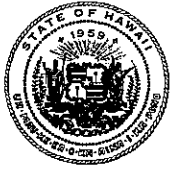


SB671

Testimony



HAWAII STATE ETHICS COMMISSION

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

March 1, 2011

The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor
Hawaii State Capitol, Room 002
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on S.B. No. 671, SD 1, Relating to Ethics**

Hearing: Tuesday, March 1, 2011, 9:00 a.m.
State Capitol, Conference Room 016

Written Testimony From: Hawaii State Ethics Commission

The Honorable Clayton Hee, Chair; The Honorable Maile S.L. Shimabukuro, Vice Chair;
and Honorable Members of the Senate Committee on Judiciary and Labor:

Thank you for the opportunity to testify on Senate Bill No. 671, SD 1, Relating to Ethics.
The Commission has serious concerns about this bill.

Senate Bill No. 671, SD 1, significantly amends Hawaii Revised Statutes section 84-11, the State Gifts Law, and would allow legislators and state employees to accept significant and costly gifts that will likely cause substantial harm to the public's perception of an ethical state government. Currently, the Gifts Law prohibits legislators and state employees from accepting or soliciting a gift if it is reasonable to infer that the gift is being given to influence or reward the legislator or employee in the performance of the legislator's or employee's official duties. Stated differently, the current law is not based on actual influence or reward; rather, consistent with the legislative intent "to promote high standards of ethical conduct in state government," it is based on the reasonable appearance of such influence or reward. As such, in determining whether acceptance of a gift is prohibited under the Gifts Law, the Commission considers: (1) the source of the gift; (2) the value of the gift; and (3) the state benefit, i.e., how the gift will benefit the legislator or state employee in performing his official duties.

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Senate Bill No. 671, SD 1 would allow a legislator and state employee to accept any gift, under any circumstances, and from any source, so long as the value of the gift does not exceed \$200. Thus, a state inspector who had just completed the inspection of a business could accept a \$200 gift from that business; a state employee in charge of issuing permits could accept a \$200 gift from a person seeking a permit; a legislator could accept a \$200 gift from a lobbyist seeking favorable action on a bill before that legislator. While, in general, the Commission does not object to placing a specific dollar value on gifts that may be accepted, the Commission believes that the \$200 threshold established in this bill is simply far too high. The Commission firmly believes that allowing the receipt of gifts of such high value would significantly erode the public's confidence in state government. Moreover, in certain specific situations, the Commission believes that the inference of influence or reward is so great that no gift to a legislator and state employee should be allowed.

The proposed section 84-11(b) would prohibit gifts in excess of \$200 in certain specified situations. While the Commission agrees that the situations set forth in section 84-11(b) would raise very significant issues, the Commission is extremely concerned that this section would appear to allow gifts in excess of \$200 in all other situations. Moreover, it appears that the language of the proposed subpart (c) will, in many situations, supersede subpart (b), allowing a legislator and state employee to accept many types of gifts that currently are prohibited. Again, the Commission believes that such a permissive Gifts Law would be detrimental to the public's interest.

The proposed subpart (c) creates exemptions to the Gifts Law and allows state legislators and employees to accept certain types of gifts, without any limitation on the value of those gifts. For example, section 84-11(c)(1) appears to allow state legislators and employees to accept gifts of food and beverages of unlimited value. a state inspector could be offered a very expensive dinner; a state employee who issues permits could similarly be wined and dined; a state legislator could receive very elaborate meals from lobbyists. In each situation, there is clearly a reasonable inference that the gift is offered to the legislator and state employee to influence or reward that person, and accordingly, under the current law, would be prohibited.

The proposed subpart (c) also creates an exemption for the receipt of honoraria. This exemption is clarified in proposed subpart (d), which states that a legislator or employee shall not accept honoraria but then provides a list of items that shall not be considered honoraria. For example, the proposed subpart (d)(1) appears to allow legislators and state employees to accept all expenses for meals, travel, and lodging and expenses, including those expenses relating to the care of child or dependent adult.

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This testimony highlights the Commission's chief areas of concern about this bill. The Commission is quite willing to work with the legislature to appropriately amend the Gifts Law to create a clearer law, including exceptions if appropriate. Senate Bill 671 SD1, however, was not created with any Commission input. As noted above, the Commission believes that this bill simply allows legislators and state employees to accept too many gifts, most of which clearly raise a reasonable inference that the gift is offered to influence or reward the person. As stated in the preamble to the State Ethics Code, the purpose of the Ethics Code is to preserve public confidence in public servants. The Commission strongly believes that this bill would do the opposite.

For the reasons set forth above, the Hawaii State Ethics Commission has strong concerns about this bill. We appreciate the opportunity to testify on Senate Bill 671 SD1, Relating to Ethics. We would like to thank the Committee for its consideration of our testimony.