

JAN 25 2017

A BILL FOR AN ACT

RELATING TO ETHICS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature recognizes the importance of
2 ethics education and advice in preventing ethics violations from
3 occurring, and encourages the state ethics commission to
4 continue its practice of providing guidance to state employees
5 and the public. The legislature also finds that the public
6 would benefit from additional clarity and consistency in the
7 administration and enforcement of the State's ethics laws.

8 Accordingly, the purpose of this Act is to clarify the
9 procedures used by the state ethics commission and its staff for
10 providing advice on ethics issues; educating employees,
11 legislators, lobbyists, and the general public; and resolving
12 investigations.

13 SECTION 2. Section 84-31, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The ethics commission shall have the following powers
16 and duties:



1 (1) It shall prescribe forms for the disclosures required
2 by article XIV of the Hawaii constitution and section
3 84-17 and the gifts disclosure statements required by
4 section 84-11.5 and shall establish orderly procedures
5 for implementing the requirements of those provisions;
6 (2) It shall render advisory opinions upon the request of
7 any legislator, employee, or delegate to the
8 constitutional convention, or person formerly holding
9 [~~such~~] the office or employment as to whether the
10 facts and circumstances of a particular case
11 constitute or will constitute a violation of the code
12 of ethics[~~-~~], section 11-8, or section 11-316. If no
13 advisory opinion is rendered within [~~thirty~~] sixty
14 days after the request is filed with the commission,
15 it shall be deemed that an advisory opinion was
16 rendered and that the facts and circumstances of that
17 particular case do not constitute a violation of the
18 code of ethics. The opinion rendered or deemed
19 rendered, until amended or revoked, shall be binding
20 on the commission in any subsequent charges concerning
21 the legislator, employee, or delegate to the



1 constitutional convention, or person formerly holding
2 [~~such~~] the office or employment, who sought the
3 opinion and acted in reliance on it in good faith,
4 unless material facts were omitted or misstated by
5 [~~such~~] those persons in the request for an advisory
6 opinion;

- 7 (3) It shall initiate, receive, and consider charges
8 concerning an alleged violation of this chapter,
9 initiate or make investigation, and hold hearings[+].
10 The commission and the subject of any investigation or
11 charge may agree at any time to resolve any alleged
12 violation of this chapter; provided that any
13 resolution shall be in writing and shall be signed by
14 three or more members of the commission and by the
15 subject of the investigation or charge; provided
16 further that the resolution shall have the force and
17 effect of a final decision and order issued after a
18 contested case hearing and shall not be appealable;
- 19 (4) It may subpoena witnesses, administer oaths, and take
20 testimony relating to matters before the commission
21 and require the production for examination of any



1 books or papers relative to any matter under
2 investigation or in question before the commission.
3 Before the commission shall exercise any of the powers
4 authorized in this section with respect to any
5 investigation or hearings, it shall by formal
6 resolution, supported by a vote of three or more
7 members of the commission, define the nature and scope
8 of its inquiry;

9 (5) It may, from time to time adopt, amend, and repeal any
10 rules, not inconsistent with this chapter, that in the
11 judgment of the commission seem appropriate for the
12 carrying out of this chapter and for the efficient
13 administration thereof, including every matter or
14 thing required to be done or [~~which~~] that may be done
15 with the approval or consent or by order or under the
16 direction or supervision of or as prescribed by the
17 commission. The rules, when adopted as provided in
18 chapter 91, shall have the force and effect of law;

19 (6) It shall have jurisdiction for purposes of
20 investigation and taking appropriate action on alleged
21 violations of this chapter in all proceedings



1 commenced within six years of an alleged violation of
2 this chapter by a legislator or employee or former
3 legislator or employee. A proceeding shall be deemed
4 commenced by the filing of a charge with the
5 commission or by the signing of a charge by three or
6 more members of the commission. Nothing [~~herein~~] in
7 this paragraph shall bar proceedings against a person
8 who by fraud or other device, prevents discovery of a
9 violation of this chapter;

10 (7) It shall distribute its publications without cost to
11 the public and shall initiate and maintain programs
12 with the purpose of educating the citizenry and all
13 legislators, delegates to the constitutional
14 convention, and employees on matters of ethics in
15 government employment [~~and~~]. It may issue guidance
16 regarding the application of this chapter; provided
17 that the guidance shall not have the force and effect
18 of law;

19 (8) It shall administer any code of ethics adopted by a
20 state constitutional convention, subject to the



1 procedural requirements of this part and any rules
2 adopted thereunder[-]; and

3 (9) It may authorize its staff to provide confidential
4 guidance to any individual as to whether the facts and
5 circumstances of a particular case constitute or would
6 constitute a violation under this chapter, section 11-
7 8, or section 11-316; provided that nothing in this
8 paragraph shall establish an attorney-client
9 relationship between the person seeking advice and the
10 commission or its staff; provided further that any
11 written guidance rendered by commission staff advising
12 that proposed conduct is allowable, until amended or
13 revoked, shall be binding upon the commission in any
14 subsequent charges concerning the individual who
15 sought the guidance and acted in reliance on that
16 guidance in good faith, unless material facts were
17 omitted or misstated by the individual in making the
18 request for guidance; and provided further that
19 nothing in this paragraph shall prevent the commission
20 or its staff from investigating alleged violations of
21 this chapter."



1 SECTION 3. Section 97-6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The state ethics commission shall administer and
4 implement this chapter, and shall have the following powers and
5 duties:

- 6 (1) Initiate, receive, and consider charges concerning
7 alleged violations of this chapter, and investigate or
8 cause to be investigated on a confidential basis, the
9 activities of any person to determine whether the
10 person is in compliance with this chapter[+]. The
11 commission and the subject of any investigation or
12 charge may agree at any time to resolve any alleged
13 violation of this chapter; provided that any
14 resolution shall be in writing and shall be signed by
15 three or more members of the commission and by the
16 subject of the investigation or charge; provided
17 further that the resolution shall have the force and
18 effect of a final decision and order issued after a
19 contested case hearing and shall not be appealable;
20 (2) Prescribe forms for the statements and reports
21 required by sections 97-2 and 97-3 and establish



1 orderly procedures for implementing the requirements
2 of those provisions;

3 (3) Render advisory opinions upon the request of any
4 person subject to this chapter. If no advisory
5 opinion is rendered within [~~thirty~~] sixty days after
6 the request is filed with the commission, it shall be
7 deemed that an advisory opinion was rendered and that
8 the facts and circumstances of that particular case do
9 not constitute a violation of this chapter. The
10 opinion rendered or deemed rendered, until amended or
11 revoked, shall be binding on the commission in any
12 subsequent charges concerning the person subject to
13 this chapter who sought the opinion and acted in
14 reliance on it in good faith, unless material facts
15 were omitted or misstated by the person in the request
16 for an advisory opinion;

17 (4) Issue subpoenas, administer oaths, and exercise those
18 powers conferred upon the commission by section 92-16;

19 (5) Adopt rules, not inconsistent with this chapter, as in
20 the judgment of the commission seem appropriate for
21 the carrying out of this chapter and for the efficient



1 administration of this chapter, including every matter
2 or thing required to be done or [~~which~~] that may be
3 done with the approval or consent or by order or under
4 the direction or supervision of, or as prescribed by,
5 the commission. The rules, when adopted as provided
6 in chapter 91, shall have the force and effect of law;
7 [~~and~~]

8 (6) Have jurisdiction for purposes of investigation and
9 taking appropriate action on alleged violations of
10 this chapter in all proceedings commenced within three
11 years of an alleged violation of this chapter. A
12 proceeding shall be deemed commenced by the filing of
13 a charge with the commission or by the signing of a
14 charge by three or more members of the commission.
15 Nothing shall bar proceedings against a person who by
16 fraud or other device prevents discovery of a
17 violation of this chapter[-];

18 (7) Issue guidance regarding the application of this
19 chapter; provided that the guidance shall not have the
20 force and effect of law; and



1 (8) Authorize its staff to provide confidential guidance
2 to any individual as to whether the facts and
3 circumstances of a particular case constitute or would
4 constitute a violation under this chapter; provided
5 that nothing in this paragraph shall establish an
6 attorney-client relationship between the person
7 seeking advice and the commission or its staff;
8 provided further that any written guidance rendered by
9 commission staff advising that proposed conduct is
10 allowable shall, until amended or revoked, be binding
11 upon the commission in any subsequent charges
12 concerning the individual who sought the guidance and
13 acted in reliance on that guidance in good faith,
14 unless material facts were omitted or misstated by the
15 individual in making the request for guidance; and
16 provided further that nothing in this paragraph shall
17 prevent the commission or its staff from investigating
18 alleged violations of this chapter."

19 SECTION 4. The state ethics commission, in its discretion,
20 may make any changes that it deems necessary to internal
21 procedures or forms to aid in the implementation of this Act.



S.B. NO. 875

1 SECTION 5. If any provision of this Act, or the
 2 application thereof to any person or circumstance, is held
 3 invalid, the invalidity does not affect other provisions or
 4 applications of the Act that can be given effect without the
 5 invalid provision or application, and to this end the provisions
 6 of this Act are severable.

7 SECTION 6. This Act does not affect rights and duties that
 8 matured, penalties that were incurred, and proceedings that were
 9 begun before its effective date.

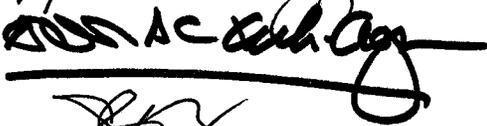
10 SECTION 7. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

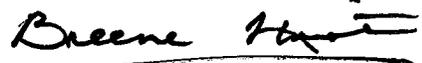
12 SECTION 8. This Act shall take effect upon its approval.

13

INTRODUCED BY:






S.B. NO. 875

Report Title:

State Ethics Commission; Guidance; Violations; Allegations;
Resolution

Description:

Clarifies how the Ethics Commission may provide guidance and
resolve allegations of violations.

*The summary description of legislation appearing on this page is for informational purposes only and is
not legislation or evidence of legislative intent.*

