



STATE ETHICS COMMISSION

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February 24, 1975

The Honorable Stanley H. Roehrig
Chairman, House Judiciary Committee
State Capitol
Honolulu, Hawaii 96813

Subject: H.B. 126, RELATING TO PUBLIC AGENCY MEETINGS
AND RECORDS; AND H.B. 506, RELATING TO MEETINGS
AND RECORDS OF PUBLIC AGENCIES

The State Ethics Commission supports the passage of bills that aim to open up governmental processes to public scrutiny and participation. Thus, the Commission supports the passage of H.B. 126 and H.B. 506. The Commission, however, recommends that certain amendments be made to the bills in order to preserve some of the confidentiality requirements of the ethics law. (The Commission's recommendations are attached.) In the course of Commission discussion on "sunshine" bills, it was decided that not every existing confidentiality requirement in the ethics law should be exempted inasmuch as the Commission strongly agrees with the declaration of policy and intent which is contained on the first pages of H.B. 126 and H.B. 506.

The Commission recommends that an additional exception be allowed for executive meetings -- "To consider a matter which is required to be confidential under HRS Chapter 84." This exception would allow an executive meeting to be held to consider a matter which is required to be confidential under the ethics law. Confidential matters, however, would not be specifically spelled out in HRS ch. 92. It is proposed that the confidentiality requirements be spelled out in HRS ch. 84; therefore, the Commission proposes that a new section be added to the bills which would contain the proposed changes to the confidentiality requirements of the State ethics law. The contemplated amendment would

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still require the Commission to reach a decision in public session. This can be accomplished by reference to the case or file number only.

The Commissioners feel that the advisory opinion proceeding, which is a voluntary proceeding, is an effective method of preventing ethics violations. The Commission feels that many individuals may be reluctant to voluntarily request an advisory opinion if their request would not be confidential. The Commission, therefore, does not recommend changing the confidentiality requirement for this proceeding.

As to charges, it is the Commission's opinion that charge proceedings under the ethics law should be no more secret than criminal proceedings. The Commission is cognizant of the fact that public trials for criminal matters are protected by the Constitution and, further, witnesses before grand jury proceedings are no longer bound by the secrecy requirements of an earlier period. The Commission, therefore, proposes amendments to the confidentiality requirement regarding Commission charge proceedings. The proposal would require confidentiality for any investigation and informal hearings up to the time that the Commission decides to file a formal charge (Further Statement of Alleged Violation) against the individual. Thereafter, all proceedings would be open to the public. Because a formal charge may be filed only when the Commission has determined that there is probable cause for belief that a violation of the ethics law might have occurred, a public official or employee would still be protected against adverse publicity resulting from irresponsible and frivolous charges. At the same time, with a public hearing, the public would be assured that the proceedings were being carried out in a fair and impartial manner.

The Commission is cognizant of Article III, §15 of the State Constitution, which states in part that "[n]o law shall be passed except by bill. Each law shall embrace but one subject which shall be expressed in its title." The Commission believes that amendments to the disclosure requirement would be beyond "the subject matter" of H.B. No. 126 and H.B. No. 506. Because the Commission feels that the filing and review of disclosures by non-legislators should not be made public without an accompanying limitation

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of the disclosure requirement, it is not recommending that the confidential filing of disclosures be changed at this time.

Thank you for the opportunity to present this written testimony.

STATE ETHICS COMMISSION

A handwritten signature in cursive script, reading "Gary S. Okabayashi".

Gary S. Okabayashi
Executive Director

Attachments

PROPOSED COMMISSION AMENDMENTS TO H.B. 126,
RELATING TO PUBLIC AGENCY
MEETINGS AND RECORDS

- I. On page 5 of H.B. 126, add the following paragraph between subparagraphs (1) and (2):

"() To consider a matter which is required to be confidential under HRS Chapter 84."

- II. On page 9 of H.B. 126, add a new section before SECTION 3 to read as follows:

SECTION (). Chapter 84, Hawaii Revised Statutes, is amended in the following respects:

- (a) Section 84-31 shall be amended to read as follows:

"Section 84-31 Duties of commission; complaint, hearing, determination."

(a) No change.

(b) No change.

"(c) . Any commission or staff member [or individual, including the individual making

the charge,] who knowingly and intentionally divulges information concerning the charge prior to the issuance of the [complaint] further statement of alleged violation by the commission[, or if the investigation discloses that the complaint should not be issued by the commission, at any time divulges any information concerning the original charge,] or divulges the contents of disclosures except as permitted by this chapter[,] shall be guilty of a felony which shall be punishable by a fine of not more than \$5,000 or imprisonment of not more than five years, or both[, or in the case of a legislator, when acting in his legislative capacity, be subject to discipline pursuant to article III, section 13, of the Hawaii Constitution as the case may be].

"(d) If after twenty days following personal service, a majority of the members of the commission conclude that there is reason to believe that a violation of this chapter has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require

the production of any books or papers relative to the proceedings, (3) to be represented by counsel, and (4) to have the right to cross-examination. All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath [and the hearings shall be closed to the public unless the party complained against requests an open hearing]. The Commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. [Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the State's general fund.]

(e) No change.

(f) No change.

(b) Section 84-32 shall be amended to read:

"Section 84-32 Procedure.

"(a) With respect to legislators and employees

removable only by impeachment: when the ethics commission after due hearings pursuant to section 84-31(d) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint must contain a statement of the facts alleged to constitute the violation. [If within thirty days after the referral, the legislature has not disposed of the complaint, the commission shall make the charges public. Days during which the legislature is not in session shall not be included in determining the thirty-day period.]

"(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission after due hearing determines pursuant to section 84-31(d) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeachment, it shall refer the decision to the governor who shall take appropriate action within sixty days and shall notify the commission of the action taken.

"[If it is found that a violation has occurred,

the governor or the ethics commission by a vote of four members may make the findings and the record of the proceeding public, taking into account the seriousness of the violation.

"This subsection shall not prevent the commission from reporting decisions in the yearly summaries required by section 84-31(f).]

"(c) With respect to former employees: [the commission may with the consent of four commissioners issue a public statement of its findings and conclusions, and t]The attorney general may exercise whatever legal or equitable remedies which may be available to the State."

Testimony of Common Cause/Hawaii on House
Bill 126 at Public Hearing of House Judiciary
Committee. 26 February 1975

I am Marie Wiley, speaking on behalf of Common Cause/Hawaii. The House bill before us today reflects a healthy interest on the part of Hawaii's government to open itself further to the people. Both houses of our legislature have responded favorably to the citizens' concern for openness by establishing internal rules stressing such openness. That all legislative committee meetings, including conference committee meetings, will now be open to the public is a tribute to the Eighth Legislature. We hope to see this trend toward greater accessibility and accountability perpetuated throughout this and future legislative sessions.

While the reform rules within the legislature are to be applauded, they leave other governmental bodies functioning under their own rules and/or the rather weak provisions of Hawaii's current open meetings statute. Also legislative and agency rules are subject to change at any time. We feel, therefore, that the most effective insurance of an accountable government is the passage of a strong open meetings bill.

HB 126 offers the following potential:

- provides a declaration of policy and intent
- defines the terms meeting and executive meeting
- limits the use of executive meetings to specific subject matter
- requires prior notification of meetings
- sets minimum standards for content and availability of minutes
- invalidates any action taken at a meeting in violation of the provisions of the bill
- includes enforcement and penalty clauses which are necessary for effective legislation

None of the provisions above now exist in the Hawaii Revised Statutes, Chapter 92 on Public Agency Meetings and Records.

Practicality has been raised as the major objection to most open meetings bills that have been introduced. In response to this objection, we feel that

the seven day prior notification requirement of the House bill could be amended to a seventy-two hour notification. This is only twenty-four hours more notice than the House and Senate require in their rules. We also feel that the agenda filed for each meeting should include the date, time, and place of the meeting.

The issue of practicality again arises in the availability of minutes. While "within thirty days after the meeting" seems too lenient a stipulation, "prior to the next meeting" in some cases is far too stringent a requirement. Our solution is to replace both conditions with the availability requirement of "within ten working days after the meeting."

Section 92-6 of House Bill 126 is one we would like to see deleted. It essentially exempts the legislature and its committees from the provisions of the bills which come in conflict with the legislature's rules. Although this present session would need use this exemption rarely, when the rules of both houses are similar to the bill's provisions, this might not hold true for future sessions. As we expressed before, internal rules are constantly subject to change, and who is to know what successive legislatures may effect in their rules. With the increase in legislative staffing, and with the amendment to require seventy-two hour rather than seven day notification of meetings, we feel the legislature could easily conform to a statute equally applied to all but the judicial branch of government.

In the section relating to cost of copies of public records, we feel that the cost should be "cost", not the "twenty cents a folio of one hundred words" that exists in the bill.

Finally, there appears to be a typographical error in Sec. 92-3 (d). The final clause, "not later than the time the agenda is filed under subsection (b)" should read "under subsection (c)."

February 21, 1975

TESTIMONY RELATING TO OPEN MEETINGS LEGISLATION
COMMITTEE ON JUDICIARY - Stanley Roehrig, Chairman

My name is Melvia Kawashima and I am the State President of the League of Women Voters of Hawaii. Our national non-profit, non-partisan organization is committed towards citizen participation in government. To this end we congratulate our state lawmakers in their efforts toward framing legislation which would further direct citizen involvement in the processes of government.

We endorse HB 126, including Legislative Branch applicability (Sec. 92-6,p.5) understanding and accepting the time constraints the Legislature must operate under.* However, we will continue to monitor our public officials making sure that the Declaration of policy and intent be adhered to.

*We would like to see this section apply to only last few weeks of session.