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# A BILL FOR AN ACT

RELATING TO ETHICS.

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

1           SECTION 1. The legislature recognizes the importance of  
2 ethics education and advice in preventing ethics violations from  
3 occurring, and encourages the state ethics commission to  
4 continue its practice of providing guidance to state employees  
5 and the public. The legislature also finds that the public  
6 would benefit from additional clarity and consistency in the  
7 administration and enforcement of the State's ethics laws.

8           Accordingly, the purpose of this Act is to clarify the  
9 procedures used by the state ethics commission and its staff for  
10 providing advice on ethics issues; educating employees,  
11 legislators, lobbyists, and the general public; and resolving  
12 investigations.

13           SECTION 2. Section 84-31, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15           "(a) The ethics commission shall have the following powers  
16 and duties:



- 1           (1) It shall prescribe forms for the disclosures required  
2                   by article XIV of the Hawaii constitution and section  
3                   84-17 and the gifts disclosure statements required by  
4                   section 84-11.5 and shall establish orderly procedures  
5                   for implementing the requirements of those provisions;
- 6           (2) It shall render advisory opinions upon the request of  
7                   any legislator, employee, or delegate to the  
8                   constitutional convention, or person formerly holding  
9                   ~~[such]~~ the office or employment as to whether the  
10                  facts and circumstances of a particular case  
11                  constitute or will constitute a violation of the code  
12                  of ethics ~~[-]~~, section 11-8, or section 11-316. If no  
13                  advisory opinion is rendered within ~~[thirty]~~ sixty  
14                  days after the request is filed with the commission,  
15                  it shall be deemed that an advisory opinion was  
16                  rendered and that the facts and circumstances of that  
17                  particular case do not constitute a violation of the  
18                  code of ethics. The opinion rendered or deemed  
19                  rendered, until amended or revoked, shall be binding  
20                  on the commission in any subsequent charges concerning  
21                  the legislator, employee, or delegate to the



1 constitutional convention, or person formerly holding  
2 [such] the office or employment, who sought the  
3 opinion and acted in reliance on it in good faith,  
4 unless material facts were omitted or misstated by  
5 [such] those persons in the request for an advisory  
6 opinion;

- 7 (3) It shall initiate, receive, and consider charges  
8 concerning an alleged violation of this chapter,  
9 initiate or make investigation, and hold hearings[+].  
10 The commission and the subject of any investigation or  
11 charge may agree at any time to resolve any alleged  
12 violation of this chapter; provided that any  
13 resolution shall be in writing and shall be signed by  
14 three or more members of the commission and by the  
15 subject of the investigation or charge; provided  
16 further that the resolution shall have the force and  
17 effect of a final decision and order issued after a  
18 contested case hearing and shall not be appealable;
- 19 (4) It may subpoena witnesses, administer oaths, and take  
20 testimony relating to matters before the commission  
21 and require the production for examination of any



1 books or papers relative to any matter under  
2 investigation or in question before the commission.  
3 Before the commission shall exercise any of the powers  
4 authorized in this section with respect to any  
5 investigation or hearings, it shall by formal  
6 resolution, supported by a vote of three or more  
7 members of the commission, define the nature and scope  
8 of its inquiry;

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

19 (6) It shall have jurisdiction for purposes of  
20 investigation and taking appropriate action on alleged  
21 violations of this chapter in all proceedings



1 commenced within six years of an alleged violation of  
2 this chapter by a legislator or employee or former  
3 legislator or employee. A proceeding shall be deemed  
4 commenced by the filing of a charge with the  
5 commission or by the signing of a charge by three or  
6 more members of the commission. Nothing [herein] in  
7 this paragraph shall bar proceedings against a person  
8 who by fraud or other device, prevents discovery of a  
9 violation of this chapter;

10 (7) It shall distribute its publications without cost to  
11 the public and shall initiate and maintain programs  
12 with the purpose of educating the citizenry and all  
13 legislators, delegates to the constitutional  
14 convention, and employees on matters of ethics in  
15 government employment [~~and~~]. It may issue guidance  
16 regarding the application of this chapter; provided  
17 that the guidance shall not have the force and effect  
18 of law;

19 (8) It shall administer any code of ethics adopted by a  
20 state constitutional convention, subject to the



1 procedural requirements of this part and any rules  
2 adopted thereunder[-]; and

3 (9) It may authorize its staff to provide confidential  
4 guidance to any individual as to whether the facts and  
5 circumstances of a particular case constitute or would  
6 constitute a violation under this chapter, section 11-  
7 8, or section 11-316; provided that nothing in this  
8 paragraph shall establish an attorney-client  
9 relationship between the person seeking advice and the  
10 commission or its staff; provided further that any  
11 written guidance rendered by commission staff advising  
12 that proposed conduct is allowable, until amended or  
13 revoked, shall be binding upon the commission in any  
14 subsequent charges concerning the individual who  
15 sought the guidance and acted in reliance on that  
16 guidance in good faith, unless material facts were  
17 omitted or misstated by the individual in making the  
18 request for guidance; and provided further that  
19 nothing in this paragraph shall prevent the commission  
20 or its staff from investigating alleged violations of  
21 this chapter."



1 SECTION 3. Section 97-6, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The state ethics commission shall administer and  
4 implement this chapter, and shall have the following powers and  
5 duties:

- 6 (1) Initiate, receive, and consider charges concerning  
7 alleged violations of this chapter, and investigate or  
8 cause to be investigated on a confidential basis, the  
9 activities of any person to determine whether the  
10 person is in compliance with this chapter[+]. The  
11 commission and the subject of any investigation or  
12 charge may agree at any time to resolve any alleged  
13 violation of this chapter; provided that any  
14 resolution shall be in writing and shall be signed by  
15 three or more members of the commission and by the  
16 subject of the investigation or charge; provided  
17 further that the resolution shall have the force and  
18 effect of a final decision and order issued after a  
19 contested case hearing and shall not be appealable;  
20 (2) Prescribe forms for the statements and reports  
21 required by sections 97-2 and 97-3 and establish



1 orderly procedures for implementing the requirements  
2 of those provisions;

3 (3) Render advisory opinions upon the request of any  
4 person subject to this chapter. If no advisory  
5 opinion is rendered within [~~thirty~~] sixty days after  
6 the request is filed with the commission, it shall be  
7 deemed that an advisory opinion was rendered and that  
8 the facts and circumstances of that particular case do  
9 not constitute a violation of this chapter. The  
10 opinion rendered or deemed rendered, until amended or  
11 revoked, shall be binding on the commission in any  
12 subsequent charges concerning the person subject to  
13 this chapter who sought the opinion and acted in  
14 reliance on it in good faith, unless material facts  
15 were omitted or misstated by the person in the request  
16 for an advisory opinion;

17 (4) Issue subpoenas, administer oaths, and exercise those  
18 powers conferred upon the commission by section 92-16;

19 (5) Adopt rules, not inconsistent with this chapter, as in  
20 the judgment of the commission seem appropriate for  
21 the carrying out of this chapter and for the efficient





1 administration of this chapter, including every matter  
2 or thing required to be done or [~~which~~] that may be  
3 done with the approval or consent or by order or under  
4 the direction or supervision of, or as prescribed by,  
5 the commission. The rules, when adopted as provided  
6 in chapter 91, shall have the force and effect of law;  
7 [~~and~~]

8 (6) Have jurisdiction for purposes of investigation and  
9 taking appropriate action on alleged violations of  
10 this chapter in all proceedings commenced within three  
11 years of an alleged violation of this chapter. A  
12 proceeding shall be deemed commenced by the filing of  
13 a charge with the commission or by the signing of a  
14 charge by three or more members of the commission.  
15 Nothing shall bar proceedings against a person who by  
16 fraud or other device prevents discovery of a  
17 violation of this chapter[~~+~~];

18 (7) Issue guidance regarding the application of this  
19 chapter; provided that the guidance shall not have the  
20 force and effect of law; and



1       (8) Authorize its staff to provide confidential guidance  
2       to any individual as to whether the facts and  
3       circumstances of a particular case constitute or would  
4       constitute a violation under this chapter; provided  
5       that nothing in this paragraph shall establish an  
6       attorney-client relationship between the person  
7       seeking advice and the commission or its staff;  
8       provided further that any written guidance rendered by  
9       commission staff advising that proposed conduct is  
10      allowable shall, until amended or revoked, be binding  
11      upon the commission in any subsequent charges  
12      concerning the individual who sought the guidance and  
13      acted in reliance on that guidance in good faith,  
14      unless material facts were omitted or misstated by the  
15      individual in making the request for guidance; and  
16      provided further that nothing in this paragraph shall  
17      prevent the commission or its staff from investigating  
18      alleged violations of this chapter."

19       SECTION 4. The state ethics commission, in its discretion,  
20 may make any changes that it deems necessary to internal  
21 procedures or forms to aid in the implementation of this Act.





# H.B. NO. 509

**Report Title:**

State Ethics Commission; Guidance; Violations; Allegations;  
Resolution

**Description:**

Clarifies how the Ethics Commission may provide guidance and  
resolve allegations of violations.

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

