



# HAWAII STATE ETHICS COMMISSION

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

---

March 13, 2008

The Honorable Tommy Waters, Chair  
The Honorable Blake K. Oshiro, Vice Chair  
House Committee on Judiciary  
Hawaii State Capitol, Room 302  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 945, H.D. 1 (Proposed H.D. 1),  
Relating to Ethics**

Hearing: Thursday, March 13, 2008, 3:15 p.m.  
State Capitol, Conference Room 325

Testifying: Daniel J. Mollway  
Executive Director and General Counsel  
Hawaii State Ethics Commission

The Honorable Tommy Waters, Chair; The Honorable Blake K. Oshiro, Vice Chair;  
and Honorable Members of the House Committee on Judiciary:

Thank you for this opportunity to testify today on S.B. No. 945, H.D. 1 (Proposed H.D. 1), Relating to Ethics. The Hawaii State Ethics Commission is only concerned with Sections 2, 3, and 4 of this bill.

With respect to Section 2 of this bill, Section 2 of this bill in essence creates something of a "nepotism" statute for legislators, at least with respect to spouses. Under Section 2, legislators would be prohibited from hiring their spouse for any position in the Legislature over which the legislator exercises jurisdiction. Further, the legislator could not advocate for the hiring or promotion of a spouse for another position within the Legislature.

While the Hawaii State Ethics Commission supports this section of this bill, the Hawaii State Ethics Commission would like to suggest that this committee consider adopting a general nepotism statute for state officials and state employees of the State of Hawaii.

The Honorable Tommy Waters  
The Honorable Blake K. Oshiro  
March 13, 2008  
Page 2

It has been the experience of the Hawaii State Ethics Commission that nepotism is unfortunately wide-spread in this State. For this reason, we believe that the issue of nepotism in the State government of Hawaii should be addressed across the board, rather than be limited to the Legislature, and the spouses of legislators.

As to the wording of such a nepotism statute, I would recommend wording along the lines of a nepotism provision in the Constitution of the State of Missouri. Article VII, Section 6, of the Missouri State Constitution, regarding nepotism, states as follows:

Any public officer or employee in the state who, by virtue of his office or employment, names or appoints to public office for employment, any relative within the 4<sup>th</sup> degree by consanguinity or affinity, shall thereby forfeit his office or employment.

I would suggest that this language be amended to state something on the order that legislators, state officials, and state employees are prohibited from hiring or promoting any relative within the 4<sup>th</sup> degree of consanguinity or affinity, or recommending to any other state agency that such a relative be hired or promoted, and so forth.

The question of nepotism has come up as long as I have been with the Hawaii State Ethics Commission, since 1981. In the 1970's, the Legislature had rejected a nepotism statute suggested by the Hawaii State Ethics Commission. However, from what I have seen, especially within the last few years, regarding nepotism, I believe that it is time for Hawaii to adopt a nepotism statute applicable to state officials and state employees.

The other section of this bill of interest to our office is Section 4. Under this section of the bill, HRS section 84-15 of the State Ethics Code, would be amended to prohibit a legislator, or a business in which a legislator has a controlling interest, from entering into any contract for goods, services, or construction with any "entity" that receives any state funding where the contract involves goods, services, or property of a value in excess of \$10,000 in any fiscal year.

Currently, HRS section 84-15 would allow a legislator, or a company in which a legislator has a controlling interest, to enter into a contract with a state agency so long as the contract is awarded by competitive sealed bidding pursuant to Section 103D-302 or Section 103D-303, which relates to competitive sealed proposals. If these competitive processes are not utilized, the state agency is required to post a notice of its intent to award such a contract with the Hawaii State Ethics Commission at least ten days before the contract is awarded.

The Honorable Tommy Waters  
The Honorable Blake K. Oshiro  
March 13, 2008  
Page 3

The purpose of amending HRS section 84-15 with respect to legislators appears to address the notion that legislators, or companies in which they have controlling interests, may be receiving preferential treatment in being awarded contracts. We assume that to some degree this is in fact occurring, and for that reason we would support this bill. However, we would like to note that legislators serve in a part-time capacity, and thus care should be taken that this bill not unfairly intrude upon a legislator's ability to earn a living. That being said, the underlying basis of the State Ethics Code is to promote the public's confidence in state officials and in state government, and thus if there is an appearance or actuality that legislators are receiving preferential treatment with respect to contracts for their personal services, or with regard to companies in which they have a controlling interest, we believe that an amendment to HRS section 84-15 is warranted.

We note that in this part of the bill, legislators are being singled out, as opposed to all state officials and employees. This is a concern for us, since other state officials or state employees (including board members) may be involved in similar abuse. However, if a restriction with respect to only legislators seems warranted at this time, we have no objection.

We would like to point out that some aspects of the language that appears in the amendment to HRS section 84-15, barring legislators from entering into contracts, is somewhat confusing. One part of the provision refers to contracts for "goods, services, or construction" [emphasis added], while the other part of the sentence refers to "goods, services, or property" [emphasis added]. This discrepancy, we believe, should be addressed. Further, we are not sure what is meant by the term "entity." We are not sure whether this term is meant to include state agencies who use state funds in contracts or in awarding contracts, or entities that receive state funds and then in turn use such state funds to award contracts. The way this bill is currently written, it seems that a company in which a legislator has a controlling interest would be barred from contracting with an entity merely because that entity receives state funds via an unrelated contract, rather than the fact that it is the state funds that will be used with respect to the new contract. Thus, we believe that these concerns should be discussed and addressed.

Thank you for this opportunity to testify on this bill today. I would be happy to address any questions that the Members of this Committee may have.