



HAWAII STATE ETHICS COMMISSION

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

Committee: House Committee on Labor & Tourism
Bill Number: H.B. 1786
Hearing Date/Time: February 8, 2022, 9:30 a.m.
Re: Testimony of the Hawaii State Ethics Commission **SUPPORTING**
H.B. 1786 with a **PROPOSED AMENDMENT**

Aloha Chair Onishi, Vice Chair Sayama and Committee Members:

Thank you for the opportunity to testify on H.B. 1786, which, among other things, requires the Hawai‘i Workforce Development Board and local workforce development boards to draft written conflicts of interest policies consistent with federal law and the Hawaii State Ethics Code, Haw. Rev. Stat. Chapter 84. The Hawai‘i State Ethics Commission (“Commission”) supports this measure, but respectfully proposes an amendment.

In H.B. 1786, page 5, lines 3-6, the sentence “[e]ngage in any other activity *determined* by the governor to constitute a conflict of interest under P.L. 113-128 (29 U.S.C. 3111(f) and 3122(h)) *or state law*”¹ may put the Governor in the unconstitutional role of interpreting Haw. Rev. Stat. Chapter 84 in a manner that conflicts with or supersedes the Hawaii State Ethics Commission.² The word “determine” connotes a “[a] final decision by a court or administrative agency.”³ The Ethics Commission supports the Governor establishing greater ethical standards for members of the workforce development boards, but Governor cannot constitutionally interpret existing state law in a final manner that lessens or conflicts with existing standards.

Proposed Amendment:

(b) Separate from and in addition to any standards of conduct set forth in Chapter 84, a ~~A~~ member of the workforce development board, a local workforce development board, or standing committee member of a local workforce development board shall not:

(1) Vote on or participate in a discussion about a matter under consideration by a board:

¹ Emphases added.

² Under the Hawaii State Constitution, the State’s “code of ethics . . . shall apply to appointed and elected officers and employees of the State . . . including members of the boards, commissions and other bodies.” Article XIV. Further, the Constitution provides the code ethics “*shall be administered by a separate ethics commission . . .*” *Id.* (emphasis added).

³ BRYAN A. GARNER, BLACK’S LAW DICTIONARY 480 (8th ed.2004) (defining the word “determination”).

- (A) Regarding the provision of services by such member, or by an entity the board member represents; or
- (B) That would provide direct financial benefit to the member or the member's immediate family; or
- (2) Engage in any other activity determined by the governor to constitute a conflict of interest under P.L. 113-128 (29 U.S.C. 3111(f) and 3122(h)) ~~or state law.~~

Once again, mahalo for the opportunity to testify.

Very truly yours,

/S/ Robert D. Harris
Robert D. Harris
Executive Director and General Counsel



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
www.labor.hawaii.gov

February 8, 2022

To: The Honorable Richard H.K. Onishi, Chair,
The Honorable Jackson D. Sayama, Vice Chair, and
Members of the House Committee on Labor & Tourism

Date: Tuesday, February 8, 2022

Time: 9:30 a.m.

Place: Conference Room 312, State Capitol and via Videoconference

From: Anne Perreira-Eustaquio, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 1786 RELATING TO WORKFORCE DEVELOPMENT BOARDS

I. OVERVIEW OF PROPOSED LEGISLATION

HB1786 proposes to amend Chapter 202, Hawaii Revised Statutes (HRS), by amending the Workforce Development Council (WDC) law by renaming the WDC to the Workforce Development Board, requiring the board to develop conflict of interest policies, and changing the composition of the board.

The DLIR supports the intent of this measure and offers comments, but prefers the contents of HB2159, which is a departmental proposal included in the Governor's Package. Further, the DLIR supports the amendment proffered by the Hawaii State Ethics Commission to the conflict of interest provision set forth as a new section in Section 1 of HB1786.

II. CURRENT LAW

The General Appropriations Act of 2021, eliminated the program identification number (LBR135) of the Workforce Development Council (WDC) and transferred its appropriation and positions to the Workforce Development Division (WDD).

III. COMMENTS ON THE HOUSE BILL

The DLIR supports the intent of this measure as it seeks to amend the WDC law to be consistent with the state budget as enacted in the General Appropriations Act of 2021 (Act 88 SLH, 2021). However, the DLIR prefers the contents of HB2159 for the following reasons:

- HB1786 reduces stakeholder representation on the board whereas HB2159 does not change the membership nor the constitution of the board.

- HB1786 board membership does not clearly identify the numbers of members that constitute the thirteen members of the private sector whereas HB2159 clearly identifies the membership and maintains the current number of 41 representatives and members include the following representatives:
 - All four chairpersons or designees of the local workforce development boards (as opposed to “one or more” in HB1786).
 - A labor representative from a community-based Native Hawaiian organization that operates workforce development programs. A representative from such a Native Hawaiian organization has been a part of the law since 1997 (Act 346, SLH 1997).
 - The Director or designee from the Department of Business, Economic Development, and Tourism.
 - The President or designee from the University of Hawaii.
- HB1786 (§202- (d) Pg. 4, lines 1-2) conflicts with the WIOA in that the WIOA requires the Governor to select a chairperson from among the representatives of the private sector (29 U.S.C. 3111(c))¹.

The DLIR supports the Hawaii State Ethics Commission’s suggested amendments to the new conflict of interest provision found in HB1786 in that it clarifies the responsibilities of the Governor pursuant to chapter 202 and the provisions found in the WIOA.

¹ (c) *Chairperson*

The Governor shall select a chairperson for the State board from among the representatives described in subsection (b)(1)(C)(i).

29 U.S.C 3111 (b)(1)(C)(i) “a majority shall be representatives of businesses in the State, who—”

HB-1786

Submitted on: 2/7/2022 11:12:35 AM

Testimony for LAT on 2/8/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Alan S. Hayashi	Workforce Development Council	Oppose	Yes

Comments:

To: Representative Richard Onishi, Chairman Representative Jackson Sayama, Vice Chair
Members of the House Labor and Tourism Committee

From: Alan S. Hayashi, Chairman Workforce Development Council

Subject: HB1786

RELATING TO
WORKFORCE
DEVELOPMENT
BOARDS.

Report Title:	Workforce Development Board; Local Workforce Development Boards; Composition; Conflict of Interest; DLIR
Description:	Renames the workforce development council the workforce development board. Requires the state workforce development board and local workforce development boards to develop conflict of interest policies. Amends the composition and powers of the board. Effective 7/1/2023.

Honorable Representative Richard Onishi, Chairman of the Labor and Tourism Committee,
Honorable Jackson Sayama, Vice Chair of the Labor and Tourism Committee, and Labor and
Tourism Committee members:

My name is Alan Hayashi, Chairman of the Workforce Development Council (WDC). We respectfully oppose the intent of this proposed HB1786 measure, and favor instead the intent of HB2159. We understand the issue with size and inefficiency of some large Boards. However, because the workforce issues cover all sectors of the broad Hawaiian economy, the WDC has members representative of Business, Labor, Education, Government, Military, and Community Support Agencies, from all sectors of the economy. Besides quarterly WDC Board meetings, the Board members meet as participants in one of 8 standing committees (Executive Committee, Employer Engagement, Finance, Special Projects, Performance Measures, Military and Veterans Affairs, Sector Strategies and Career Pathways, Youth Services). All major issues are vetted by

the Executive Committee consisting of the Chair, Vice Chair and the 7 Committee Chairs, and reported to the full Board, making the current WDC Board organization structure very efficient and effective.

We have great interest and participation from the Board members and the public. While we currently have 36 appointed WDC Board members (41 authorized), our total WDC Board committee participation is over 130 participants. We feel privileged to have such community participation in Government. Therefore, we respectfully, suggest that the WDC Board is correctly sized in the public interest, and does not need a reduction in size, or diversity.

Thank you for the opportunity to testify. I will be glad to answer any questions, if requested.