



HAWAII CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office

May 2, 2013

3:30 p.m.

Present: Linda Krieger, Mark G. Valencia, Raymund Liongson, Kim Coco Iwamoto, and Wally Fukunaga, Commissioners; Livia Wang, Bill Hoshijo, and Marcus Kawatachi, Staff.

Artemio Baxa, Commissioner Appointee.

Chair Linda Krieger called the meeting to order.

Approval of Minutes

The minutes of the March 22, 2013, meeting were approved. **(m/s/p Fukunaga/Liongson; 4-0 in favor, Iwamoto abstained).**

Chief Counsel's Report

Chief Counsel (CC) Livia Wang reported that the presentation of the draft proposed rules to the Small Business Regulatory Review Board for its required review of the proposed rules was rescheduled for mid-May, 2013. Upon that review, the proposed rules would be submitted for Governor's approval. It was anticipated that the public hearing on the proposed rules would then be scheduled for early July, 2013.

CC Wang reported that the *Lales* case before the Hawai'i Supreme Court remained pending.

Legislation -2013 Session

The Commissioners reviewed Legislative Summary 4, focusing on and discussing measures that were approved in some form:

HAWAII CIVIL RIGHTS COMMISSION

**GM 766 Nomination of Artemio Baxa as HCRC Commissioner
(term 2013-2017)**

Status: ref. to JDL; hrg. before JDL on 4/10, advise and consent.

Discussion: CC Wang reported that the Senate had voted and confirmed Artemio Baxa's nomination.

EMPLOYMENT

[HB-56] Domestic Workers Bill of Rights

[HB-413]

**SB 535, SD1, HD2,
CD1**

Amends several HRS sections to establish rights for domestic workers. Specifically amends H.R.S. §§378-1 and 378-2 to include domestic work in the definition of “employment” solely for the purpose of prohibiting sexual harassment and harassment based on gender, race, religion or national origin against domestic workers.

Status: SB 535 ref to: JDL; hrg before JDL on 2/7/13, passed w/ amendments prohibiting an employer from discharging or otherwise discriminating against “domestic workers” (limited definition excluding employees who work on a “casual basis” and less than 20 hours per week) in compensation or terms, conditions or privileges of employment because of race, sex (including gender identity or expression) sexual orientation, age, religion, color, ancestry, disability or marital status; crossed on 3/5, ref. to LAB/EDB, JUD; hrg before LAB/EDB on 3/15, passed w/ amendments to state “domestics” in HCRC section to include all domestic employees, since HRS Chapter 378 does not have “casual basis” or part time employee exclusions; hrg. on 4/4 before JUD, passed with amendments; conf. mtg. on 4/24, passed w/ amendments taking out Chapter 378 protections for hiring and discharge.

Discussion: Executive Director (ED) Bill Hoshijo noted that the basis for the conference committee’s exclusion of protection against discriminatory discharge was consistent with that for exclusion of discriminatory hiring, that being that an employer of a domestic should be allowed to choose who to employ in their home, for any reason.

HCRC position: Support, but amend to include protections for all employment actions except hiring/selection.

[HB-409] Breastfeeding – workplace accommodation

**SB 532, SD1, HD1,
CD1**

Requires employees with 50+ employees to provide reasonable time and clean location for breastfeeding employees to express milk in privacy. Employees with less than 50 employees have to show undue hardship to be exempt. Requires posted notice and establishes civil fine. Repeals HRS § 378-10.

Status: SB 532 ref to JDL; hrg before JDL on 2/20, passed w/ amendments putting protections under a new Part 378 with right to bring civil action; crossed on 3/5, ref. to LAB, JUD, FIN; hrg on 3/12 before LAB, passed w/ amendments; hrg. on 3/19 before JUD, passed unamended; hrg. on 4/4 before FIN, passed unamended; conf mtg. on 4/24, passed w/ amendments to cover employers with 20+ employees, those with less than 20 employees must show undue hardship, fine of \$500 for each violation, private cause of action for employees.

HCRC position: Support. Makes state law consistent with FLSA provisions, takes breastfeeding protections out of HCRC jurisdiction; also recommend private right of action for injunctive relief, reasonable attorneys fees.

HOUSING

SB 328, SD1, HD2, CD1 Security Deposit for Animals

Amends HRS 521-44 to allow a landlord to hold a tenant's security deposit for the purpose of paying for damages caused by an animal residing in the premises. Authorizes a landlord as a condition of a rental agreement to add to the security deposit an amount for an animal to reside in the premises.

Status: ref. to: CPN; hrg on 2/1/13, passed w/ HCRC's suggested amendments; crossed ref. to: CPC, JUD; hrg before CPC on 3/20, passed w/ amendments changing exception for security deposits to "service animals" (instead of "assistance animals"); hrg before JUD on 4/2, passed with amendments changing language back to "assistance animals"; conf. mtg. on 4/18, passed w/ amendments

HCRC position: No opposition only if amended to put in clarifying language that landlords cannot add a security deposit for assistance animals used as reasonable accommodations. This per HUD policy.

OTHER CIVIL RIGHTS ISSUES

[~~SB 58, SD2~~] Language Access Resource Center; Multilingual Website Pilot Project HB 266, HD1, SD2 CD1

Establishes a statewide language access resource center in the Office of Language Access (OLA) to maintain a roster of language interpreters and translators, train state agencies on how to obtain and utilize interpreters and translators, work towards creating a testing and certification process. OLA is to also explore the feasibility of creating a multilingual website to provide online information to LEP seeking information about government services.

Status: HB 266 ref. to HLT, FIN; hrg. on 2/8/13 before HLT, passed w/ amendments; hrg. on 2/22/13 before FIN, passed unamended; crossed on 3/1, ref. to HMS, WAM; hrg before HMS on 3/12, passed w/ amendments; hrg before WAM on 3/27, passed with amendments; conf. mtg. on 4/25, passed w/ amendments and appropriations for FY 2013-2015.

HCRC position: Support. HCRC supported the establishment of OLA and sits on its Language Access Advisory Council. A state agency's inability to provide LEP people access to its services could be a form of ancestry discrimination. The resource center and website will help to resolve this problem.

**HB 1396, HD1, SD2 Appropriation for Nisei Veterans Legacy Center [~~and Honouliuli~~
CD1 ~~Interment Camp Ed. Center~~
[~~SB 1317, SD2, HD1~~
[~~SB 1318~~**

HB 1396 and SB 1317 appropriate \$500,000 for planning, design and construction of Nisei Veterans Legacy Center and Honouliuli Interment Camp Ed. Center; SB 1318 appropriated \$5,000,000.

Status: HB 1396 ref. to VMI, HED, FIN; hrg before VMI on 2/6/13, passed w/ amendments; hrg before HED on 2/12/13, passed unamended; hrg before FIN on 2/21, passed unamended; crossed on 3/1, ref. to TEC/WTL, WAM; hrg before TEC/WTL on 3/21; passed with amendments; hrg before WAM on 3/27, passed with amendments; conf. mtg. on 4/26, passed w/ amendments deleting planning, design and appropriation for Honouliuli Camp Education Center.

Discussion: CC Wang noted that it was disappointing that the legislature chose to delete the provision for planning, design, and appropriation for a Honouliuli Camp Education Center.

HCRC position: Support. Last session the HCRC supported the creation of the Honouliuli Interment Camp Ed. Center.

SB 856, HD1 [~~Fred Korematsu Day~~] Civil Liberties and the Constitution Day

Establishes January 30 of each year as Fred Korematsu Day to honor his commitment to preserving civil liberties.

Status: ref. to JDL, TEC; hrg on 2/5/13 before JDL, passed unamended; hrg before TEC on 2/21/13, passed unamended; crossed on 3/5, ref. to VMI, hrg before VMI on 4/3, passed with amendments changing name of day to "Civil Liberties and the Constitution Day" to honor Korematsu, Min Yasui, Gordon Hirabayashi and Mitsuye Endo, who all challenged Executive Order 9066; senate conf. mgrs. met on 4/25, Senate agrees w/ House amendments.

Discussion: Chair Krieger noted that it was disappointing that the legislature chose to change "Fred Korematsu Day" to "Civil Liberties and the Constitution Day", because the focus could be lost in the broad title.

HCRC position: Support.

RESOLUTIONS

HR 88 **Urging Congress to include resident citizens of COFA states as**
[~~HCR 117, HD1~~] **“Qualified Aliens” under the Personal Responsibility and Work**
SR 74 **Opportunity Recognition Act**
SCR 108

Recognition would allow COFA immigrants to be eligible for numerous federal benefits such as Medicaid, social security, food stamps and housing benefits.

Status: HR 88 and HCR 117 ref. to VMI, JUD, hrg before VMI on 3/27, passed unamended; hrg before JUD on 4/5, passed with amendments; HR 88 adopted on 4/12, HCR 117 crossed on 4/12, ref. to TIA/HMS/PSM

SR 74 and SCR 108 ref. to TIA/HMS/PSM; hrg before TIA/HMS/PSM on 3/25, passed unamended; SR 74 adopted on 4/1; SCR 108 crossed on 4/1, ref. to VMI, JUD; hrg before VMI on 4/19; passed unamended; 4/23 resolution adopted.

HCRC position: support. COFA immigrants are from former U.S. Trust Territories, which were used for nuclear and other military tests and U.S. military occupation. A disproportionately large number of COFA immigrants also serve in the U.S. military. Therefore, they should be eligible for these benefits.

SR 66 **Urging the governor to strive to achieve or maintain gender equity in**
[~~SCR 100~~] **nominations to state boards and commissions**

Status: SR 66 and SCR 100 ref. to JDL; hrg. before JDL on 3/25, passed unamended, SR 66 adopted on 4/3, SCR 100 crossed on 4/3; ref. to CPC, JUD; hrg. before CPC on 4/18, passed unamended; no hearings before JUD.

HCRC position: support intent given position on HB 189.

SR 123 **Requesting the convening of a task force to study the social, economic**
SCR 166 **and religious impacts of enacting marriage equity in Hawaii**
[~~HCR 217~~]

Creates task force headed by WSRSL Dean and composed of 2 attorneys, 2 members of business community, one clergy member, one member of a marriage equity organization, one professor of economics, the House Speaker, Senate President to determine: 1) whether civil unions are sufficient to provide rights necessary to ensure strong healthy families in Hawaii; 2) examine impact of U.S. S. Ct.'s decision in U.S. v. Windsor regarding the constitutionality of DOMA and Hollingsworth v. Perry, regarding the constitutionality of California's initiative banning same sex marriage; 3) examine the economic impact of passing or not passing marriage equity legislation in Hawaii; and 4) review effects of marriage equity in Conn., Iowa, Maine, Maryland, Mass., NH, NY, Vermont, Wash and D.C.

Status: SR 123/SCR 166 ref. to JDL; hrg before JDL on 3/25, passed unamended; SR 123 adopted on 4/5; SCR 166 crossed on 4/5, ref. to JUD; hrg. before JUD on 4/23, passed unamended, resolution adopted on 4/16.

HCR 217 ref. to JUD; hrg before JUD on 4/2, passed unamended; crossed on 4/15; ref. to JDL

HCRC position: No opposition. ACLU suggested this resolution and study because similar studies were done in states that did pass marriage equity laws. However, since marriage equity is a civil rights issue which should not be based on economic, social and religious impacts, and the HCRC supported HB 1109 and SB 1369 (same sex marriage equity bills), there is no need for such task force.

Old Business

ED Hoshijo reported that plaintiffs' motions for summary judgment in *Cervelli v. Aloha Bed & Breakfast* were granted, and that defendant was likely to pursue an interlocutory appeal.

New Business & Announcements

ED Hoshijo announced that the HCRC would again have a contingent in the Honolulu Pride Parade on June 1, 2013.

Closed Executive Session

The Commissioners went into a closed session for a discussion of HCRC internal procedures, confidential pursuant to HRS § 368-4(b)(5). **(m/s/p Iwamoto/Liongson; all in favor).**

Next Meeting

The next regular meeting was scheduled for June 12, 2013, subject to polling of and confirmation by the Commissioners.

CC Wang asked that the Commissioners be available for a public hearing on proposed rules to be scheduled in early July.

ED Hoshijo indicated that rather than a regular meeting in July, later in the month a closed session-only meeting would be scheduled to complete the discussion of internal procedures.

Adjournment