



HAWAI'I CIVIL RIGHTS COMMISSION

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MINUTES

Hawai'i Civil Rights Commission Office
via MS TEAMS
January 29, 2021
2:00 p.m.

Present: Liann Ebesugawa, Joan Lewis, William Puette, and Jon Matsuoka, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi, Staff.

Chair Liann Ebesugawa called the meeting to order.

Approval of Minutes

The Commissioners reviewed the draft minutes of the December 17, 2020, meeting. The minutes were approved.

Commissioner William Puette recommended that going forward the draft minutes should be labeled "DRAFT," with a notation of "Submitted by _____," at the end, after "Adjournment." Then "Approved," after approval by the Commission.

Executive Director's Report

Deputy Executive Director (DED) Marcus Kawatachi presented a FY 2021 HCRC Mediation Program year-to-date summary.

Summary & Details (7/1/20 through 1/29/21)

Referrals	15+2= 17
Dispositions:	11+3= 14
Settlements:	3+1= 4
Non-agreements:	8+2= 10
Settlement Rate:	28.6%

Dual-filed (EEOC/HCRC and HUD/HCRC) settlements:	3
State-only settlements:	1
Employment cases settled:	2
Housing cases settled:	2

Primary Bases for Complaints Settled in Mediation

Disability	3
Age	1

Dispositions by Mediation Center

Mediation Center of the Pacific	1/6	(settlement rate 16.7%)
Mediation Services of Maui		
Private Mediators		
Ku‘ikahi Mediation Services (Hilo)	1/1	(settlement rate 100%)
West Hawaii Mediation Center		
Kauai Economic Opportunity, Inc.		
Hawai‘i Civil Rights Commission	2/7	(settlement rate 28,6%)

OVERALL 4/14 (settlement rate 28.6%)

DED Kawatachi again noted that the mediation settlement rate continued to be lower than pre-COVID-19, attributable to adjustments being made to remote mediation.

DED Kawatachi presented a data and production report showing caseload data through January 29, 2021.

As of January 29, 2021, the written report showed 325 open cases, a decrease of 12 cases from the number reported as of December 16, 2020.

Of the 325 open investigation cases, none were filed in 2016, 6 (1.8%) in 2017, 47 (14.5%) in 2018, 112 (34.5%) in 2019, 148 (45.5%) in 2020, and 12 (3.7%) in 2021.

DED Kawatachi reported a breakdown of the status of the open cases by type of case and investigation stage.

	2017	2018	2019	2020	2021	Total
Housing Cases	0	2	9	29	3	43
Response Monitoring	1	10	42	76	8	137
Mediation	0	0	10	24	1	35
Pending Assignment	0	17	39	13	0	69
Active Investigation	5	18	12	6	0	41
TOTAL	6	47	112	148	0	325

The report indicated no new subpoena enforcement litigation.

DED Kawatachi reported on case aging, with continuing concern over the increasing number of older cases in the caseload.

Case Aging (Last report – 12/16/20)

16.9 % of all cases are 2 years or older (15.7 %)

12.0 % of all cases are over 18 months, but less than 2 years old (11.9 %)

25.5 % of all cases are over 12 months, but less than 18 months old (22.3%)

23.4 % of all cases are over 6 months but less than 12 months (24.0 %)

22.2 % of all cases are 6 months or less (26.1 %)

The report also covered the year-to-date data for the past five fiscal years:

Category	7/1/16 – 1/29/17	7/1/17 – 1/29/18	7/1/18 – 1/29/19	7/1/19 – 1/29/20	7/1/20 – 1/29/21
PCQ Received	362	342	364	355	256
Intake Decision	380	306	294	406	223
Complaint Filed	204	155	171	198	105
Investigation Closed	242	167	181	136	120
Notice of Cause	9	22	7	5	7
Enforcement Closure	8	14	11	3	4

Chief Counsel’s Report

Chief Counsel (CC) Robin Wurtzel reported on litigation in *Van Putten v. City and County of Honolulu, and State of Hawai‘i, Hawai‘i Civil Rights Commission, and William Hoshijo, in his Official Capacity as Executive Director*; Civil No. 21-0000006. In a civil action framed as agency appeal from a notice of dismissal and right to sue, a hearing on a motion to dismiss was set for February 17, 2021.

CC Wurtzel reported no change on *Morning Hill Foods, LLC dba Mana Bu’s v. The Hawaii Civil Rights Commission*, Civil No. 18-100034-01 KKH, pending in the ICA.

2021 Legislation

The Commissioners reviewed 2021 Legislative Summary 1A, with staff recommendations, and decided on HCRC positions as follows:

CIVIL RIGHTS COMMISSION

HB838

SB538

HB1101

Relating to the Hawaii Civil Rights Commission

Amends § 368-1.5 to include state agencies which receive federal funds

Clarifies the meaning of "program or activity receiving state financial assistance". Excludes cases within the scope of the Individuals with Disabilities Education Act from the jurisdiction of the Hawaii civil rights commission.

Status: HB 838 ref to LAT, JHA, FIN; HB 1101 LAT, JHA, FIN
SB 538 ref to HMS, JDC

Discussion: Staff recommended strong Support, with concern that proposed budget cuts will impact HCRC's enforcement capacity. The statute prohibits discrimination based on disability by state agencies, or programs and activities receiving state financial assistance. This bill amends the statute to clarify that agency and programs which receive state assistance includes programs which also receive federal assistance. Passage would return our statute to its pre-*Matter of LE* reading, giving HCRC jurisdiction over all state agencies and programs receiving state financial assistance, regardless of whether they also receive federal funds.

HCRC Position: Strong Support, with concern that proposed budget cuts will impact HCRC's enforcement capacity.

[NOTE: HB 1101 differs from the others. It adds Section 3 which adds disability to the protected rights in the State analog to Title IX]

EMPLOYMENT

HB125
SB526

Relating to the Uniform Employee and Student Online Privacy Act

Adopts uniform laws regarding protection of online accounts of employees, interns, applicants, students and prospective students from employers and educational institutions

Status: HB125 ref to LAT, HET, CPC
SB 526 ref to LCA/EDU, JDC

Discussion: Staff recommended support. HCRC testified in support the past 3 years. This version addresses the concerns previously raised by HCRC, and expressly providing that employers' obligation to investigate discrimination complaints is not diminished.

HCRC Position: Support.

HB241

Relating to Discrimination

Amends HRS § 378-2 to add a new protected category prohibiting discrimination in employment based on invasive medical tests or vaccination status.

Status: Ref to LAT, JHA, FIN

Discussion: Staff recommended oppose. Bill appears to be an anti-vaccination bill. Staff recommended opposition because (a) this is a public health issue, not a discrimination issue; and (b) it adds additional categories for HCRC protection without additional funding. Further “vaccination status” is not defined. Note: By definition of “invasive medical test,” the bill would also affect and prohibit employment action based on test intended to screen for the use of marijuana.

HCRC Position: Oppose.

HB285

Relating to Insurance

Prohibits health insurance companies from denying coverage on the basis of gender identity if the policy covers the treatment for purposes other than gender transition. Requires insurance companies to provide applicants and insured persons with clear information about the coverage of gender transition services, including the process for appealing a claim denied on the basis of medical necessity.

Status: ref to HHH, CPC, JHA

Discussion: Staff recommended support. Expands mandatory health insurance coverage for transgender individuals for services related to gender transition treatments, and for smoking cessation. HCRC supports the rights of transgender individuals and equality.]

HCRC Position: Support.

HB852

Relating to Discrimination

Prohibits discrimination by employers based on political affiliation. Prohibits unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation based on political affiliation

Status: ref to LAT, JHA

Discussion: Staff recommended oppose. Based on serious concerns because this is different in kind than other protected bases. The bill states that Washington, D.C. has this, but does not mention any other jurisdiction.

HCRC Position: Oppose.

SB64

Relating to Medical Cannabis.

Prohibits an employer from discriminating against a person in hiring, termination, or term or condition of employment based on the person's status as a medical cannabis cardholder, under certain conditions. Specifies that an employer may use a fit-for-duty test as a tool for medical cannabis qualifying patients in potentially dangerous occupations. Exempts certain occupations.

Status: ref to LCA/HTH, JDC

Discussion: Staff recommended support the intent. HCRC supported similar legislation in the past (see SB2543 L 2020). This bill places jurisdiction in HRS Chapter 329, within the statute governing the DOH's administration of the medical cannabis program. This is appropriate because their definition of "debilitating medical condition" differs from the HRS Chapter 378, Part I statutory definition of disability. Not every person with a medical cannabis card is entitled to a reasonable accommodation for disability.

HCRC Position: Support the intent.

HB1253

Relating to Employment Practices

Prohibits an employer from: (1) requiring an employee to download a mobile application to the employee's personal communication device that enables the employee's location to be tracked or their personal information revealed; (2) terminating or otherwise discriminating against an employee for refusing to download a mobile application on their personal device; or (3) discharging or discriminating against an employee for filing a complaint concerning these unlawful practices.

Status: not yet referred

Discussion: Staff recommended no action. Bill places new protection in a new part of HRS Chapter 378, not under HCRC jurisdiction. Another division of DLIR is reviewing and testifying on this bill.

No position taken.

HOUSING

HB381

SB280

Relating to Fair Housing Reasonable Accommodations

Codifies the administrative rule definition of "assistance animal". Clarifies the type of verification an individual may provide to substantiate a reasonable accommodation request for a specific assistance animal. Specifies that possession of a vest or other distinguishing animal garment, tag, or registration document commonly purchased online and purporting to identify an animal as a service animal or assistance animal does not constitute valid verification of a disability-related need for an assistance animal.

Status: HB 381 ref to HHH, JHA
SB 280 ref to HMS, JDC

Discussion: Staff recommended support. The current rule has the full force and effect of law, so this bill is not necessary. The section stating that vests and tags purchased online are not valid verification is helpful and definitive.

HCRC Position: Support.

SB36
SB206
SB1135
HB1390

Relating to Rental Discrimination

Prohibits discrimination, including in advertisements for available real property, based on participation in a housing assistance program or requirements related to participation in housing assistance programs, in real estate transactions and requirements.

Status: SB 36 ref to HOU, JDC; SB 206 to CPN, JDC; SB 1135 not yet referred
HB 1390 not yet referred

Discussion: Staff recommended support. HCRC supported prior versions of this bill (SB 2031 L 2019; HB 25 L. 2015, SB 127 L. 2017; SB 122, L 2019), which prohibited discrimination based on lawful source of income and this bill includes changes suggested by HCRC. This bill is not under Chapter 515 or the Landlord Tenant Code, and allows for direct civil action in district court. It does require HCRC to produce materials, and publicize the prohibition against discrimination which we are willing to do.

The majority of people who receive rental assistance are people with disabilities, single female heads of households, families with children, and members of certain minority groups. Therefore, there is a correlation between those that are protected under our fair housing law and those who receive rental assistance.

HCRC Position: Support.

PUBLIC ACCOMMODATIONS

SB739

Relating to The Americans With Disabilities Act.

Requires all places of public accommodation to comply with accessibility guidelines established under the Americans with Disabilities Act.

Status: ref to JDC

Discussion: Staff recommended oppose. Compliance with federal law is mandatory, regardless of this bill. The amendment runs counter to the express limitation in HRS § 489-2, that expressly states that no public accommodation can be ordered to reconstruct a place of public accommodation to comply with HRS Chapter 489, limiting the remedies a State court could order. ADAAG federal enforcement provides adequate protection. And, given the loss of capacity due to proposed budget cuts, we oppose additional jurisdiction imposed by this bill.

HCRC Position: Oppose.

SB1285

Relating to Medical Facilities.

Requires any hospital or other medical facility that serves a community including more than 500 COFA benefit recipients to establish diversity and inclusion training for all staff, and to hire interpreters and community healthcare workers as necessary to bridge the language and cultural divide with the community.

Status: not yet referred

Discussion: Staff recommended support the intent. Pacific Islander communities have been affected by COVID—19 at higher numbers than any other community of color in the State. This statute will mandate that medical staff be provided training to better aid the COFA community. Further, decreasing infection rates for disproportionately affected communities serves advances the broader public health interest in stopping the spread of the pandemic. This bill is a vehicle for discussion of unfulfilled promises and obligations to COFA citizens.

HCRC Position: Support the intent.

PROCEDURAL ISSUES

HB166

HB190
HB503
HB677
HB880 (Gov package)
SB442
SB661
SB1034 (Gov package)

Relating to Sunshine Law Boards

Expands board and public participation by giving boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings under the Sunshine Law, even when no emergency has been declared by government authorities. Authorizes boards to exclude the public from nonpublic locations, such as homes, where board members are physically present when remote board meetings are held by interactive conference technology, with members of the public given the option to participate either remotely or at an in-person public location. Establishes requirements for the conduct of remote meetings. Requires remote meetings held by interactive conference technology to recess for a maximum prescribed period when audiovisual communication cannot be maintained by the board (not due to a member of the public's inability to maintain such communication) and allows the meeting to be reconvened even if only audio communication can be reestablished. Establishes a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail, which also applies to remote meeting agendas. Amends existing option to hold in-person meetings at multiple public meeting sites connected by interactive conference technology to require termination of meeting only if audio communication is lost and cannot be reestablished within an hour and the board had not provided reasonable notice of how the meeting would be continued. Allows for additional courtesy sites open to the public for both remote and in-person meetings held by interactive conference technology. Allows for contact tracing and social distancing in a pandemic.

Status: HB 166, HB, 505 & 677 ref to PDP, JHA, FIN; HB 880 to PDP, JHA
SB 442, 661 ref to GVO, JDC; SB 1034 not yet referred

Discussion: Staff recommended support. These bills codify the Governor's proclamations, and clean up the remote meeting laws. The OIP bills are **HB 880 and SB 1034**. Staff recommend supporting the intent, but oppose the requirement of posting videos, and raise questions about the meaning and implementation of some aspects.

Commissioners shared Chair Ebesugawa's reservations regarding concern about potential abuses or mishandling of personal information gathered for contact tracing.

Commissioner Puette noted that Sunshine Law requires speakers to sign in and identify themselves; speakers are not anonymous.

HCRC Position: Support, but with express reservations about potential for abuse and mishandling of personal information gathered for contact tracing..

SB9

Relating to Board Members.

Authorizes, until June 30, 2022, boards to exclude the public from the meeting locations where board members are physically present if the board meetings are held by interactive conference technology during a state of emergency due to a contagious illness. Permits two or more members of a board to attend state of the city, state of the county, state of the State, or state of the judiciary addresses with certain restrictions. Requires meetings held by interactive conference technology to recess, rather than terminate, when audio communication cannot be maintained and may reconvene only when audio communication is reestablished.

Status: SB 9 ref to GVO, JDC

Discussion: Staff recommended support. This bill is similar to the bills above, but is time limited. It also combines the above concepts with those in SB 592, below. Prefer the Sunshine Law bills.

Commissioner Puette noted that there is an exception to the Sunshine Law for training.

HCRC Position: Support the intent.

SB592

Relating to the Uniform Information Practices Act.

Allows any number of members of a board to attend an informational meeting or presentation on matters relating to official board business and conduct private meetings with legislators without meeting public meeting requirements.

Status: ref to GVO, JDC

Discussion: Staff recommended support. Gives board/commission members greater freedom.

HCRC Position: Support.

HB157

HB168

SB393

SB456

Relating to Public Agency Meeting and Records.

Authorizes any board that is subject to public agency meetings law to hold a closed meeting to consider statements and information obtained from witnesses or victims during the course of any investigation into the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting a witness's or victim's privacy will be involved.

Status: HB 157 ref to GVR, JHA, FIN; 68 to LAT, JHA
SB 393 ref to PSM, JDC; SB 456 to GVO, JDC

Discussion: Staff recommended DEFER.

HB341

Relating to Administrative Procedure

Prohibits agencies from accepting petitions for declaratory rulings on issues or questions for which a decision was already issued by another agency that has sole or shared jurisdiction with the agency receiving the petition and provides that agency orders under the State's administrative procedure law relating to declaratory rulings are final and not appealable.

Status: HB 341 ref to JHA, FIN

Discussion: Staff recommended oppose. This bill amends HRS § 91-8 and states that "Agency orders issued under this section shall be final and are not appealable." It eliminates the due process right of appeal, and defeats one of the purposes of administrative law. It will also increase the burden on the judiciary because there will be no reason to file dec relief with an agency, and not the Court.

HCRC Position: Oppose.

HB342

Relating to the Hawaii Administrative Procedure Act

Amends the definitions of "contested case" and "rule" in the Hawaii Administrative Procedures Act.

Status: ref to JHA,FIN

Discussion: Staff recommended oppose. The intent of the bill is not clear. The bill would adversely affect HCRC Chapter 515 contested cases, by changing the definition of “contested case” to exclude “an agency decision regarding the disposition of land by sale, lease, license, permit, or otherwise.”

HCRC Position: Oppose.

HB343

Relating to Contested Cases

Requires any state agency that does not have hearings officers on its staff to arrange with the department of commerce and consumer affairs to have its contested case hearings heard by hearings officers of the department. Allows the department of commerce and consumer affairs to charge a fee for conducting these hearings.

Status: Ref to CPC, JHA, FIN

Discussion: Staff recommended oppose. The HCRC has a need for specialized hearing officers who are familiar with and have experience and expertise with in the laws HCRC enforces.

HCRC Position: Oppose.

HB847

Relating to the Office of Administrative Adjudications

Requires the department of the attorney general to study and submit a report to the legislature on the feasibility and cost effect of establishing an office of administrative adjudications that conducts administrative hearings for the State's executive branch agencies.

Status: Ref to JHA, FIN

Discussion: Staff recommended oppose and express concern. See discussion of HB 343 above. The HCRC has a need for specialized hearing officers who are conversant in the law. (See also HB 1307 L2019).

HCRC Position: Oppose.

HB972 (Gov. Pack)

SB873

SB1126 (Gov. Pack)

Relating to Contested Cases.

Authorizes contested case hearings to use interactive conference technology.

Status: None yet referred

Discussion: Staff recommended support. The statute is permissive rather than mandatory. The bill is in response to COVID restrictions, but may be used in general and will aid administrative agencies.

HCRC Position: Support.

OTHER/ MISCELLANEOUS

HB242

Relating to Dr. Martin Luther King, Jr. Day

Changes the name of Dr. Martin Luther King, Jr., Day to Dr. Martin Luther King, Jr./How Would They Feel Day.

Status: Ref to CAI, JHA

Discussion: Staff recommended oppose. Changing the name of the holiday dilutes the importance of the holiday, the only federal and Hawai'i state holiday honoring and celebrating an African American, the importance of the life and work of Dr. Martin Luther King, Jr., and the history of the civil rights struggle.

HCRC Position: Oppose.

HB377

SB461

Relating to Selective Service

Requires compliance with the federal Military Selective Service Act to be eligible for enrollment in a state-supported post-secondary institution, qualify for state financial assistance for post-secondary education, or be eligible for state or county employment or service. Provides exceptions.

Status: HB 377 ref to CMV, HET, FIN

SB 461 ref to PSM/HRE, JDC

Discussion: Staff recommended strongly oppose. Similar to SB 1343 L 2019, SB 2622 and HB 2518 L2018; HB 422 and SB 419 L 2017. Previous opposition based on the grounds that it codified sex discrimination – it only applies to males and imposes a discriminatory burden on men that does not apply to women. Also, the prohibition would likely bar young men who are conscientious objectors based on their religious beliefs from state higher education and county/state employment, including elected office.

HCRC Position: Strongly oppose.

SB860

Relating to Accessibility.

Requires a retail establishment with an employee toilet facility to allow a customer suffering from an eligible medical condition to use that restroom during normal business hours, under certain conditions. Exempts a retail establishment and employees from civil liability in allowing an eligible customer to use an employee toilet facility. Establishes fines.

Status: not yet referred

Discussion: Staff recommended monitor only. This bill does not affect public accommodations law, but does affect the disability community.

HCRC Position: No action.

SB 966

Relating to Menstrual Equity

Requires the department of education to make menstrual products available for free to students on public secondary school campuses.

Status: not yet referred

Discussion: Staff recommended abstain. This bill affects the DOE, not the HCRC.

HCRC Position: No action.

HB19
SB544

Relating to Discrimination

Establishes provisions relating to civil remedies for discriminatory reporting to a law enforcement officer. Provides that a person who summons or reports to a law enforcement officer, without reason to suspect a crime, offense, or imminent danger has occurred or is occurring, because of that person's belief or perception involving a member of a protected class shall be civilly liable.

Status: HB 19 ref to LAT, JHA
SB 544 ref to PSM, JDC

Discussion: Staff recommended support. These bills are a recognition of racism and innate bias in our society. False reporting has historically been a threat to minority communities, and a cause of racial violence. We believe that Oregon and NY have passed “Karen” bills, similar to this, but no information has been provided in the bill, and HCRC will research further.

Chair Ebesugawa posed the question of whether a civil remedy would be effective. Commissioner Puette pointed out that the bill sets a high standard, which would be difficult to prove in cases where there is no video evidence, as there was in the recent New York City Central Park case.

Commissioner Lewis wondered whether this bill was the way to address the problem and whether affected minority communities see this as the answer. Commissioner Matsuoka said the problem is latent racism, and the bill sends a message. The Commissioners agreed that the bill was a part of the answer.

Executive Director Hoshijo asked whether civil action was the way to address the problem, rather than criminal prosecution for false reporting, as it put the burden on the individual victims to prosecute a societal interest.

HCRC Position: Support.

HB1077
SB193

Relating to Equitable Gender Representation on Corporate Boards

Requires publicly held domestic corporations to include non-male and non-female individuals among the directors of their corporate board. Establishes reporting requirements for the Department of Commerce and Consumer Affairs and penalties.

Status: HB 1077 not yet referred

SB 193 ref to CPN, JDC

Discussion: Staff recommended support the intent. HCRC supported a similar resolution last year regarding State boards. This bill uses unusual terminology, “non-male and “non-female,” that needs to be clarified.

Commissioner Matsuoka noted concern that the bill only addressed gender diversity, not the lack of race or ancestry diversity on corporate boards.

Chair Ebesugawa noted that there were only seven publicly held domestic corporations in Hawai‘i, and that this was not a bad start.

HCRC Position: Support, with concerns for race and ancestry diversity in addition to gender diversity.

SB16
SB316
SB939

Relating to State Holidays

Establishes June 19 of each year as a state day or holiday to be known as Juneteenth Day.

Status: SB 16, SB 316 ref to GVO, WAM; SB 939 not yet referred

Discussion: Staff recommended support. All 3 of these bills differ slightly, but all offer recognition of Juneteenth and the abolition of slavery.

HCRC Position: Support.

SB711

Relating to Hawaiian Language.

Requires all letterheads, documents, symbols, and emblems of the State and other political subdivisions that include Hawaiian words or names to include accurate and appropriate Hawaiian names, spelling, and punctuation. Establishes references for accurate, appropriate, and authentic Hawaiian names and words, including proper Hawaiian spelling and punctuation. Clarifies that the full text of bills and other official documents are not required to be written in Hawaiian and that misspelled or incorrectly punctuated Hawaiian words and names shall not invalidate the documents or render them unenforceable and no cause of action shall arise accordingly.

Status: ref to GVO, JDC

Discussion: Staff recommended support the intent. HCRC has supported similar legislation previously. Both Hawaiian and English are the official languages of the State (State Constitution, Article XV, § 4), and our State motto is in Hawaiian. *See* SB 2368 L 2020.

HCRC Position: Support both SB711 and SB1413, with a preference for SB711.

SB1413

Relating to the Hawaiian Language.

Requires the governor, lieutenant governor, state legislators, and heads of principal departments to prominently display a Hawaiian translation of the name of their office or department at least once on the main page of their official website and in the letterhead of their stationery.

Status: not yet referred

Discussion: Staff recommended support the intent. Prefer SB 711. This bill refers to websites in addition to and letterhead, but does not have any guidelines to guarantee accuracy, and does not refer to place names.

HCRC Position: Support both SB711 and SB1413, with a preference for SB711.

SB537

Relating to American Sign Language.

Recognizes American Sign Language as a fully developed, autonomous, natural language with its own grammar, syntax, vocabulary, and cultural heritage.

Status: Ref to HMS, JDC

Discussion: Staff recommended support. We recommend support and recognition of ASL. In related news, the White House announced this week that its regular press briefings will now include an ASL interpreter.

HCRC Position: Support.

SB751

Relating to Blood Donations.

Prohibits blood banks operating in the State from rejecting or deferring blood donors on the basis of sexual orientation, actual gender identity, or perceived gender identity.

Status: Ref to HTH, JDC

Discussion: Staff recommended support the intent. But note that Federal Drug Administration regulates blood banks and blood donations, and currently has these restrictions in place which cannot be overruled by State statute.

HCRC Position: Support the intent.

SB1133

HB979

Relating to Gender-based Analysis Training.

Requires the Commission on the Status of Women to provide biannual gender-based analysis training to government officials.

Status: Not yet referred

Discussion: Staff recommended support. This bill is part of the Governor's package. The bill shall be known at the RBG Legacy Training Program Act. We support training and the concept that decision making should consider and reflect the needs of women.

HCRC Position: Support.

HB1231

Relating to Vital Statistics.

Allows a qualified applicant to change their sex designation on their own birth certificate, including "x", as in the driver's license statute

Status: Not yet referred

Discussion: Staff recommended support. This is a furtherance of Act 142 C 2019, adding the additional "x" gender marker to licenses and ids. We supported that issue, and recommend allowing individuals to make that determination.

HCRC Position: Support.

SB1398

Relating to Age Discrimination.

Prohibits businesses that sell age-restricted goods from requiring disclosure of a customer's date of birth if it is clear that the individual has attained the age required to make a purchase.

Status: Not yet referred

Discussion: Staff recommended abstain. This is an issue relating to DCCA.

HCRC Position: No action.

SB1395

Relating to Boards And Commissions.

Requires the governor to appoint an individual to fill a vacancy within all boards and commissions within an unspecified period of time. Requires that holdover appointments are limited to an unspecified period of time, thereby creating a vacancy at the end of the holdover period. Requires department heads to inform the governor of any vacancy in any board or commission.

Status: Not yet referred

Discussion: Staff recommended abstain.

HCRC Position: No action.

RESOLUTIONS

SCR7

SR5

Requesting the Disability and Communication Access Board, in Collaboration With The Office Of Enterprise Technology Services, To Convene A Working Group On Accessible Government.

Status: not yet referred

Discussion: Staff recommended support.

HCRC Position: Support.

SCR9
SR8
HCR12
HR13

Convening a task force to address implementation of Hawaii's state law corollary to Title IX in light of anticipated changes to Federal Title IX Regulations.

Status: not yet referred

Discussion: Staff recommended support. HCRC would prefer to see legislation implementing Chapter 368D - Discrimination in State Educational Programs and Activities. HCRC views federal law as the floor, not the ceiling. However, the federal position may change with the new administration. The Obama administration "Dear Colleague" letter and the 2014 Q & A may be reissued.

HCRC Position: Support.

FB 2021-2023 Budget.

ED Hoshijo reviewed the FY 2021 Budget, which provided for 23 permanent positions (22.5 GF) and \$1,682,736 GF.

HE reported that the FY 2022 and FY 2023 Executive Budget called for cuts to the HCRC budget of \$315,000 and six permanent general funded positions.

Unfinished Business

There was no unfinished business.

New Business

There was no new business.

Announcements

There were no announcements.

With the 2021 legislative session scheduled to open on January 20, 2021, the next meeting of the Commission was scheduled for January 29, 2021, to be continued on February 5, 2021.

Adjournment, to be continued on February 5, 2021, at 2:00 p.m.

Submitted by William D. Hoshijo, Executive Director.

Approved by Commission on March 5, 2021.

MINUTES

Hawai`i Civil Rights Commission Office
via MS TEAMS
February 5, 2021
2:00 p.m.

Present: Liann Ebesugawa, Joan Lewis, William Puette, and Jon Matsuoka, Commissioners; Robin Wurtzel, Bill Hoshijo, and Marcus Kawatachi, Staff.

Chair Liann Ebesugawa called the continued meeting to order.

2021 Legislation

The Commissioners reviewed 2021 Legislative Summary 1B, with staff recommendations, and decided on HCRC positions as follows:

CIVIL RIGHTS COMMISSION

HB838

SB538

HB 1101

Relating to the Hawaii Civil Rights Commission

Amends § 368-1.5 to include state agencies which receive federal funds

Clarifies the meaning of "program or activity receiving state financial assistance". Excludes cases within the scope of the Individuals with Disabilities Education Act from the jurisdiction of the Hawaii civil rights commission.

Status: HB 838 ref to LAT (2-2-21 passed with technical amendments), JHA, FIN; HB 1101 ref to LAT, JHA, FIN
SB 538 ref to HMS, JDC

HCRC Position (1/29/21): Strong Support, with concern that proposed budget cuts will impact HCRC's enforcement capacity. The statute prohibits discrimination based on disability by state agencies, or programs and activities receiving state financial assistance. This bill amends the statute to clarify that agency and programs which receive state assistance includes programs which also receive federal assistance. Passage would return our statute to its pre-*Matter of LE* reading, giving HCRC jurisdiction over all state agencies and programs receiving state financial assistance, regardless of whether they also receive federal funds.

Additional discussion: HB 1101 differs from the other 2 bills. It adds Section 3 which adds disability to the protected rights in the State analog to Title IX. **Staff recommended strong**

support for Sections 1 and 2 and Opposition to Section 3. Title IX, and its analogs, prohibit sex discrimination in schools. There are other federal statutes prohibiting disability discrimination.

HCRC Position: Strong support for Sections 1 and 2 and Opposition to Section 3.

EDUCATION/TITLE IX

SB1331

Relating to Disability Discrimination

Expands HRS 368D, the Title IX State legislation, to include disability

Status: Ref to HMS/EDU, JDC

Discussion: Staff recommended oppose. This statute is a state analog to Title IX. Title IX prohibits sex discrimination in any school or educational institution that receives federal funds. The Civil Rights Act of 1964 applied to employment and public accommodation. Title VI of the Act applies to any activity that receives federal funds, and prohibits discrimination based on race, color or national origin. It does not include sex, so Title IX was passed to address sex discrimination in education settings. Also, this bill discusses “complaints” even though there is no complaint mechanism within this statute.

Disability discrimination is addressed in other bills, such as the Americans with Disabilities Act, Individuals with Disabilities Education Act, Rehabilitation Act, and several other laws. It does not belong in a Title IX analog.

HCRC Position: Oppose.

PROCEDURAL ISSUES

HB157

HB168

SB393

SB456

Relating to Public Agency Meeting and Records.

Authorizes any board that is subject to public agency meetings law to hold a closed meeting to consider statements and information obtained from witnesses or victims during the course of any investigation into the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting a witness's or victim's privacy will be involved.

Status: HB 157 ref to GVR, JHA, FIN; 68 to LAT, JHA
SB 393 ref to PSM, JDC; SB 456 to GVO, JDC

Discussion: Staff recommended no action.

HCRC Position: No action.

Next meeting.

The next meeting of the Commission was scheduled for March 5, 2021.

Adjournment

Submitted by William D. Hoshijo, Executive Director.

Approved by Commission on March 5, 2021.