



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

February 10, 2010

The Honorable James Kunane Tokioka, Chair
The Honorable Blake K. Oshiro, Vice Chair
House Committee on Legislative Management
Hawaii State Capitol, Room 439
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on H.B. No. 2327, Relating to Ethics**

Hearing: Wednesday, February 10, 2010, 2:00 p.m.
State Capitol, Conference Room 423

Written Testimony From: Hawaii State Ethics Commission

The Honorable James Kunane Tokioka, Chair; The Honorable Blake K. Oshiro, Vice Chair; and Honorable Members of the House Committee on Legislative Management:

Thank you for this opportunity to submit written testimony on H.B. No. 2327, Relating to Ethics. We regret that we cannot be here in person to testify. We have a Commission meeting scheduled for this time.

The Hawaii State Ethics Commission, with all due respect, opposes this bill.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) chapter 84, the Hawaii State Ethics Code. This bill amends the Gifts section of the State Ethics Code and also amends some of the procedural requirements that govern the administration of the State Ethics Code. The Hawaii State Ethics Commission believes that these amendments are unnecessary.

This bill amends HRS section 84-11, the Gifts section of the State Ethics Code. Currently, the Gifts law reads:

§84-11 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 the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

House Bill 2327 adds language to the Gifts section to require the Hawaii State Ethics Commission to examine the following factors in determining whether or not a gift is acceptable:

- 1) The official action the recipient has taken or may be taking that directly affects the donor of the gift;
- 2) The extent to which the gift benefits the State and the extent to which the gift personally benefits the recipient;
- 3) The business relationship, if any, between the donor and the recipient of the gift;
- 4) The relationship of the gift to the official functions of the recipient;
- 5) The benefits to the donor; and
- 6) All other circumstances under which the bill is given.

The Hawaii State Ethics Commission believes that it is simply unnecessary to codify these factors. The Commission already examines these factors, and others, when appropriate in determining whether or not a gift is acceptable. The Hawaii State Ethics Commission believes that there is no need to add this language to the Gifts law.

House Bill 2327 also amends the procedures of the Hawaii State Ethics Commission. Chiefly, the bill makes the following changes:

- 1) It amends the Charge provisions to allow requests for reconsideration of Informal Advisory Opinions within 30 days.
- 2) It requires that in cases where there is a request for reconsideration of an Informal Advisory Opinion, the Commission must conduct an informal, confidential hearing to obtain further information and hear arguments from the person charged. Upon reaching a decision, the Commission shall notify the person charged who may either request a formal opinion or comply with the Informal Advisory Opinion.
- 3) It amends procedures to allow the Commission, in its discretion, to amend or de-publish published Advisory Opinions or Informal Advisory Opinions.

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- 4) It requires the Commission to rely on and follow the analysis of its published opinions in evaluating conduct to the extent that the factual situation is analogous.
- 5) It amends procedures to state that anyone who reasonably relies on a prior opinion, whether published or unpublished, shall not be in violation, provided the facts are reasonably analogous.

Again, the Hawaii State Ethics Commission believes that all of these changes are unnecessary.

House Bill 2327 adds additional procedures attendant to the issuance of an Informal Advisory Opinion. HRS section 84-31 provides that whenever the Hawaii State Ethics Commission receives or initiates a Charge against an individual, the individual is notified and given an opportunity to respond. After receiving the response and reviewing the matter, the Commission may then issue an Informal Advisory Opinion to the respondent. At this point the respondent may either comply with the Informal Advisory Opinion or request a formal opinion. If the respondent does not comply or if the majority of the Hawaii State Ethics Commission believes that there is probable cause that violation of the State Ethics Code has occurred, then the Commission may issue a Charge and Further Statement of Alleged Violation. The respondent is then given an opportunity to respond to this second Charge. Twenty days after service of the Charge and Further Statement of Alleged Violation, the Commission must again decide whether or not there is probable cause to believe a violation of the State Ethics Code has occurred. If the Commission makes this determination, then it will schedule a hearing under HRS chapter 91, the Hawaii Administrative Procedures Act. Any decision following a hearing is appealable to Court.

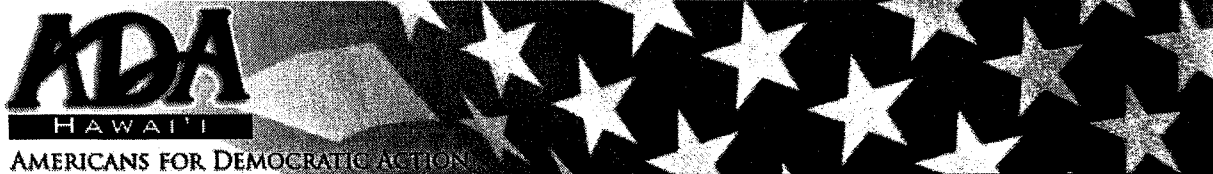
This is an outline of the State Ethic Commissions procedures involving Informal Advisory Opinions. The Commission believes that its current procedures properly protect the interests of the respondent, the complainant, and the public.

House Bill 2327 also requires the Commission to follow the precedent established in prior opinions. Again, the Hawaii State Ethics Commission believes that it is unnecessary to codify this requirement. The Hawaii State Ethics Commission maintains Advisory Opinions going back to 1968. These opinions are valuable in creating an understanding of how the law is interpreted in certain situations.

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Each particular situation, however, stands on its own facts. The Commission is, by law, required to provide advice on the State Ethics Code. It is a simple matter to request advice from the Commission. In addition, HRS section 84-31(a)(2) states that the Hawaii State Ethics Commission is bound by the advice that it gives. If anyone has a question about the application of the State Ethics Code to their situation, that person can ask the Commission for advice. The Commission will then be bound by that advice.

House Bill 2327 amends the Ethic Code in a number of ways. The Hawaii State Ethics Commission believes that this bill is unnecessary. For these reasons the Hawaii State Ethics Commission cannot support this bill. We appreciate the opportunity to submit written testimony on H.B. No. 2327, Relating to Ethics. We would like to thank this Committee for its consideration of our written testimony.



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TO: Chair James Kunane Tokioka
Vice Chair Blake Oshiro
Members of the House Committee on Legislative Management

FROM: Barbara Polk, Legislative Chair
Americans for Democratic Action/Hawaii

RE: TESTIMONY IN SUPPORT OF HB 2327 Relating to Ethics

Americans for Democratic Action/Hawaii supports HB 2327 and urges its passage. This bill codifies decisions and procedures of the Ethics Commission and give them legal standing. This is important to those who need to know how the Commission interprets special cases and to be assured that standards will not change unpredictably. The bill also provides the Commission members with guidance in making their determinations, without removing any of their ability to make changes in guidelines that will apply to future cases as their understanding of particular situations evolve.

We urge your support for this bill.

Thank you.