HAWAII
STATE
ETHICS
COMMISSION
State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

February 11, 2015

The Honorable Scott Y. Nishimoto, Chair
The Honorable John M. Mizuno, Vice Chair
Honorable Members
House Committee on Legislative Management
Hawaii State Capitol, Room 439
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **HB No. 184, Relating to Advisory Opinions by the State Ethics Commission**

Hearing: Wednesday, February 11, 2015, 2:00 0.m.
State Capitol, Conference Room 423

The State Ethics Commission strongly supports HB No. 184, Relating to Advisory Opinions by the State Ethics Commission, which amends the State Ethics Code, specifically HRS section 84-31(a)(2), to allow the Commission, for good cause, an additional thirty days in which to render an advisory opinion.

Individuals subject to the State Ethics Code may request formal guidance from the Commission regarding the application of the State Ethics Code to a specific factual situation. The formal guidance is rendered in the form of an advisory opinion issued by the Commission. By law, the Commission must issue the advisory opinion no later than 30 days after the request is received. If the Commission fails to render the advisory opinion within the proscribed time period, the facts and circumstances described in the request are deemed to be consistent with the State Ethics Code, i.e., deemed to not constitute a violation of the statute.

The Commission is comprised of five volunteer members, who generally meet one time every month. Occasionally, the Commission may cancel a meeting for a particular month. Three members constitute a quorum of the Commission, meaning the Commission cannot convene a meeting or render a decision with less than three members.[1]

During at least one recent period, two members of the Commission resigned, and there was a delay of many months in the appointment of new members. In that instance, if one of the three remaining members was unable to attend a meeting or was required to recuse himself from participating in the Commission's consideration of the request for

[1] HRS section 92-15.

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advisory opinion, the Commission would be unable to issue formal guidance and the situation for which advice was requested, no matter how outrageous, would be deemed to be allowed.

There are other instances where, because of the Commission's meeting schedule, the Commission may not be able to render an advisory opinion within the thirty day period. For instance, the Commission could receive a request for an advisory opinion on February 2, which would trigger the 30 day period, meaning that the Commission must issue an advisory opinion on or before March 3; the Commission may have met on February 5 and was unable to consider the requested advisory opinion as part of that meeting because the Sunshine Law requires that the meeting agenda be filed with the Lieutenant Governor's office at least six days in advance of the meeting; and the Commission's next regularly scheduled meeting is four weeks later, on March 5. In that situation, the Commission is faced with the choice of convening a "special" meeting before March 3, which, even assuming that members are able to participate, may involve additional costs, such as travel costs for neighbor island members, or allowing the described conduct.

The Commission believes that the instances where an additional 30 days is required for it to render an advisory opinion are rare; however, the situations described above are real.

In the Commission's opinion, the bill strengthens the state ethics laws. The additional 30 days, for good cause, is consistent with and furthers the underlying purpose of the State Ethics Code.[2] The Commission strongly believes that conduct that is contrary to the minimum standards established by the legislature for employees (and former employees) should not be deemed to be allowed without a reasonable opportunity for the Commission to consider the circumstances and to render reasoned guidance. Allowing the Commission an additional 30 days, for good cause, will also prevent employees from "gaming" the system by timing their requests for formal guidance, knowing that the Commission may not be able to rendered an advisory opinion within the 30 day period. The Commission believes that the additional 30-day period, for good cause, in which it must render an advisory opinion is a reasonable and appropriate balance between the statute's purpose and the employee/former employee's right to timely guidance.

The Commission requests that the Committee pass HB No. 184, unamended. Thank you for considering the State Ethics Commission's testimony.

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[2] The underlying purpose of the State Ethics Code is to preserve the public's confidence in public servants. HRS chapter 84, Preamble.