. For example, the Commission installed a new telephone system in 2019 that will save several thousand dollars annually in phone/internet charges.

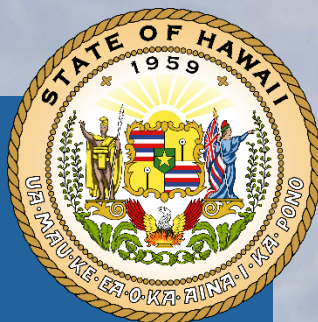
The Commission appreciates the Legislature's continuing support of the Commission's work to ensure that public officers and employees exhibit the highest standards of ethical conduct as mandated by Article XIV of Hawaii's Constitution.

Thank you for your continuing support of the Commission's work.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

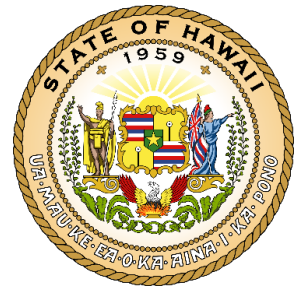
Attachments: Hawai'i State Ethics Commission, 2019 Annual Report



HAWAI‘I STATE ETHICS COMMISSION

—
2019 Annual Report

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Hawai'i State Ethics Commission

Mission & Duties

Established in 1968, the Hawai'i State Ethics Commission - the first state ethics commission in the United States - represents a commitment by the people of Hawai'i to the principles that "public officers and employees must exhibit the highest standards of ethical conduct[,] and that these standards come from the personal integrity of each individual in government." Hawai'i Constitution, article XIV. The constitution further requires that the State, and each of its subdivisions, establish a code of ethics for public officers and employees.

Pursuant to this constitutional mandate, the Commission is responsible for the administration and enforcement of the State Ethics Code and the State Lobbyists Law, chapters 84 and 97, Hawai'i Revised Statutes ("HRS"), respectively. The Ethics Code includes laws relating to the acceptance and reporting of gifts, confidential information, fair treatment (the prohibited misuse of official position), conflicts of interests, state contracts, and post-employment restrictions, along with a requirement that state legislators, candidates for state elective office, and certain state employees file financial disclosure statements.

For purposes of the State Ethics Code, the Commission has jurisdiction over more than 50,000 state officials and employees. This includes state legislators and other elected state officials, employees of the legislative, executive, and judicial branches of government (except for judges and justices), and members of all state boards and commissions. The State Ethics Code's financial disclosure law also applies to all candidates for state elective office.

The Commission also administers the State Lobbyists Law, HRS chapter 97, which applies to lobbying activities at the state level. The Lobbyists Law requires lobbyists to register with the Commission and requires lobbyists and organizations that lobby to report lobbying expenditures and contributions on forms filed with the Commission. The Commission has jurisdiction over more than 400 lobbyists representing over 300 organizations that lobby the state legislature or executive branch.

Ethics Advice

The Commission issues advisory opinions and other types of guidance about the application of the State Ethics Code and the State Lobbyists Law. In 2019, the Commission's attorneys received and responded to 1,389 requests for advice from state legislators, state employees, lobbyists, and members of the public, including 215 requests for advice on whether state officials could accept a particular gift of travel (where travel is paid for by a non-state entity). The Commission considers its ability to provide timely and meaningful guidance and advice to be one of its most essential functions.

In 2019, the Commission issued seven formal Advisory Opinions, all of which are available on its website at <https://ethics.hawaii.gov/all-opinions/> and on Westlaw, a legal research platform:

1. [Advisory Opinion 2019-1](#), advising that a member of a state board may not represent the board in collective bargaining negotiations with a public-sector union when the state board member's spouse is a member of the public-sector union.
2. [Advisory Opinion 2019-2](#), advising that the Ethics Code does not necessarily prohibit a state agency from soliciting donations from the private sector, and providing a series of guidelines to ensure that any solicitations are not coercive and do not provide anyone with an unwarranted benefit.
3. [Advisory Opinion 2019-3](#), advising that the Ethics Code does not prohibit a legislator, in the legislator's private capacity, from representing a private client in an attempted purchase of state property from a state agency.
4. [Advisory Opinion 2019-4](#), advising that an employee could not take action on matters involving a company when the employee's spouse works for that company.
5. [Advisory Opinion 2019-5](#), advising that a former employee was not prohibited from representing a private client in a lawsuit against the employee's former agency, so long as the legal representation does not involve the use or disclosure of confidential information acquired during state employment.
6. [Advisory Opinion 2019-6](#), advising that an agency is not prohibited from awarding a contract to a company whose employee is on the agency's board, where, under the specific facts presented to the Commission, the employee was unaware that the company was seeking a contract with the agency, and cautioning against potential conflicts of interest and abuse of position.
7. [Advisory Opinion 2019-7](#), advising that an employee may accept a complimentary registration fee to a vendor's conference, but advising that the employee may not attend a Vendor-sponsored reception for government employees.

Ethics Education

The Commission is charged with educating state officials and employees about ethics in government, HRS § 84-31(a)(7). To fulfill this mandate, the Commission conducts ethics training sessions throughout the year. The Commission has been expanding its educational efforts to reach as many state officials as possible. In 2019, the Commission offered forty-seven training sessions for 2,131 individuals, including one session offering Continuing Legal Education (“CLE”) credits for government attorneys. The Commission also conducted mandatory ethics training sessions for all newly elected state officials as required by HRS § 84-42. The Commission believes that it is critical to provide ethics training for state employees to improve their general awareness of ethics and to prevent unknowing violations of the State ethics laws. In fact, for many employees, the ethics training is their first exposure to the State Ethics Code.

In 2020, the Commission is launching an on-line training to be available to all state employees. This 30-minute, interactive session can be accessed from any device with an internet connection, and the Commission hopes that this will help to ensure greater ethics awareness by the more than 50,000 employees and board/commission members who serve the people of Hawai‘i. Anyone can take the training (and receive a certificate of completion for doing so), and view an introductory “Guide to the State Ethics Code,” at <https://ethics.hawaii.gov/ethiconlinetraining/>.

The Commission also continues to explore new ways to ensure that state officials are aware of the Ethics Code’s requirements. To that end, in 2019, the Commission developed and distributed three new “Quick Guides” to the Ethics Code on the following topics:

- [Holiday Season Ethics Guide](#)
- [Second Jobs and Other Private Business Activities](#)
- [Ethics Reminders for Employees at State Base Yards and Repair Shops](#)

The Commission has seven of these short educational flyers on its website at <https://ethics.hawaii.gov/quickguides/>.

The Commission also published four issues of “The High Road” newsletter, available at <https://ethics.hawaii.gov/category/guidance/publications/highroad/>.

2019 Advice and Education Summary



2019 Enforcement Summary

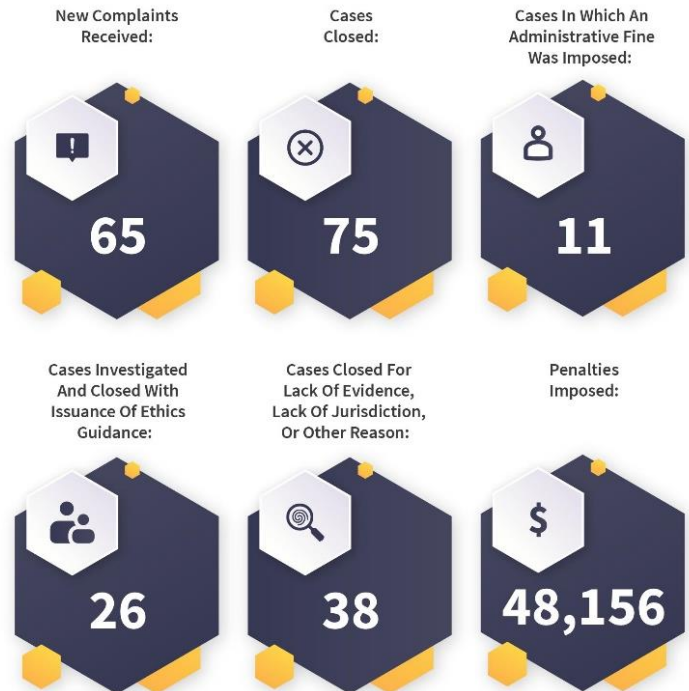
Enforcement

The Commission enforces the State Ethics Code, HRS chapter 84, and the State Lobbyists Law, HRS chapter 97. The Commission receives and reviews complaints and conducts investigations on a confidential basis concerning alleged violations of the law. When appropriate, the Commission initiates formal charges against individuals who appear to have violated the law. If there is probable cause to believe that a violation of the law has occurred, the Commission may hold a contested case hearing in accordance with HRS Chapter 91, Hawaii's Administrative Procedure Act.

In 2019, the Commission received 65 new complaints of violations of the Ethics Code and Lobbyists Law. The Commission issued thirty-two Resolutions authorizing staff to conduct investigations, issued two Charges, and closed 75 cases. The Commission publicly resolved nine Charges and investigations (including those below) by issuing a Resolution of Investigation/Charge document or Decision & Order; resolved another twenty-six matters by issuing ethics guidance; resolved two cases involving late filing of financial disclosure statements; and closed thirty-eight other matters (for lack of jurisdiction, lack of supporting evidence, or another reason). The Commission assessed a total of \$48,156.53 in administrative penalties, payable to the General Fund. Notable enforcement actions include:

Office of Hawaiian Affairs ("OHA") Trustee Rowena Akana: [Decision 2019-1](#) and [Resolution of Charge 2019-2](#)

The Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order involving former OHA Trustee Akana ([Decision 2019-1](#)), concluding that Akana committed forty-seven violations of the Ethics Code, including violations of the Gifts law (HRS § 84-11), Gifts Reporting law (HRS § 84-11.5), and Fair Treatment law (HRS § 84-13). The Commission imposed an administrative penalty of \$23,106.53 and referred the matter to the Attorney General to recover prohibited gifts, improperly received by Akana, valued at \$21,513.15. Akana appealed. The Circuit Court affirmed the Commission's Decision in full in September 2019, and Akana appealed to the Intermediate Court of Appeals. The Commission also resolved a second Charge against Akana arising out of Akana's disclosure of confidential information from two Executive Session meetings of OHA's Board of Trustees ([Resolution of Charge 2019-2](#)); Akana agreed to pay an administrative penalty of \$1,500.



Department of Land and Natural Resources (“DLNR”), Division of Boating and Ocean Recreation (“DOBOR”), Hawai‘i Island: [Resolution of Investigation 2019-5](#)

The Commission resolved a case involving a DOBOR Harbor Agent who took official action affecting his personal boat (by inspecting his own boat) and who used state time and other resources to attend to his personal boat. The Conflicts of Interests law, HRS § 84-14(a), prohibits state employees from taking official action directly affecting their own substantial financial interests; the Fair Treatment law, HRS § 84-13, prohibits state employees from using their official positions to provide themselves or others with unwarranted benefits.

Department of Education (“DOE”), Facilities Maintenance Branch: [Resolution of Investigations 2019-1, 2019-3, and 2019-4](#)

The Commission resolved cases involving three DOE supervisory employees from the Facilities Maintenance Branch, all of whom hired subordinate employees for outside projects (such as construction work); some of the supervisors also accepted free labor from subordinate employees. The Fair Treatment law, HRS § 84-13(a)(4), prohibits supervisors from engaging in substantial financial transactions from subordinates; the Gifts law (HRS § 84-11) and the Fair Treatment law (HRS § 84-13) also generally prohibits supervisors from receiving free labor for personal projects from subordinate employees. The supervisors agreed to pay administrative penalties of \$11,000, \$3,500, and \$750, respectively.

Department of Land and Natural Resources (“DLNR”), Division of Boating and Ocean Recreation (“DOBOR”), Kaua‘i: [Resolution of Charge 2019-1](#)

The Commission resolved a Charge against Bruce Kelekoma, a DOBOR-Kauai official, after having resolved cases involving three other employees from DOBOR-Kauai in 2018. Kelekoma admitted to receiving \$2,753.89 in automobile parts and repair services, knowing that those parts and services were purchased and paid for using state funds; to using a state pCard to purchase automobile parts for his personal vehicle; to using state time, personnel, and equipment to transport diesel fuel to his family’s pasture land and thereafter pouring the fuel on fence posts as a preservative, rather than disposing of it as hazardous waste; to directing subordinate employees to cut and deliver kiawe wood to him for his personal use; and to taking official action as a DOBOR-Kauai employee affecting his private employer. Kelekoma also admitted that he signed Certificates of Disposal (indicating he disposed of state property) without actually disposing of the property, and that he repeatedly gave incorrect statements to Ethics Commission investigators while under oath. Kelekoma agreed to pay an administrative penalty of \$4,500, and the matter was referred to DLNR.

Financial & Gifts Disclosures

The Commission administers the filing requirements of the financial disclosure law and the gifts disclosure law, which help provide accountability and transparency in government.

In 2019, the Commission received 1,788 financial disclosure statements; public disclosure statements (for elected officials, department directors, and other designated state officials) are available at <https://ethics.hawaii.gov/2019financial/>.

The Commission received and published 236 gifts disclosure statements, all of which are available at <https://ethics.hawaii.gov/2019gifts/>.

Lobbyists Law: Registration & Expenditure Reports

The Commission administers HRS chapter 97, the Lobbyists Law, which requires lobbyists to register with the Commission and file periodic expenditure reports. The Commission launched its new electronic filing system for lobbying registration and reporting, allowing lobbyists to register and file their periodic expenditure reports electronically. The Commission is continually upgrading and improving both the lobbying e-filing system and the system for filing financial disclosure statements and gifts disclosure statements (launched in 2018).

In 2019, the Commission received and published 950 lobbyist registration statements from 438 lobbyists, representing 415 organizations, along with 1,009 lobbyist expenditure reports.

Ethics Conference

In September 2019, Hawaii's state and county ethics officials met together for the first time in Honolulu for a one-day conference on government ethics. Conference participants included members and staff of the Hawai'i State Ethics Commission, the Honolulu Ethics Commission, and the Ethics Boards for the Counties of Hawai'i, Kaua'i, and Maui. Participants exchanged information about the practical details of administering a code of ethics, including training tools, providing ethics advice, and enforcing the law.

2019 Summary of Disclosures/Reports Filed



Judicial Candidate Reviews

The Commission provides information to the Judicial Selection Commission on applicants for judicial office. In 2019, the Hawai'i State Ethics Commission provided information on approximately 108 applicants (including current judges seeking retention).

Legislation

In 2019, the Commission successfully advocated for the passage of three ethics-related bills:

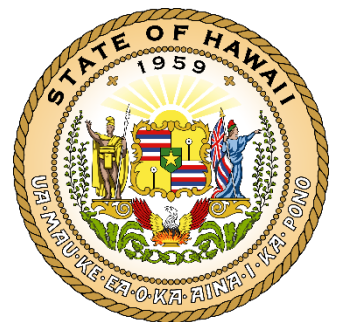
- [Act 109 \(SB144\)](#): Updates the Lobbyists Law to provide that anyone who negligently fails to register as a lobbyist (or file an expenditure report) may be fined by the Commission.
- [Act 119 \(HB170\)](#): Clarifies the fair treatment and conflict of interest laws with respect to legislators and task force members.
- [Act 120 \(HB169\)](#): Clarifies provisions of the Ethics Code relating to gifts disclosure statements, financial disclosure statements, and ethics training.

Commissioners and Staff

The Commission has five members who are nominated by the State Judicial Council and appointed by the Governor for four-year terms. The current members of the Commission are Reynard Graulty (Chairperson), Ruth Tschumy (Vice Chairperson), Susan DeGuzman, Melinda Wood, and Wesley Fong.

The Commission currently employs a staff of eleven: Executive Director Daniel Gluck, Associate Director Susan Yoza, four staff attorneys (Nancy Neuffer, Virginia Chock, Bonita Chang, and Kee Campbell); Computer Specialist Patrick Lui; Office Manager Caroline Choi; Secretary/Paralegal Napua Yasuda; Secretary Lynnette Santiago; and Investigator Jason Kamisugi.

For quick, confidential ethics advice, or to lodge a confidential complaint, please contact the Commission at ethics@hawaiiethics.org or 587-0460.



Charlotte A. Carter-Yamauchi
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Written Comments in Support

SB3079, SD1

RELATING TO APPROPRIATIONS FOR PUBLIC EMPLOYMENT COST ITEMS

Written Comments by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Director

Presented to the Senate Committee on Ways and Means

Thursday, February 20, 2020, 1:00 p.m.
Conference Room 211

Chair Dela Cruz and Members of the Committee:

Good morning Chair Dela Cruz and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments in support of S.B. No. 3079, S.D. 1, Relating To Appropriations for Public Employment Cost Items.

The purpose of this bill is to appropriate funds for the public employment cost items of and cost adjustments for employees of the legislative service agencies, the Senate, and the House of Representatives.

As you know, the staff of the Legislature and the legislative service agencies are excluded from collective bargaining. The Bureau strongly supports the measure's continued progress through the legislative process so that a viable legislative vehicle will remain available should the Legislature later determine that such cost items and adjustments are warranted.

Thank you again for your consideration.