

ACT 263

H. B. 6.

A Bill for an Act Relating to Standards of Conduct for State Legislators and Employees.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purposes. The purposes of this Act are (1) to prescribe standards of conduct for the guidance of state legislators and employees; (2) to prohibit certain conduct involving state legislators and employees; (3) to establish a state ethics commission; (4) to provide for advisory opinions by the state ethics commission for the interpretation of laws and rules relating to the ethics of state legislators and employees; and (5) to provide a method whereby state legislators and employees unjustly accused of improper conduct can obtain vindication.

PART I. CONSTRUCTION; APPLICABILITY; DEFINITIONS

SECTION 2. **Construction.** This Act shall be liberally construed to promote high standards of ethical conduct in state government.

SECTION 3. **Applicability.** This Act shall apply to every nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and persons under contract to the State, and excluding justices, judges, and magistrates.

SECTION 4. Definitions.

(1) "Business" includes a corporation, a partnership, a sole proprietorship, or any other individual or organization carrying on a business.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Controlling interest" means an interest which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.

(4) "Employee" means any person who has been elected to, appointed to, or nominated for, state office, board, commission or committee, but excluding legislators, justices, judges, and magistrates.

(5) "Employment" means any rendering of services for compensation.

(6) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

(A) An ownership interest in a business,

(B) A creditor interest in an insolvent business,

(C) An employment, or prospective employment for which negotiations have begun, or

(D) An ownership interest in real or personal property.

(7) "Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action which involves the use of discretionary authority.

(8) "State agency" includes the State; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

PART II. STANDARDS OF CONDUCT

SECTION 5. Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part.

SECTION 6. Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which he acquires in the course of his official duties, or use such information for his personal gain or for the benefit of anyone.

SECTION 7. Fair treatment. No legislator or employee shall use or attempt to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for himself or others.

SECTION 8. Conflicts of interests. No employee shall:

(a) Participate, as an agent or representative of a state agency, in any official action directly affecting a business or matter in which (1) he has a substantial financial interest; or (2) by or for which a firm of which he is a member or an associate has been engaged as a legal counsel in a matter directly related to such action.

(b) Acquire financial interest in business enterprises which he has

reason to believe may be directly involved in official action to be taken by him.

SECTION 9. Transactions involving the State. No employee shall appear in behalf of private interests before any state agency for compensation that is contingent upon action by a state agency.

SECTION 10. Contracts. (a) A state agency shall not enter into any contract with a legislator or employee or with a business in which a legislator or employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

(c) This section shall not apply to a personal contract of employment with the State.

SECTION 11. Contracts voidable. In addition to any other penalty provided by law, any contract entered into by the State in violation of this Act is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the matter is referred to the civil service commission or authority.

SECTION 12. Requirement of disclosures. (a) Whenever an employee or legislator has a controlling interest in any matter or a substantial financial interest which he believes may be affected by a state agency, the nature and extent of the interest shall be disclosed to the commission (1) by the employee employed by such agency, or (2) by the legislator affected by actions of such state agency.

(b) The information on the disclosures shall be confidential, and the commission shall not release the contents of the disclosures except as may be permitted pursuant to this Act.

(c) Except for legislators, or employees removable only by impeachment, the filing of disclosures pursuant to this section shall be a condition of entering upon and continuing in public employment.

PART III. STATE ETHICS COMMISSION

SECTION 13. State ethics commission established; composition. There is created within the office of the legislative auditor for administrative purposes only a commission to be known as the state ethics commission. The commission shall consist of five members to be appointed by the governor from a panel of ten persons who shall be nominated by the judicial council. Each member shall have been a citizen of the United States and a resident of the State of Hawaii at least five years next preceding his

appointment. Members of the commission shall hold no other public office for which they receive compensation.

The chairman of the commission shall be elected by the majority of the commission. The term of each member shall be four years, provided that of the five members initially appointed two members shall hold office for two years, two members shall hold office for three years and one member shall hold office for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments except that the judicial council shall nominate for gubernatorial appointment two persons for any vacancy. The governor may remove or suspend any member of the commission, upon the filing of a written finding with the commission, and upon service of a copy of the written finding on the member removed or suspended.

PART IV. ADMINISTRATION AND ENFORCEMENT

SECTION 14. Duties of commission; complaint, hearing, determination. (a) The commission shall have the following powers and duties:

(1) It shall prescribe a form for the disclosures required by section 12 of this Act and shall establish an orderly procedure for implementing the requirements of that section.

(2) It shall render advisory opinions upon the request of any legislator or employee as to whether the facts and circumstances of a particular case constitute or will constitute a violation or probable violation of the standards. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the standards. Such opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator or employee who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the legislator or employee in the request for an advisory opinion.

(3) It shall initiate, receive and consider charges concerning alleged violation of this Act, initiate or make investigation and hold hearings.

(4) It may subpoena witnesses, administer oaths and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized herein with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry.

(5) It may, from time to time make, amend and repeal such rules and regulations, not inconsistent with this Act, as in the judgment of the commission seem appropriate for the carrying out of the provisions of this Act and for the efficient administration thereof, including every matter or thing

required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules and regulations, when approved, promulgated and filed as provided in chapter 6C of the Revised Laws of Hawaii 1955 shall have the force and effect of law.

(b) Charges concerning the legislator or employee must be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission must be signed by at least two members of the commission. The commission may notify in writing every legislator or employee against whom a charge is received and afford him an opportunity to explain the conduct alleged to be in violation of this Act. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the legislator or employee shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the legislator or employee fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this Act might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. He shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) Any commission member or individual, including the individual making the charge, who divulges information concerning the charge prior to the issuance of the complaint 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 or disclosures except as permitted by this Act, shall be guilty of a felony which shall be punishable by a fine of not more than \$5,000.00 or imprisonment of not more than five years, or both, or in the case of a legislator 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 Act 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 of cross-examination. 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) A decision of the commission pertaining to the conduct of any legislator or employee shall be in writing and signed by three or more of the members of such commission.

(f) The commission shall cause to be published yearly summaries of decisions on questions raised by complaints or by requests for advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions.

SECTION 15. Procedure. (a) With respect to legislators and employees removable only by impeachment: When the commission after due hearing 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 neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the commission shall make public the nature of the charges, but it shall make clear that the merits of the charges have never been formally determined. 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 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 issue a complaint and refer the matter to the civil service commission, or, if the civil service commission does not have jurisdiction, with the authority having the power to discipline the employee. The complaint must contain a statement of the facts alleged to constitute the violation. Hearings shall be in accordance with chapter 6C, Revised Laws of Hawaii 1955, except that every hearing shall be private, and no record of the proceedings shall be released to the public prior to its conclusion. Judicial review of decisions, orders and rulings adverse to such employee shall be in accordance with chapter 6C.

If it is found that no violation has occurred, the civil service commission or authority shall not make the record of the proceedings public. If it is found that a violation has occurred, the civil service commission or authority may make its findings and the record of the proceedings 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 14(f) of this Act.

SECTION 16. Penalties. In addition to any other powers the civil

service commission or other authority may have to discipline employees, the civil service commission or authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the standards of this Act.

SECTION 17. No compensation. The members of the commission shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

SECTION 18. Staff. The commission may employ and at pleasure remove such persons as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from the provisions of chapters 3 and 4 of the Revised Laws of Hawaii 1955.

SECTION 19. Cooperation. The commission may request and shall receive from every department, division, board, bureau, commission or other agency of the state cooperation and assistance in the performance of its duties.

PART VI. SEVERABILITY

SECTION 20. Severability. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 21. Appropriation. There is appropriated out of the general revenues of the State of Hawaii, not otherwise appropriated, the sum of \$25,000 or so much thereof as may be necessary, for the purpose of this Act to be expended by the commission.

SECTION 22. This Act shall take effect on January 1, 1968.
(Approved June 7, 1967.)