



HAWAII STATE ETHICS COMMISSION

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

February 27, 2014

The Honorable David Y. Ige, Chair
The Honorable Michelle N. Kidani, Vice Chair
Honorable Members
Senate Committee on Ways and Means
Hawaii State Capitol, Room 208
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on Senate Bill 2423, Senate Draft 1, Relating to the Department of Education**

Decision Making: Thursday, February 27, 2014, 9:00 a.m.
State Capitol, Conference Room 211

Written Testimony From: Hawaii State Ethics Commission

The Honorable David Y. Ige, Chair; The Honorable Michelle N. Kidani, Vice Chair;
and the Honorable Members of the Senate Committee on Ways and Means:

The Hawaii State Ethics Commission has strong concerns about S.B. No. 2423, S.D. 1. More specifically, as explained more fully below, the bill conflicts with provisions in the State Ethics Code and may provide less guidance to schools and school employees on fundraising in schools than currently provided under the State Ethics Code and the opinions issued by the State Ethics Commission on the Code. The Commission urges the Committee to fully consider and understand the broad scope of the bill and the possible (and maybe even likely) application of the provision.

The purpose of this bill is to add a new section to chapter 302A, Hawaii Revised Statutes, that would, notwithstanding any law to the contrary, allow schools and classes to participate in fundraising or charitable activities, in conjunction with certain tax exempt non-profit organizations as a school project when the participation benefits student learning.

The State Ethics Code does not allow a state employee to use his position to give himself or others an unwarranted advantage or special treatment. Haw. Rev. Stat. § 84-13. The statute also specifically prohibits the use of "state time, equipment or other facilities for private business purposes." Haw. Rev. Stat. § 84-13(3). "Business" is defined to include both for-profit and non-profit organizations. Haw. Rev. Stat. § 84-3.

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Thus, the State Ethics Code specifically makes no distinction between for-profit businesses and non-profit organizations.

This bill, in essence, will create an exception to the State Ethics Code's provision that prohibits using state resources for private business activities. It will allow schools to decide whether to dedicate class time, school facilities, and other resources to fundraise for or to otherwise support a private, non-profit organization, no matter the mission or purpose of the non-profit organization.

The Commission appreciates the intent of the bill: to enrich student learning, improve the school environment and support school programs. The Commission also appreciates that schools and school employees may be eager to support a non-profit organization, particularly a popular organization. However, as written, the bill is extremely broad, allows fundraising for any non-profit organization without any guidance or controls, and raises numerous concerns. The Commission offers the following as examples of issues that the Committee should consider:

* Although there are many worthy charities, there are also many non-profit 501(c)(3) type organizations which are not widely accepted, which may have a mission that is inconsistent with or objected to by some school employees and/or parents (in other words, one person's belief that a charity or its cause is worthy may not be universally shared). For example, Make a Wish Foundation is a non-profit organization. But so are Hawaii Right to Life Education Fund, Planned Parenthood, and Hawaii Family Forum. There is no legal distinction between these organizations and this bill will allow fundraising for any and all of these organizations.

* Because there are so many 501(c)(3) non-profit organizations, there will be issues relating to why a school supported one charity but not another (i.e., is it fair for a state entity to "choose" which charity is more worthy and to allow its resources to be used to fundraise for that charity rather than a different charity). This bill offers no guidance on the selection of a non-profit organization. There is no criteria or other direction in the bill to assist a school in selecting to support or fundraise for, for example, Planned Parenthood over Hawaii Right to Life; similarly what criteria would be used in selecting the Susan G. Komen Foundation over the Pacific Cancer Foundation?

* Similarly, if a principal or other school employee (or their spouse) is involved with a charity or its underlying mission (e.g., he is a director on the non-profit's board), there may be issues as to whether the principal misused his position to cause school resources to be dedicated to support that charity or whether he has a conflict of interest in allowing school resources to be used to support the organization (e.g., a teacher's daughter is a girl scout and she uses class time and student labor to sell girl scout cookies; or the principal's son plays Pop Warner football and he fundraises at school, during school hours, and using the school equipment to support the team; a school principal's spouse is employed by the Susan G. Komen Foundation and allows fundraising for the organization at the school.);

* Students and their parents likely will be asked to participate in fundraising if it is a school-sanctioned activity; the Commission suggests that the Committee should take into account that the fundraising activities may create or facilitate an environment where certain families may feel "pressured" to participate notwithstanding their limited financial resources or objection to the organization and/or its mission.

The Commission realizes that some of these issues may eventually be addressed in the rule making requirements of this bill; however, since the State Ethics Code and the opinions issued on the Code have been developed over decades, the Commission suggests that the State Ethics Code may provide more comprehensive and clearer guidance to the Department and its employees than the rules that may be promulgated under this bill.

The Commission also is concerned that other state agencies and departments may believe that they have significant public functions and should also be exempt from statutory provisions restricting their ability to fundraise or engage in charitable activities. The Commission suggests that, consistent with the constitutional mandate and underlying purpose of the State Ethics Code, all state agencies and departments should be held to the same standards and codes of conduct.

In closing, the Commission notes that issues of fundraising and other charitable activities in schools and other state agencies recently have been the subject of multiple complaints or questions from those endorsing the practice and from those objecting to it. The Commission, through its staff, has met with and discussed the fundraising issues with the Superintendent as well as other agency heads. The Commission invites input from those interested in this issue and the Commission's staff would be happy to

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meet and discuss this issue further with legislators or others interested in the matter. In the very near future, the Commission intends to consider, comprehensively, the application of the State Ethics Code to such activities by state employees. The Commission expects to issue guidance on the issues after its consideration. Many of the concerns expressed by the schools and other agencies that this bill may be attempting to address will be considered and the Commission would like the opportunity to work with the Department in order to issue guidance that may alleviate certain of the current concerns. For that reason, the Commission suggests that the Committee defer the bill until after the Commission has had an opportunity to thoroughly consider the issues and the application of the State Ethics Code.

Thank you for the opportunity to testify on S.B. No. 2423, S.D. 1.



Thursday, February 27, 2014
9:00 AM
Conference Room 211

TESTIMONY TO
THE SENATE COMMITTEE
ON WAYS AND MEANS

RE: SB 2423 SD1 – Relating to the Department of Education

Chair Ige, Vice Chair Kidani, and members of the Committee:

My name is Robert Witt, Executive Director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

HAIS is in strong support of SB 2423 SD1 which allows schools and classes to participate in fundraising or charitable activities, in conjunction with a charitable organization that is a 501(c)(3) tax-exempt organization and registered under section 467B-2.1, HRS, or granted an exception from registration under section 467B-2.1, HRS, to enhance the school environment for the betterment of student learning.

As you already know, the price of a high quality education is quite lofty and funding for education, without fail, falls well short of what is necessary to provide the learning experiences that are crucial for increased student success in school and life. The per pupil allocation of funds provided by the state currently only covers a percentage of the cost to educate an individual.

It is therefore imperative that schools and classes are allowed to participate in fundraising activities that benefit student learning, as this is a positive way of engaging the school community in service learning as they make meaningful contributions to the school.

Our private schools rely heavily on fundraising activities such as capital campaigns or various fundraisers for student scholarships; this has proven to be a very effective way of supplementing the cost of education.

Thank you for the opportunity to testify in strong support of this measure.