



HAWAII STATE ETHICS COMMISSION

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State Ethics Commission's Legislative Package for 2009

The State Ethics Commission's legislative package of bills has been introduced by both the Senate President and Speaker of the House. The State Ethics Commission's legislative package consists of five bills. The description and purpose of these bills is described below. While we will refer to the Senate form of the bill, each bill in the House and Senate is the "companion bill" of the other.

1. **Senate Bill No. 1026, Relating to Conflicts of Interests.** (Companion Bill: House Bill No. 852, Relating to Conflicts of Interests.) The purpose of this bill is to expand HRS §84-14(a), one of the primary provisions of the conflicts-of-interests section of the State Ethics Code. Under the current law, a state official or state employee (excluding legislators) must recuse himself or herself from taking official action affecting a business in which the state official or state employee, or the official's or employee's spouse or dependent child, has a substantial financial interest. But a state official or state employee is not required under the current law to recuse himself or herself from taking official action

affecting a business in which an “emancipated” child of a state official or state employee holds a significant financial interest.

The bill expands HRS §84-14(a) to encompass a state official’s or state employee’s emancipated child, if the child has a twenty-five percent ownership interest in a business, or serves as a member of the board of directors of the business, or is an officer of the business. If an emancipated child has a twenty-five percent ownership interest in a business, or serves as a member of the board of directors of a business, or is an officer of a business, the Commission believes that a state official or state employee should recuse himself or herself from taking official action affecting the business in which the emancipated child holds the interest discussed above. The State Ethics Commission believes that this will strengthen public confidence in state officials and state employees by requiring recusal in a situation that otherwise, if recusal were not required, would diminish public confidence in state officials and state employees. Recusal only results in another state official or employee taking the requisite action. This bolsters public confidence in government. The State Ethics Code defines the term “business” to include both for-profit and non-profit entities.

2. **Senate Bill No. 1027, Relating to Public Disclosure of Financial Interests Statements.** (Companion Bill: House Bill No. 853, Relating to Public Disclosure of Financial Interests Statements.) The purpose of this bill is to require legislators to file their annual disclosure of their financial interests between January 1 and

January 31 of each year. The Commission believes that this is important because legislators are not subject to the conflict-of-interests law set forth in the State Ethics Code.

Currently, legislators may file their annual disclosures between January 1 and May 31. Since many disclosures filed by legislators are filed after the end of the legislative session, the disclosures are basically useless in helping the public to understand where there are potential conflicts for legislators that the public might be interested in. The purpose of having legislators file public financial interests disclosure forms is, in the absence of a recusal law administered by the State Ethics Commission, to give to the public information about the financial interests a legislator may have. Thus, logic dictates that such disclosure forms be filed early in the session.

The State Ethics Commission understands that the disclosure form requires legislators to disclose the amount of income received from businesses they worked for in the preceding calendar year, and this amount of income in some cases may not be known in January, due to the complexities of tax law and so forth. Thus, in such instances, a legislator would only have to disclose the source of the income received, and then provide a good-faith estimate of the income the legislator expects to receive. Later, by May 31, the legislator would be required to file an amendment form solely to amend this portion of the financial interests disclosure form.

The State Ethics Commission believes that such a bill will do a tremendous amount of good in showing that legislators are responsive to the dictates of transparency, which are important for the functioning of our state government. The public would at least know the sources of income from which legislators received income, and thus would be able to assess for themselves whether or not legislators have conflicts of interests, to the public's mind. The State Ethics Commission believes that such a bill is also salutary, in the sense that in general the Commission believes that such disclosure forms will in fact show a lack of significant conflicts of interests in the main. At present, the public can only guess as to what interests a legislator may have until a disclosure form is filed at some time later, or even after the legislative session ends. The Commission believes that this is a very important bill for the Legislature to consider.

3. **Senate Bill No. 1028, Relating to Nepotism.** (Companion Bill: House Bill No. 854, Relating to Nepotism.) The purpose of this bill is to prohibit nepotism. A nepotism provision in an ethics code is a very standard provision. Yet, the State of Hawaii has no such provision in its ethics code. The nepotism provision that the State Ethics Commission is proposing would bar a legislator or state official or state employee, by virtue of the legislator's or official's or employee's office or employment, from naming or appointing to public office or employment any relative within the fourth degree of consanguinity or affinity. This is a very standard provision in ethics codes. The language of this bill is modeled after a nepotism provision set forth in the Constitution of the State of Missouri.

The State Ethics Commission believes that nepotism is not the problem it once was in the State of Hawaii. That being said, the Commission believes that nepotism is still a problem in the State of Hawaii, and, nevertheless, an ethics code should always have a provision with respect to nepotism. Lack of a nepotism statute surely diminishes the public's confidence in state government, and the public should rest assured that there is a statute that prohibits nepotism. The public should be assured that, in good or bad economic times, they have an equal chance to obtain state employment.

4. **Senate Bill No. 1029, Relating to the Disposition of Financial Interests**

Disclosure Statements. (Companion Bill: House Bill No. 855, Relating to the Disposition of Financial Interests Disclosure Statements.) This bill is in essence a "housekeeping" bill. In the State Ethics Code, provision HRS §84-17.5 allows "disclosure of financial interests statements" to remain in the office of the State Ethics Commission for six years following the day upon which a filer leaves the state position for which the disclosure form was filed. The time period of six years was established because the State Ethics Code provides for a six-year statute of limitations.

The current law, HRS §84-17.5, requires the Commission to dispose of disclosure forms six years from the day a state official or state employee has left the position for which the form was filed. Because about 2,000 disclosure forms are filed each year, it is extremely difficult for the Commission's staff to dispose of such forms on a daily basis, in order to be in compliance with the law. At times, staff is not even aware that a particular

state official or employee has left state office. The Commission works with other agencies to determine when filers leave their positions, but the Commission often is not provided with up-to-date information.

What this bill does is give the Commission a one-year period, after the six-year period of retention has run, to dispose of the disclosure statements. This will provide the small staff of the State Ethics Commission with adequate time to dispose of disclosure statements without technically running afoul of the law. Although a disclosure form would possibly remain within the Commission for as long as a seventh year, the Commission does not believe that this is significant, and certainly not significant in terms of the proper disposal of the disclosure forms. After the six-year period has run, it is very rare that a disclosure form would be of interest to anyone.

5. **Senate Bill No. 1030, Relating to Lobbying Statement of Expenditures.**

(Companion Bill: House Bill No. 856, Relating to Lobbying Statement of Expenditures.)

The purpose of this bill is to require lobbyists and their clients to file, during a year, a fourth statement of lobbying expenditures. Four reporting periods is clearly the norm with respect to the federal government and most state governments that regulate lobbying.

At present, lobbyists and their clients only file expenditure forms three times a year. The first reporting period covers the months of January and February. The second

reporting period covers the months of March and April. After that time, the third reporting period covers the months from May to the end of December.

The May to December reporting period, however, does not make much sense in terms of disclosure with respect to lobbying expenditures. This is because in the months of May, June and July, the governor will be lobbied, as well as others, with respect to bills the governor must consider to become law. The Commission in its proposed legislation would create a lobbying period that runs from May 1 to the end of August, and another lobbying period that would run from September 1 to the end of the year. This simply divides the third current reporting period into two reporting periods.

The reporting period from May 1 to the end of August would capture lobbying done basically on bills that the Legislature has passed. Currently, this information is not available to the public until January 31 of the following calendar year, which makes the information almost useless. By having a reporting period from May 1 to the end of August, the public will know the extent of any lobbying that takes place with respect to the governor determining which bills become law.

Furthermore, the reporting period of September 1 to end of the year will allow the public to see what lobbying takes place for the purpose of the upcoming legislative session. This will be informative to the public.

It is quite customary for agencies that regulate lobbying to have at least four reporting periods at a minimum. This bill would establish the same system for Hawaii. The Commission believes it is necessary, in order to have transparency and adequate lobbying disclosure, to have lobbyists file a report for activity between May 1 and the end of August, and then a report for September 1 to the end of December. Again, this will allow the public to have information about lobbying activities that take place shortly after the legislative session, and then provide information with respect to the upcoming legislative session.

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