

STAND. COM. REP. NO.

23

Honolulu, Hawaii

FEB 05 , 2021

RE: H.B. No. 838
H.D. 1

Honorable Scott K. Saiki
Speaker, House of Representatives
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Labor & Tourism, to which was referred H.B. No. 838 entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION,"

begs leave to report as follows:

The purpose of this measure is to clarify the meaning of "program or activity receiving state financial assistance" and exclude cases within the scope of the Individuals with Disabilities Education Act from the jurisdiction of the Hawaii Civil Rights Commission.

Your Committee received testimony in support of this measure from the Hawaii Civil Rights Commission, Disability and Communication Access Board, Hawaii Disability Rights Center, National Federation of the Blind of Hawaii, and two individuals.

Your Committee finds that when it was enacted, the intent of section 368-1.5, Hawaii Revised Statutes, was to give the Hawaii Civil Rights Commission (Commission) jurisdiction over disability discrimination claims, even if protections under section 504 of the federal Rehabilitation Act of 1973, as amended, (Section 504) are available. Nonetheless, in Hawaii Technology Academy, et al. v. L.E., et al., 141 Hawaii 147 (2017), the Hawaii Supreme Court decided that the Commission lacks jurisdiction over disability

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discrimination cases when section 504 applies. The practical effect of this ruling was to leave people with disabilities with a state law against discrimination but no actual state remedy.

Your Committee further finds that this measure resolves that anomaly by defining a program or activity receiving state financial assistance to include a program or activity that receives federal and state financial assistance. This measure also takes the precaution of explicitly excluding claims within the scope of the Individuals with Disabilities Education Act from the Commission's jurisdiction to alleviate further confusion.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Tourism that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 838, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 838, H.D. 1, and be referred to your Committee on Judiciary & Hawaiian Affairs.

Respectfully submitted on
behalf of the members of the
Committee on Labor & Tourism,



RICHARD H.K. ONISHI, Chair



