

JAN 18 2024

A BILL FOR AN ACT

RELATING TO THE STATE ETHICS COMMISSION.

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

1 SECTION 1. The purpose of this Act is to clarify and
2 modernize the way the state ethics commission provides advice
3 and conducts investigations pursuant to sections 84-31 and 97-6,
4 Hawaii Revised Statutes.

5 SECTION 2. Section 84-31, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) The ethics commission shall have the following powers
8 and duties:

9 (1) It shall prescribe forms for the disclosures required
10 by article XIV of the Hawaii constitution and section
11 84-17 and the gifts disclosure statements required by
12 section 84-11.5 and shall establish orderly procedures
13 for implementing the requirements of those provisions;

14 (2) It shall provide advice upon the request of any person
15 as to whether the facts and circumstances of a
16 particular situation constitute or will constitute a
17 violation of the code of ethics or other laws or rules



1 administered and enforced by the commission, and
2 discuss ways to avoid an appearance of impropriety. A
3 person receiving advice from the commission may
4 request a written summary of that advice. The
5 commission shall treat all advice requests, responses,
6 and related materials as confidential. Written
7 summaries shall be confidential unless the recipient
8 waives confidentiality;

9 [+2+] (3) It shall render advisory opinions upon the
10 request of any legislator, employee, or delegate to
11 the constitutional convention, or person formerly
12 holding such office or employment as to whether the
13 facts and circumstances of a particular case
14 constitute or will constitute a violation of the code
15 of ethics. If no advisory opinion is rendered within
16 [~~thirty~~] ninety days after the request is filed with
17 the commission, it shall be deemed that an advisory
18 opinion was rendered and that the facts and
19 circumstances of that particular case do not
20 constitute a violation of the code of ethics. The
21 opinion rendered or deemed rendered, until amended or



1 revoked, shall be binding on the commission in any
2 subsequent charges concerning the legislator,
3 employee, or delegate to the constitutional
4 convention, or person formerly holding such office or
5 employment, who sought the opinion and acted in
6 reliance on it in good faith, unless material facts
7 were omitted or misstated by such persons in the
8 request for an advisory opinion[?] The commission
9 shall also render public general advisory opinions
10 concerning proper interpretation of the code of ethics
11 and other laws or rules administered and enforced by
12 the commission, if it deems the opinion of sufficient
13 general interest and importance;

14 (4) It may initiate an investigation into alleged,
15 possible, or potential violations of this chapter and
16 other laws or rules administered and enforced by the
17 commission, on a confidential basis, having available
18 all of the powers herein provided, whether the
19 investigation is made based on a charge allegation,
20 other information or indications, or as the commission
21 determines is in the public interest;



1 ~~[(3)]~~ (5) It shall initiate, receive, and consider charges
2 and other information, on a confidential basis,
3 concerning alleged ~~[violation]~~, possible, or potential
4 violations of this chapter~~[7]~~ and other laws or rules
5 administered and enforced by the commission, initiate
6 or make investigation, and hold hearings;
7 ~~[(4)]~~ ~~It~~ (6) Upon adoption of a resolution defining the
8 scope and nature of the inquiry, supported by a vote
9 of three or more members of the commission, the
10 commission may subpoena witnesses, administer oaths,
11 and take testimony relating to matters before the
12 commission and require the production for examination
13 of any books or papers relative to any matter under
14 investigation or in question before the commission~~[-~~
15 ~~Before the commission shall exercise any of the powers~~
16 ~~authorized in this section with respect to any~~
17 ~~investigation or hearings it shall by formal~~
18 ~~resolution, supported by a vote of three or more~~
19 ~~members of the commission, define the nature and scope~~
20 ~~of its inquiry];~~



1 ~~[(5)]~~ (7) It may, from time to time adopt, amend, and
2 repeal any rules, not inconsistent with this chapter,
3 that in the judgment of the commission seem
4 appropriate for the carrying out of this chapter and
5 for the efficient administration thereof, including
6 every matter or thing required to be done or which may
7 be done with the approval or consent or by order or
8 under the direction or supervision of or as prescribed
9 by the commission. The rules, when adopted as
10 provided in chapter 91, shall have the force and
11 effect of law;

12 ~~[(6)]~~ (8) It shall have jurisdiction for purposes of
13 investigation and taking appropriate action on
14 ~~[alleged]~~ possible violations of this chapter in all
15 proceedings commenced within six years of ~~[an-alleged]~~
16 a possible violation of this chapter by a legislator
17 or employee or former legislator or employee. A
18 proceeding shall be deemed commenced by the filing of
19 a charge with the commission or by the signing of a
20 charge by three or more members of the commission.
21 Nothing herein shall bar proceedings against a person



1 who by fraud or other device, prevents discovery of a
2 violation of this chapter;

3 ~~[(7)]~~ (9) It shall distribute its publications without cost
4 to the public and shall initiate and maintain programs
5 with the purpose of educating the citizenry and all
6 legislators, delegates to the constitutional
7 convention, and employees on matters of ethics in
8 government employment; and

9 ~~[(8)]~~ (10) It shall administer any code of ethics adopted
10 by a state constitutional convention, subject to the
11 procedural requirements of this part and any rules
12 adopted thereunder.

13 (b) Charges concerning the violation of this chapter shall
14 be in writing, signed by the person making the charge under
15 oath, except that any charge initiated by the commission shall
16 be signed by three or more members of the commission. The
17 commission shall ~~[notify in writing]~~ issue written notice to
18 every person against whom a charge is received and afford the
19 person an opportunity to explain the conduct alleged to be in
20 violation of the chapter. The commission may investigate, after
21 compliance with this section, such charges and render an



1 informal advisory opinion to the alleged violator. The
2 commission shall investigate all charges on a confidential
3 basis, having available all the powers herein provided, and
4 proceedings at this stage shall not be public. If the informal
5 advisory opinion indicates a probable violation, the person
6 charged shall request a formal opinion or within a reasonable
7 time comply with the informal advisory opinion. If the person
8 charged fails to comply with such informal advisory opinion or
9 if a majority of the members of the commission determine that
10 there is probable cause for belief that a violation of this
11 chapter might have occurred, a copy of the charge and a further
12 statement of the alleged violation shall be personally served
13 upon the alleged violator. Service shall be made by personal
14 service upon the alleged violator wherever found or by
15 registered or certified mail with a request for a return receipt
16 and marked deliver to addressee only. If after due diligence
17 service cannot be effected successfully in accordance with the
18 above, service may be made by publication if so ordered by the
19 circuit court of the circuit wherein the alleged violator last
20 resided. The state ethics commission shall submit to the
21 circuit court for its consideration in issuing its order to



1 allow service by publication an affidavit setting forth facts
2 based upon the personal knowledge of the affiant concerning the
3 methods, means, and attempts made to locate and effect service
4 by personal service or by registered or certified mail in
5 accordance with the above. Service by publication when ordered
6 by the court shall be made by publication once a week for four
7 successive weeks of a notice in a newspaper of general
8 circulation in the circuit of the alleged violator's last known
9 state address. The alleged violator shall have twenty days
10 after service thereof to respond in writing to the charge and
11 statement."

12 SECTION 3. Section 97-6, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) The state ethics commission shall administer and
15 implement this chapter, and shall have the following powers and
16 duties:

17 (1) Initiate, receive, and consider charges and other
18 information, on a confidential basis, concerning
19 alleged, possible, or potential violations of this
20 chapter^[7] and other laws or rules administered and
21 enforced by the commission, and investigate or cause



1 to be investigated on a confidential basis, the
2 activities of any person to determine whether the
3 person is in compliance with this chapter;

4 (2) Prescribe forms for the documentation, statements and
5 reports required by sections 97-2 and 97-3 and
6 establish orderly procedures for implementing the
7 requirements of those provisions;

8 (3) Provide advice upon the request of any person as to
9 whether the facts and circumstances of a particular
10 situation constitute or will constitute a violation of
11 this chapter or other laws or rules administered and
12 enforced by the commission and discuss ways to avoid
13 an appearance of impropriety. A person receiving
14 advice from the commission may request a written
15 summary of that advice. The commission shall treat
16 all advice requests, responses, and related materials
17 as confidential. Written summaries shall be
18 confidential unless the recipient waives
19 confidentiality;

20 [+3+] (4) Render advisory opinions upon the request of any
21 person subject to this chapter. If no advisory



1 opinion is rendered within [~~thirty~~] ninety days after
2 the request is filed with the commission, it shall be
3 deemed that an advisory opinion was rendered and that
4 the facts and circumstances of that particular case do
5 not constitute a violation of this chapter. The
6 opinion rendered or deemed rendered, until amended or
7 revoked, shall be binding on the commission in any
8 subsequent charges concerning the person subject to
9 this chapter who sought the opinion and acted in
10 reliance on it in good faith, unless material facts
11 were omitted or misstated by the person in the request
12 for an advisory opinion[+]. The commission shall also
13 render public general advisory opinions concerning
14 proper interpretations of the laws of this chapter and
15 other laws or rules administered and enforced by the
16 commission, if it deems the opinion of sufficient
17 general interest and importance;

18 [~~4~~] (5) Issue subpoenas, administer oaths, and require
19 the production for examination of any records or
20 papers relative to any matter under investigation or



1 in question before the commission, and exercise those
2 powers conferred upon the commission by section 92-16;
3 ~~[-5-]~~ (6) Adopt, amend, and repeal rules, not inconsistent
4 with this chapter, as in the judgment of the
5 commission seem appropriate for the carrying out of
6 this chapter and for the efficient administration of
7 this chapter, including every matter or thing required
8 to be done or which may be done with the approval or
9 consent or by order or under the direction or
10 supervision of, or as prescribed by, the commission.
11 The rules, when adopted as provided in chapter 91,
12 shall have the force and effect of law; ~~[and]~~
13 ~~[-6-]~~ (7) Have jurisdiction for purposes of investigation
14 and taking appropriate action on ~~[alleged]~~ possible
15 violations of this chapter in all proceedings
16 commenced within ~~[three]~~ six years of ~~[an-alleged]~~ a
17 possible violation of this chapter. A proceeding
18 shall be deemed commenced by the filing of a charge
19 with the commission or by the signing of a charge by
20 three or more members of the commission. Nothing
21 shall bar proceedings against a person who by fraud or



1 other device prevents discovery of a violation of this
2 chapter[-]; and

3 (8) Distribute educational and advisory publications and
4 initiate, administer, and maintain training programs
5 for the purpose of training lobbyists on compliance
6 with state lobbying laws and applicable parts of the
7 code of ethics.

8 (b) Charges concerning the violation of this chapter shall
9 be in writing, signed by the person making the charge under
10 oath, except that any charge initiated by the commission shall
11 be signed by three or more members of the commission. The
12 commission shall [~~notify in writing~~] issue written notice to
13 every person against whom a charge is received and afford the
14 person an opportunity to explain the conduct alleged to be in
15 violation of the chapter. The commission may investigate, after
16 compliance with this section, such charges and render an
17 informal advisory opinion to the alleged violator. The
18 commission shall investigate all charges on a confidential
19 basis, having available all the powers herein provided, and
20 proceedings at this stage shall not be public. If the informal
21 advisory opinion indicates a probable violation, the person



1 charged shall request a formal opinion or within a reasonable
2 time comply with the informal advisory opinion. If the person
3 charged fails to comply with such informal advisory opinion or
4 if a majority of the members of the commission determine that
5 there is probable cause for belief that a violation of this
6 chapter might have occurred, a copy of the charge and a further
7 statement of the alleged violation shall be personally served
8 upon the alleged violator. Service shall be made by personal
9 service upon the alleged violator wherever found or by
10 registered or certified mail with request for a return receipt
11 and marked deliver to addressee only. If after due diligence
12 service cannot be effected successfully in accordance with the
13 above, service may be made by publication if so ordered by the
14 circuit court of the circuit wherein the alleged violator last
15 resided. The commission shall submit to the circuit court for
16 its consideration in issuing its order to allow service by
17 publication an affidavit setting forth facts based upon the
18 personal knowledge of the affiant concerning the methods, means,
19 and attempts made to locate and effect service by personal
20 service or by registered or certified mail in accordance with
21 the above. Service by publication when ordered by the court



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1 shall be made by publication once a week for four successive
2 weeks of a notice in a newspaper of general circulation in the
3 circuit of the alleged violator's last known state address. The
4 alleged violator shall have twenty days after service thereof to
5 respond in writing to the charge and statement."

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.

9

INTRODUCED BY:



By Request



S.B. NO. 2216

Report Title:

HSEC; State Ethics Commission Package; Advice; Investigations

Description:

Clarifies and modernizes the way the State Ethics Commission provides advice and conducts investigations pursuant to sections 84-31 and 97-6, Hawaii Revised Statutes.

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

