



# HAWAII STATE ETHICS COMMISSION

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

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Committee: Committee on Labor  
Bill Number: H.B. 98  
Hearing Date/Time: February 7, 2017, 11:00 a.m.  
Re: Testimony of the Hawaii State Ethics Commission in **SUPPORT**  
of H.B. 98, Relating to the Code of Ethics

Dear Chair Johanson and Committee Members:

The Hawaii State Ethics Commission (“Commission”) supports H.B. 98, Relating to the Code of Ethics. This bill seeks to ensure that Task Force members are exempted from certain Ethics Code requirements, in alignment with the Legislature’s intent in enacting Act 208 of 2012; and (2) to restore pre-2012 language regarding legislators’ constitutionally protected “legislative functions.”

The Ethics Commission has proposed similar amendments in H.B. 290, Sections 3 and 4, also on today’s agenda. The Commission supports H.B. 98, though respectfully suggests that this Committee may wish to review the Ethics Commission’s proposal and consider amending both HRS § 84-13 and HRS § 84-14.

This measure addresses obligations under the Ethics Code for both Task Force members and legislators. Each group is addressed in turn.

## **1. Task Force members**

In 2012, the Legislature enacted Act 208 (HB 2175) to exempt Task Force members from certain provisions of the Ethics Code. The legislative history of this measure indicates the Legislature’s clear intention to ensure that Task Force members could offer their expertise in a limited capacity without being held to the same standards as state officials.

In so doing, however, the Legislature appears to have inadvertently created additional burdens for Task Force members. Specifically, Act 208 of 2012 required Task Force members to “file a full and complete public disclosure” of potential conflicts, and further suggested that Task Force members may be required to file financial disclosure statements (as required for many state officials in HRS § 84-17). In other words, in attempting to exempt Task Force members from some provisions of the Ethics Code, the Legislature appears to have subjected Task Force members to additional provisions of the Ethics Code (specifically, the provision requiring the filing of financial disclosures).

The Commission recognizes that Task Force members are often selected because of their positions within the community, and that these community ties should not prevent experts from serving on Task Forces. As such, the Commission respectfully suggests amendments to both HRS §§ 84-13 and 84-14 to make clear that Task Force members need not file financial disclosures, and that the Ethics Code should not be a barrier to Task Force members serving on Task Forces.

That said, the Legislature has indicated it wishes both Task Force members and legislators to disclose conflicts of interest in some manner. As such, the Commission respectfully proposes that it develop administrative rules to provide for this public disclosure for Task Force members and that either the Legislature or the Commission develop rules for legislators.

## **2. Legislators: “legislative functions” and “official action”**

In enacting Act 208 in 2012, the Legislature also 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 Hawaii Constitution.<sup>1</sup> 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).

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 supports HB98, because it restores the pre-2012 exemption for “legislative functions” and thereby demonstrates that the Legislature holds its members to high ethical standards.

Thank you for your continuing support of the Commission’s work and for considering the Commission’s testimony on H.B. No. 98.

Very truly yours,

Daniel Gluck  
Executive Director and General Counsel

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<sup>1</sup> In relevant part, Article III, section 7 of the Hawaii 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. . . .”