



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i 96813

Committee: Committee on Labor
Bill Number: H.B. 2748
Hearing Date/Time: February 4, 2020, 9:30 a.m.
Re: Testimony of the Hawai'i State Ethics Commission with **COMMENTS**
on H.B. 2748, Relating to Government

Dear Chair Johanson, Vice Chair Eli, and Committee Members:

The Hawai'i State Ethics Commission ("Commission") has not had an opportunity to discuss H.B. 2748, such that it does not take a position on this measure. However, the undersigned submits the following comments for the Committee's consideration.

Pension forfeiture

As set forth in the Commission's testimony on H.B. 2747, the Commission has, at times, discussed the possible need for increased penalties – including pension forfeiture – for employment-related misconduct. Although employment-related felonies for State employees are quite rare, an increased penalty may serve as an additional deterrent that will help promote the public's trust in government officials.

Additionally, I believe the Commission would support the requirement that pension forfeiture occur only after a court concludes that an employee committed a felony, and not upon a lower standard.

Criminal penalties for violations of the Ethics Code, HRS chapter 84

Currently, alleged violations of the Ethics Code are adjudicated by the Ethics Commission, a legislative agency. The Commission's staff is not trained to prosecute Class A felonies, nor would the Commission be able to preside over a criminal trial. As such, if this Committee wishes to maintain the provision making any violation of the Ethics Code a Class A felony, the Committee may wish to consider adding language to clarify enforcement.

However, the Committee should note that the Ethics Code contains a range of prohibitions, many of which likely do not warrant treatment as Class A felonies. For example, a state official who files a gifts disclosure statement one day late, or who completes the form incorrectly (by omitting the date, for example), has violated the Ethics Code. While late filers can (and do) face administrative fines for such infractions, incarceration for such an action – even for legislators, department directors, and others whose salaries are set by the salary commission (including the undersigned) – is likely unnecessary.

In the past, the Commission has discussed other possible amendments to the Ethics Code to deter unethical conduct; one idea is to authorize the Commission to discipline or terminate state employees upon a finding of a serious Ethics Code violation.¹ The Commission has not voted on such a recommendation, however – and there are pros and cons to doing so – and this idea is offered here only as a possible topic of discussion for the Committee (or for the Public Employee Corruption and Bribery Task Force).

Public Employee Corruption and Bribery Task Force

The Commission is willing and able to convene such a task force. The Committee may wish to consider whether county officials should be included in this discussion, recognizing that the State Ethics Commission has jurisdiction only over state officials. The Committee may also wish to have the task force consider whether the county ethics commissions – particularly from the neighbor islands – need additional resources to carry out the requirements of article XIV of the Hawai‘i Constitution.

Thank you for your continuing support of the Commission’s work and for considering this testimony on H.B. 2748.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

¹ The Commission has the authority to impose administrative penalties – and can make a recommendation to an employee’s agency that the employee be disciplined – but the Commission itself cannot discipline or terminate an employee.

Statement Before The
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Tuesday, February 4, 2020
9:30 AM
State Capitol, Conference Room 309

in consideration of
HB 2748
RELATING TO GOVERNMENT.

Chair JOHANSON, Vice Chair ELI, and Members of the House Labor & Public Employment Committee

Common Cause Hawaii supports HB 2748, which would (1) authorize forfeiture of certain employees' retirement system benefits, pursuant to court order, for state or county employees and designated beneficiaries who are convicted of an employment-related felony; (2) make ethics code violations a class A felony if the salary of the employee who commits the offense is subject to the recommendation of the Commission on Salaries; (3) increase the offense of bribery to a class A felony if the salary of the public servant who commits the offense to recommendation by the Commission on Salaries; (4) direct the Commission on Salaries to consider the deterrence of corruption and bribery by persons appointed to those positions; and (5) create a task force to investigate avenues to prevent corruption and bribery issues among public servants in positions of influence.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy. Common Cause Hawaii works to restore faith in our government and our democracy that has been shattered in the last few years through ethics, accountability, and transparency reforms. These reforms are probably the most important tools to restoring the people's trust in their elected leaders and their government – to show people that their government is acting for the people's interest versus serving their own interests.

HB 2748 will start to demonstrate to the people of Hawaii that its government is diligently working to solve the issues of self-dealing and abuse of office by public servants, which is the impression that some people, unfortunately, have.

Common Cause Hawaii is uncertain that a salary commission to recommend salaries competitive with the private sector will be a deterrence against corruption or bribery. Public service should be a reward unto itself. People are not necessarily drawn to the public sector for the salaries in the first place but for more altruistic reasons.

Thank you for the opportunity to testify in support of HB 2748 with comments, and Common Cause Hawaii respectfully requests that the Committee members support the passage of HB 2748 out of your Committee. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



AMERICANS FOR DEMOCRATIC ACTION

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February 2, 2020

TO: Chair Johanson and members of Labor & Public Employment Committee

RE: HB 2748 Relating to Government

Support for hearing on February 4

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 2748 as it would authorize the forfeiture of certain employees' retirement system benefits. We believe this bill will begin to show that our government is working to solve the issues of self-dealing and abuse of office by public servants. Unfortunately many people have that impression

Thank you for your favorable consideration.

Sincerely,
John Bickel, President



HB-2748

Submitted on: 2/2/2020 9:33:21 PM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

HB-2748

Submitted on: 2/2/2020 11:12:40 PM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Support	No

Comments:

Dear Chair Johanson and Members of the Committee of Labor and Public Employment,

I am writing in support of HB2748.

HB 2748, which would (1) authorize forfeiture of certain employees' retirement system benefits, pursuant to court order, for state or county employees and designated beneficiaries who are convicted of an employment-related felony; (2) make ethics code violations a class A felony if the salary of the employee who commits the offense is subject to the recommendation of the Commission on Salaries; (3) increases the offense of bribery to a class A felony if the salary of the public servant who commits the offense to recommendation by the Commission on Salaries; (4) direct the Commission on Salaries to consider the deterrence of corruption and bribery by persons appointed to those positions; and (5) create a task force to investigate avenues to prevent corruption and bribery issues among public servants in positions of influence.

We need to identify meaningful ways to keep public servants accountable.

Mahalo,

Caroline Kunitake

HB-2748

Submitted on: 2/3/2020 12:38:28 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward B Hanel Jr	Individual	Support	No

Comments:

Concur with Common Cause Hawaii support of HB 2748.

If enacted, this bill would (1) authorize forfeiture of certain employees' retirement system benefits, pursuant to court order, for state or county employees and designated beneficiaries who are convicted of an employment-related felony; (2) make ethics code violations a class A felony if the salary of the employee who commits the offense is subject to the recommendation of the Commission on Salaries; (3) increases the offense of bribery to a class A felony if the salary of the public servant who commits the offense is subject to the recommendation by the Commission on Salaries; (4) direct the Commission on Salaries to consider the deterrence of corruption and bribery by persons appointed to those positions; and (5) create a task force to investigate avenues to prevent corruption and bribery issues among public servants in positions of influence.

I also recommend that the committee considering revising complete forfeiture of retirement system benefits to a forfeiture of benefits for the period of employment that involved criminal activity. This approach would help blunt legal challenges contending that complete forfeiture is an excessive fine under the 8th Amendment to the US Constitution. Such an approach better matches the penalty to the crime.

HB-2748

Submitted on: 2/3/2020 3:35:36 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Azuma Chrupalyk	Individual	Support	No

Comments:

LATE

HB-2748

Submitted on: 2/4/2020 1:32:29 AM

Testimony for LAB on 2/4/2020 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
tlaloc tokuda	Individual	Support	No

Comments:

i support this bill