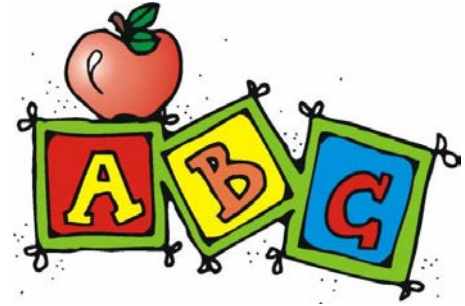


SB2423



Measure Title: RELATING TO THE DEPARTMENT OF EDUCATION.

Report Title: Department of Education; Gifts and Donations; Fundraising and Charitable Activities

Description: Authorizes the department of education to accept gifts or donations based on criteria established by the board of education. Allows schools and classes to participate in fundraising or charitable activities, in conjunction with a 501(c)(3) tax-exempt organization, based on criteria established by the board of education.

Companion:

Package: None

Current Referral: EDU, WAM

Introducer(s): TOKUDA, GABBARD, KIDANI, RUDERMAN, Slom



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/07/2014

Committee: Senate Education

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 2423 RELATING TO THE DEPARTMENT OF EDUCATION.

Purpose of Bill: Authorizes the department of education to accept gifts or donations based on criteria established by the board of education. Allows schools and classes to participate in fundraising or charitable activities, in conjunction with a 501(c)(3) tax-exempt organization, based on criteria established by the board of education.

Department's Position:

The Department of Education strongly supports SB 2423 because we believe it is critically important for students and schools to partner with non-profit community organizations to foster civic engagement and service learning. Moreover, we believe that school or class participation in fundraising or charitable activities directly promote character education pursuant to Board of Education Policy 2109 (Character Education) which provides in relevant part:

The vitality and viability of our democratic way of life are dependent on all students developing into responsible and caring citizens who respect themselves, others, and the world in which they live. Character education is the process through which students are provided opportunities to learn and demonstrate democratic principles and core ethical values such as civic responsibility, compassion, honesty, integrity, and self-discipline. . . .

Character education must be incorporated into the curriculum at each grade level in the public schools. For character education to flourish, it must be infused into the culture of each classroom as well as the entire school. Students need continuing, real-life opportunities to learn to act morally and ethically. The ultimate objective is the development of students who make virtues integral parts of their personality.

Further, school projects involving fundraising or charitable activities provide opportunities for youth to apply what they have learned in the classroom to real world situations. Beyond fundraising, the activities give students a sense of accomplishment, responsibility and independence. Engaged students work alongside staff, parents, and community members to ensure long lasting and meaningful contributions to their schools, communities and organizations.

This bill, which provides the authority under HRS Chapter 302A relating to Education, will allow

our students to engage as described above. We are also supportive of the provision that allows for schools to accept donations.

Upon consultation with the Department of the Attorney General, the Department would also respectfully suggest that the language be changed to include that the charitable organization be both exempt from federal taxes under section 501(c)(3) of the Internal Revenue Code and registered under HRS section 467B-2.1 or granted an exemption from registration under HRS section 467B-11.5. (suggested language underscored).



HAWAII STATE ETHICS COMMISSION

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

February 6, 2014

The Honorable Jill N. Tokuda, Chair
The Honorable Michelle N. Kidani, Vice Chair
Honorable Members
Senate Committee on Education
Hawaii State Capitol, Room 414
415 South Beretania Street
Honolulu, Hawaii 96813

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

Hearing: Friday, February 7, 2014, 1:30 p.m.
State Capitol, Conference Room 414

Testimony From: Hawaii State Ethics Commission

The Honorable Jill N. Tokuda, Chair; The Honorable Michelle N. Kidani, Vice Chair; and the Honorable Members of the Senate Committee on Education:

The Hawaii State Ethics Commission has strong concerns about S.B. No. 2423. 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 the acceptance of gifts and fundraising in schools than currently provided under the State Ethics Code and the opinions issued by the State Ethics Commission on the Code.

The purpose of this bill is to add 2 new sections to chapter 302A, Hawaii Revised Statutes, that would, notwithstanding any law to the contrary: 1) authorize the Department of Education to accept gifts or donations on behalf of the department, individual schools or school complexes; and 2) 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.

Gifts and donations to department.

It is the Commission's understanding that the Department, currently, may accept gifts of money and other property from private sources. See Haw. Rev. Stat. § 302A-1122. The State Ethics Code establishes standards of conduct which state employees must meet but, generally, does not apply to gifts to the Department. In rare cases, the Commission may examine gifts given to the Department for a specific employee or where there are concerns that the donor of the gift is being given special treatment or is receiving an unwarranted advantage because of the gift.

For example, if a private business such as Sports Authority offered to provide lockers "wrapped" in the store's logo for a school's athletic teams, that gift may raise concerns under the State Ethics Code's fair treatment provision because of the blatant "advertising" or "marketing" of the private business on the lockers to the exclusion of other businesses.

This bill, however, allows the Department to accept any gift, regardless of whether the gift may trigger concerns under the State Ethics Code. The Commission suggests that it is both unnecessary and imprudent to allow the Department to accept gifts that may trigger concerns under and be contrary to the State Ethics Code. By doing so, the bill may create situations that are inconsistent with the underlying purpose of the State Ethics Code, i.e., to foster public confidence in state government.

Fundraising and charitable activities; school projects.

The Commission has strong concerns about the part of the bill relating to fundraising and charitable activities. 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 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.

In the context of fundraising and charitable activities, with certain very limited exceptions, state employees are not allowed to fundraise during work hours, using state equipment including the state email system, or in state offices.

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.

The Commission appreciates that the intent of the bill is to enrich student learning, improve the school environment and support school programs; however, as written, the bill is extremely broad and raises numerous concerns. The Commission offers the following as examples of issues that the Committee may wish to 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 an "agenda" 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);

- * Because there are so many charities, 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 allow its resources to be used to fundraise for that charity);

- * 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 Planned Parenthood 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 suggest 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 be addressed in the rule making requirements of this bill; however, since the State Ethics Code and the

The Honorable Jill N. Tokuda, Chair
The Honorable Michelle N. Kidani, Vice Chair
Honorable Members, Senate Committee on Education
February 6, 2014
Page 4

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 to 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. The Commission, through its staff, has met with and discussed the fundraising issues with the Superintendent as well as other agency heads. 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 guidance 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.

841 Bishop St., Suite 301
Honolulu, Hawaii 96813



Telephone: 808 926-1530
Contact@HEECoalition.org

Senate Committee on Education
Senator Jill Tokuda, Chair
Senator Michelle Kidani, Vice Chair

February 7, 2014

Dear Chair Tokuda, Vice Chair Kidani, and Committee Members:

This testimony is submitted offering comments for SB2423, relating to gifts, donations and fundraising for schools.

The Hui for Excellence in Education (HE'E) is a diverse coalition of over 40 parent and community organizations dedicated to improving student achievement by increasing family and community engagement and partnerships in our schools. Our member list is attached.

The Coalition understands that school budgets will continually be constrained and that increasing avenues for alternative revenue streams is welcomed. We like that the bill tries to provide clarity on the process/mechanism on how gifts and donations are made to the department, complexes and schools, and on fundraising and charitable activities for school projects.

However, a few Coalition members have expressed concerns about the bill in its current form. The language gives a very broad brush to allow gifting, donating, fundraising and charitable activities, which can have negative or potentially unintended consequences if specific acceptance policies do not follow that statute quickly. Some are concerned that donations or gifts would inappropriately influence. Others are afraid that centralized rules could discourage fundraising especially at the school level.

Perhaps more information about background and purpose of the bill might be helpful to help clarify, so the Coalition can take a position on the bill.

Thank you for the opportunity to testify and for your consideration.

Sincerely,
Cheri Nakamura
HE'E Coalition Director

HE'E Member List

Academy 21

After-School All-Stars Hawaii

Alliance for Place Based Learning

*Castle Complex Community Council

Center for Civic Education

Coalition for Children with Special Needs

*DOE Windward District

*Faith Action for Community Equity

Fresh Leadership LLC

Girl Scouts Hawaii

*Good Beginnings Alliance

Harold K.L. Castle Foundation

*Hawaii Appleseed Center for Law and Economic Justice

Hawai'i Athletic League of Scholars

*Hawai'i Charter School Network

*Hawai'i Nutrition and Physical Activity Coalition

*Hawaii State PTSA

Hawai'i State Student Council

Hawai'i State Teachers Association

Hawai'i P-20

Hawai'i 3Rs

Head Start Collaboration Office

It's All About Kids

*INPEACE

Joint Venture Education Forum

Junior Achievement of Hawaii

Kamehameha Schools

Kanu Hawai'i

Keiki to Career

Kupu A'e

*Leaders for the Next Generation

Learning First

McREL's Pacific Center for Changing the Odds

Our Public School

*Pacific Resources for Education and Learning

*Parents and Children Together

*Parents for Public Schools Hawai'i

Punahou School PUEO Program

Teach for America

The Learning Coalition

US PACOM

University of Hawai'i College of Education

YMCA of Honolulu

Voting Members (*)