

STAND. COM. REP. NO.

428

Honolulu, Hawaii

FEB 15 2007

RE: S.B. No. 1957  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 1957 entitled:

"A BILL FOR AN ACT RELATING TO CODE OF ETHICS,"

begs leave to report as follows:

The purpose of this measure is to amend the code of ethics for elected officers and public employees of the State of Hawaii by requiring "members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory" to submit public, rather than confidential, financial interests disclosure statements submitted to the Hawaii State Ethics Commission.

Your Committee received testimony in favor of this measure from a concerned individual. The Hawaii State Ethics Commission and the League of Women Voters of Hawaii commented on this bill.

Testimony submitted by the State Ethics Commission included the following:

*Currently, almost all state boards and commissions, other than the Board of Education and the Office of Hawaiian Affairs, file "confidential" financial interests disclosure statements with our office. The filing of confidential disclosure statements by members of boards and commissions derives from Article XIV of the Constitution of the State of Hawaii. Article XIV created the Hawaii State Ethics commission, and with respect to financial interests*

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disclosure statements, provides that the Legislature in its own discretion can determine which individuals file "public" financial interests disclosure statements and which individuals file "confidential" financial interests disclosures statements. The pertinent language in Article XIV of our State Constitution reads as follows:

The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make **public** financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make **confidential** financial disclosures. [Emphasis added.]

Thus, Article XIV of the Constitution of the State of Hawaii allows the Legislature to determine which state officials shall file public or confidential financial interests disclosure statements. Since board and commission members now file confidential disclosure statements, it is evident that in the past the Legislature determined that the disclosure statements filed by board and commission members should be confidential. There are legitimate reasons for this. Almost all members of boards and commissions serve on their respective boards and commissions without compensation and as "community service." If the members of boards and commissions are required to file public disclosures, it is certainly reasonable to assume that many individuals will be dissuaded from serving on boards and commissions since their financial interests will become a matter of public record. Since board and commission members are not compensated for their service, having public disclosures may tip the balance in terms of dissuading dedicated and public-spirited citizens from participating on boards and commissions. The work that boards and commissions in the State do can be demanding, and it is in the interest of the State to attract the best citizens to provide service to the various state boards and commissions. The Legislature, in the past, appears to have followed this logic in providing for confidential disclosure statements for board and commission members.

On the other hand, having confidential disclosures keeps the public in the dark with respect to the work of board and commission members and their potential conflicts of interests. While the confidential disclosure statements are



received by the Hawaii State Ethics Commission and are reviewed by the Hawaii State Ethics Commission, the Hawaii State Ethics Commission is generally not aware of the issues that the 150 or so boards and commissions deal with on a day-to-day basis. No doubt the individuals who deal with these boards and commissions are in the best position to determine whether board or commission members have conflicts of interests, and thus there appears to be good reason to have public disclosure statements, particularly so that those who deal with or appear before boards and commissions can assure themselves that board or commission members have no conflicts of interests, or, if they do, that they are properly "recusing" themselves from taking action.

When disclosure statements are kept confidential, suspicion can be quickly generated with regard to a board or commission member's possible conflicts of interests. To this extent, public disclosure statements go a long way to assure the public that there are in fact no apparent ethics problems or conflicts of interests. This weighs strongly for having board and commission members file public disclosures.

. . . . [H]aving only the Hawaii State Ethics Commission see confidential disclosures may not satisfy the public, or the oversight responsibilities of the Legislature itself. In order to enhance public confidence in state government, having public disclosures would no doubt serve to further public confidence in state government. Again, however, the disadvantage to this is that competent and wise board and commission members may be dissuaded from serving on boards and commissions if their financial interests are made a matter of public record.

Your Committee finds it to be in the best interest of the public for members of the following entities with significant discretionary and fiscal powers to make public financial disclosures: the Board of Agriculture, the Hawaii Community Development Authority, the Board of Trustees of the Employees' Retirement System, the Hawaiian Homes Commission, the Board of Land and Natural Resources, the Land Use Commission, the Public Utilities Commission, the Board of Directors of the Research Corporation of the University of Hawaii, and the Hawaii Tourism Authority. Accordingly, your Committee has amended this measure by narrowing its application from members of "every" board and commission to members of those entities.



As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1957, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1957, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,

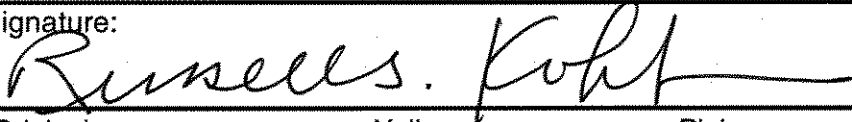


CLAYTON HEE, Chair



The Senate  
 Twenty-Fourth Legislature  
 State of Hawaii

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 1957</b>	Committee Referral: <b>JDL</b>	Date: <b>2/12/07</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
KOKUBUN, Russell S. (VC)	/			
INOUE, Lorraine R.	/			
NISHIHARA, Clarence K.	/			
GABBARD, Mike	/			
<b>TOTAL</b>	<b>5</b>			<b>0</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution:             Original             Yellow             Pink File with Committee Report             Clerk's Office             Drafting Agency				

\*Only one measure per Record of Votes