



February 8, 2022

To: The Honorable Richard H.K. Onishi, Chair,  
The Honorable Jackson D. Sayama, Vice Chair, and  
Members of the House Committee on Labor & Tourism

Date: Tuesday, February 8, 2022

Time: 9:30 a.m.

Place: Conference Room 312, State Capitol and via Videoconference

From: Anne Perreira-Eustaquio, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. 2159 RELATING TO WORKFORCE DEVELOPMENT BOARDS**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB2159 proposes to amend Chapter 202, Hawaii Revised Statutes (HRS), by amending the Workforce Development Council law to be consistent with the General Appropriations Act 2021 (Act 88 SLH, 2021).

The DLIR strongly supports this Governor's Package measure and concurs with the amendment proffered by the Hawaii State Ethics Commission.

**II. CURRENT LAW**

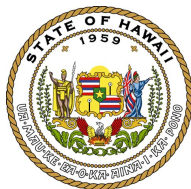
The General Appropriations Act of 2021, eliminated the program identification number (LBR135) of the Workforce Development Council (WDC) and transferred its appropriation and positions to the Workforce Development Division (WDD).

**III. COMMENTS ON THE HOUSE BILL**

The DLIR strongly supports this measure that amends the Workforce Development Council (WDC) law to be consistent with the state budget as enacted in the General Appropriations Act of 2021 (Act 88 SLH, 2021), and conforms the WDC statute to the conflict of interest provisions and nomenclature found in the corresponding federal law.

The bill also makes the terminology used in the state statute consistent with the federal law by changing the name of the state and local entities, i.e., Hawaii Workforce Development Board and local workforce development boards.

The DLIR supports the Hawaii State Ethics Commission's suggested amendments to the new conflict of interest provision found in HB2159 in that it clarifies the responsibilities of the Governor pursuant to chapter 202 and the provisions found in the WIOA.



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## HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813

Committee: House Committee on Labor & Tourism  
Bill Number: H.B. 2159  
Hearing Date/Time: February 8, 2022, 9:30 a.m.  
Re: Testimony of the Hawaii State Ethics Commission **SUPPORTING**  
H.B. 2159 with a **PROPOSED AMENDMENT**

Aloha Chair Onishi, Vice Chair Sayama and Committee Members:

Thank you for the opportunity to testify on H.B. 2159, which, among other things, requires the Hawai‘i Workforce Development Board and local workforce development boards to draft written conflicts of interest policies consistent with federal law and the Hawaii State Ethics Code, Haw. Rev. Stat. Chapter 84. The Hawai‘i State Ethics Commission (“Commission”) supports this measure, but respectfully proposes an amendment.

In H.B. 2159, page 3, lines 1-3, the sentence “[e]ngage in any other activity *determined* by the governor to constitute a conflict of interest under P.L. 113-128 *or state law*”<sup>1</sup> may put the Governor in the unconstitutional role of interpreting Haw. Rev. Stat. Chapter 84 in a manner that conflicts with or supersedes the Hawaii State Ethics Commission.<sup>2</sup> The word “determine” connotes a “[a] final decision by a court or administrative agency.”<sup>3</sup> The Ethics Commission supports the Governor establishing greater ethical standards for members of the workforce development boards, but Governor cannot constitutionally interpret existing state law in a final manner that lessens or conflicts with existing standards.

### ***Proposed Amendment:***

(b) Separate from and in addition to any standards of conduct set forth in Chapter 84, a ~~A~~ member of the workforce development board, a local workforce development board, or standing committee member of a local workforce development board shall not:

(1) Vote on or participate in a discussion about a matter under consideration by a board:

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<sup>1</sup> Emphases added.

<sup>2</sup> Under the Hawaii State Constitution, the State’s “code of ethics . . . shall apply to appointed and elected officers and employees of the State . . . *including members of the boards, commissions and other bodies.*” Article XIV (emphasis added). Further, the Constitution provides the code ethics “shall be administered by a separate ethics commission . . . .” *Id.*

<sup>3</sup> BRYAN A. GARNER, BLACK’S LAW DICTIONARY 480 (8<sup>th</sup> ed.2004) (defining the word “determination”).

- (A) Regarding the provision of services by such member, or by an entity the board member represents; or
  - (B) That would provide direct financial benefit to the member or the member's immediate family; or
- (2) Engage in any other activity determined by the governor to constitute a conflict of interest under P.L. 113-128 ~~or state law~~.

Once again, mahalo for the opportunity to testify.

Very truly yours,

/S/ Robert D. Harris  
Robert D. Harris  
Executive Director and General Counsel

**HB-2159**

Submitted on: 2/7/2022 11:53:45 AM

Testimony for LAT on 2/8/2022 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Alan S. Hayashi	Workforce Development Council	Support	Yes

Comments:

To: Representative Richard Onishi, Chairman Representative Jackson Sayama, Vice Chair Members of the House Labor and Tourism Committee

From: Alan S. Hayashi, Chairman Workforce Development Council

Subject: HB2159

RELATING TO WORKFORCE DEVELOPMENT BOARDS.

Honorable Representative Richard Onishi, Chairman of the Labor and Tourism Committee, Honorable Jackson Sayama, Vice Chair of the Labor and Tourism Committee, and Labor and Tourism Committee members:

My name is Alan Hayashi, Chairman of the Workforce Development Council (WDC). We support the intent of HB2159. We would also respectfully request the ability of the Workforce Development Council to have a role in the selection of the WDC Executive Director by submission of 3 names for final approval by the Governor.

Thank you for the opportunity to testify. I will be glad to answer any questions, if requested.