

JAN 22 2016

A BILL FOR AN ACT

RELATING TO ETHICS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the state ethics
2 commission administers and enforces governmental ethics laws,
3 issues advisory opinions, educates public officials and
4 employees on matters relating to ethics in government, and
5 investigates charges of alleged ethical violations. Pursuant to
6 section 84-31(a)(2), Hawaii Revised Statutes, the commission,
7 upon request, issues advisory opinions on whether the facts and
8 circumstances of a particular case constitute or will constitute
9 a violation of the state ethics code. Occasionally, however,
10 these advisory opinions appear to be based upon subjective and
11 overly broad applications of the state ethics code that can be
12 detrimental to the public. For example, in its Advisory Opinion
13 No. 2015-1, the commission found ethical violations in the
14 longstanding practice of public school teachers receiving free
15 travel and other benefits from tour companies when chaperoning
16 students on out-of-state educational trips. The commission
17 found that when public school teachers planning these excursions



1 select the tour company, design and organize the itinerary with
2 the tour company, decide which teachers will travel with the
3 students, and promote the trip to the students and their parents
4 using materials prepared by the tour company, the teachers help
5 generate substantial revenue for tour companies and are,
6 essentially, "rewarded" for their efforts in the form of free
7 travel and other benefits from the tour companies they selected
8 and promoted. The commission determined that the dual role as
9 teacher and tour company representative places public school
10 teachers in a conflict of interest under the state ethics code
11 and also raises concerns under the gifts law and the fair
12 treatment law.

13 The gifts law under section 84-11, Hawaii Revised Statutes,
14 prohibits an employee from soliciting, accepting, or receiving
15 any gift, including travel, under circumstances where it can be
16 reasonably be inferred that the gift is intended to influence
17 the employee in performing the employee's official duties or is
18 intended to reward the employee for official action. The state
19 ethics commission found that because the gifts law is based upon
20 an appearance of impropriety, it is immaterial whether the
21 employee is actually influenced by the gift or whether the donor



1 actually intended to influence the employee. The commission
2 stated that if it appears to a reasonable person that the gift
3 is given to influence or reward the employee for official
4 action, the employee is prohibited from accepting the gift.
5 Under that standard, the commission found it reasonable to infer
6 that the free travel and other benefits offered to public school
7 teachers by a tour company were intended as both an incentive
8 for the teachers to promote the trip to students and parents and
9 a reward for the teachers' efforts in generating revenue for the
10 tour company. The commission therefore concluded that the free
11 travel and other benefits were prohibited gifts.

12 The legislature finds that the state ethics commission's
13 advisory opinion on public school teachers accepting free travel
14 from tour companies may have the unintended effect of depriving
15 students of valuable learning opportunities outside of the
16 classroom, by making it difficult for teachers to afford
17 activities that are largely contingent upon their participation.
18 In particular, the treatment of free travel from tour companies
19 as prohibited gifts does not provide an equitable response to
20 the challenges of requiring public school teachers to pay for
21 their own travel on work-related trips in the absence of



1 available funding from the department of education. Public
2 school teachers dedicate personal time and resources to
3 coordinate the trips, chaperone students, and plan curriculum,
4 oftentimes supervising students in other cities and countries
5 for entire days and for the duration of the trip. Public school
6 teachers participating in student educational trips assume
7 additional work responsibilities that exceed normal duties, and
8 teachers often sacrifice vacation time with their own families
9 to accompany their students on the trips. Given these
10 considerations, the legislature believes that the state ethics
11 code should be more strictly interpreted and applied to avoid
12 unfair restrictions placed upon student educational trips and
13 other activities that benefit the public.

14 The legislature further finds that the ability of the state
15 ethics commission to provide oversight and guidance on matters
16 of governmental ethics would be greatly enhanced if commission
17 members had a better understanding of the roles and
18 responsibilities of public officials and employees who are
19 subject to the commission's decisions and advice. Currently,
20 commission members are appointed by the governor from a panel of
21 ten persons nominated by the judicial council. The legislature



1 believes that increased diversity among the commission's
 2 membership, through appointments to the commission made by
 3 multiple branches of government, would significantly benefit the
 4 public.

5 Accordingly, the purpose of this Act is to clarify and
 6 enhance the application of the state ethics code by:

7 (1) Repealing the standards:

8 (A) Requiring a liberal interpretation of the state
 9 ethics code; and

10 (B) Allowing determinations of gifts law violations
 11 based upon an inference of impropriety, to
 12 instead require a finding of actual intent to
 13 influence the recipient of the gift;

14 (2) Requiring that advisory opinions rendered by the
 15 commission be approved and signed by a majority of the
 16 commission members; and

17 (3) Requiring that each chamber of the legislature appoint
 18 one of the five members of the state ethics
 19 commission.

20 SECTION 2. Section 84-11, Hawaii Revised Statutes, is
 21 amended to read as follows:



1 "§84-11 Gifts. No legislator or employee shall solicit,
2 accept, or receive, directly or indirectly, any gift, whether in
3 the form of money, service, loan, travel, entertainment,
4 hospitality, thing, or promise, or in any other form, under
5 circumstances in which [~~it can reasonably be inferred that~~] the
6 gift is intended to influence the legislator or employee in the
7 performance of the legislator's or employee's official duties or
8 is intended as a reward for any official action on the
9 legislator's or employee's part."

10 SECTION 3. Section 84-21, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§84-21 State ethics commission established; composition.

13 (a) There is established within the office of the auditor for
14 administrative purposes only a commission to be known as the
15 state ethics commission. The commission shall consist of five
16 members appointed [~~by the governor from a panel of ten persons~~
17 ~~nominated by the judicial council.~~] as follows:

18 (1) Three members appointed by the governor from a list of
19 six persons nominated by the judicial council;



1 (2) One member appointed by the president of the senate
2 from a list of two persons nominated by the judicial
3 council; and
4 (3) One member appointed by the speaker of the house of
5 representatives from a list of two persons nominated
6 by the judicial council;
7 provided that no list of nominees submitted pursuant to this
8 subsection shall include any nominee that is currently pending
9 selection from any other list of nominees submitted pursuant to
10 this subsection.

11 Each member of the commission shall be a citizen of the
12 United States and a resident of the State. Members of the
13 commission shall hold no other public office.

14 (b) The chairperson of the commission shall be elected by
15 the majority of the members of the commission. The term of each
16 member of the commission shall be for four years. No person
17 shall be appointed consecutively to more than two terms as a
18 member of the commission. A vacancy on the commission shall be
19 filled for the remainder of the unexpired term by the respective
20 appointing authority in the same manner as the original



1 appointment [~~, except that the judicial council shall nominate~~
2 ~~for gubernatorial appointment two persons for a vacancy~~].

3 (c) No member of the commission shall hold office for more
4 than one hundred and twenty days after the expiration of the
5 member's term. If the ~~[governor]~~ respective appointing
6 authority fails to appoint a person to a vacant office within
7 sixty days after receipt of the list of nominees from the
8 judicial council, the council shall select a person from its
9 list of nominees to fill the vacant office, notwithstanding
10 subsection (b) and section 26-34 to the contrary.

11 (d) The ~~[governor]~~ respective appointing authority may
12 remove or suspend any member of the commission appointed by the
13 respective appointing authority upon the filing of a written
14 finding with the commission, and upon service of a copy of the
15 written finding on the member to be removed or suspended."

16 SECTION 4. Section 84-31, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The ethics commission shall have the following powers
19 and duties:

20 (1) It shall prescribe forms for the disclosures required
21 by article XIV of the Hawaii constitution and section



1 84-17 and the gifts disclosure statements required by
2 section 84-11.5 and shall establish orderly procedures
3 for implementing the requirements of those provisions;
4 (2) It shall render advisory opinions upon the request of
5 any legislator, employee, or delegate to the
6 constitutional convention, or person formerly holding
7 such office or employment as to whether the facts and
8 circumstances of a particular case constitute or will
9 constitute a violation of the code of ethics[-];
10 provided that no advisory opinion shall be rendered
11 unless approved and signed by three or more members of
12 the commission. If no advisory opinion is rendered
13 within thirty days after the request is filed with the
14 commission, it shall be deemed that an advisory
15 opinion was rendered and that the facts and
16 circumstances of that particular case do not
17 constitute a violation of the code of ethics. The
18 opinion rendered or deemed rendered, until amended or
19 revoked, shall be binding on the commission in any
20 subsequent charges concerning the legislator,
21 employee, or delegate to the constitutional



1 convention, or person formerly holding such office or
2 employment, who sought the opinion and acted in
3 reliance on it in good faith, unless material facts
4 were omitted or misstated by such persons in the
5 request for an advisory opinion;

6 (3) It shall initiate, receive, and consider charges
7 concerning alleged violation of this chapter, initiate
8 or make investigation, and hold hearings;

9 (4) It may subpoena witnesses, administer oaths, and take
10 testimony relating to matters before the commission
11 and require the production for examination of any
12 books or papers relative to any matter under
13 investigation or in question before the commission.
14 Before the commission shall exercise any of the powers
15 authorized in this section with respect to any
16 investigation or hearings it shall by formal
17 resolution, supported by a vote of three or more
18 members of the commission, define the nature and scope
19 of its inquiry;

20 (5) It may, from time to time adopt, amend, and repeal any
21 rules, not inconsistent with this chapter, that in the



1 judgment of the commission seem appropriate for the
2 carrying out of this chapter and for the efficient
3 administration thereof, including every matter or
4 thing required to be done or which may be done with
5 the approval or consent or by order or under the
6 direction or supervision of or as prescribed by the
7 commission. The rules, when adopted as provided in
8 chapter 91, shall have the force and effect of law;

9 (6) It shall have jurisdiction for purposes of
10 investigation and taking appropriate action on alleged
11 violations of this chapter in all proceedings
12 commenced within six years of an alleged violation of
13 this chapter by a legislator or employee or former
14 legislator or employee. A proceeding shall be deemed
15 commenced by the filing of a charge with the
16 commission or by the signing of a charge by three or
17 more members of the commission. Nothing herein shall
18 bar proceedings against a person who by fraud or other
19 device, prevents discovery of a violation of this
20 chapter;



1 (7) It shall distribute its publications without cost to
2 the public and shall initiate and maintain programs
3 with the purpose of educating the citizenry and all
4 legislators, delegates to the constitutional
5 convention, and employees on matters of ethics in
6 government employment; and

7 (8) It shall administer any code of ethics adopted by a
8 state constitutional convention, subject to the
9 procedural requirements of this part and any rules
10 adopted thereunder."

11 SECTION 5. Section 84-1, Hawaii Revised Statutes, is
12 repealed.

13 ~~["§84-1 Construction. This chapter shall be liberally
14 construed to promote high standards of ethical conduct in state
15 government."]~~

16 SECTION 6. Notwithstanding any other law to the contrary,
17 the incumbent members of the state ethics commission serving on
18 the effective date of this Act shall continue to serve until the
19 expiration of their respective terms, except that the two
20 incumbent members whose terms expire the earliest following the
21 effective date of this Act shall be replaced in accordance with



1 this section. No later than sixty days after the effective date
2 of this Act, the judicial council shall separately submit to the
3 president of the senate and the speaker of the house of
4 representatives, a list of two nominees for appointment to the
5 commission; provided that no nominee shall be included on both
6 lists. If the respective appointing authority fails to make an
7 appointment pursuant to this section within sixty days of
8 receiving the list of nominees from the judicial council, the
9 judicial council shall make the appointment in accordance with
10 section 84-21(c), Hawaii Revised Statutes. Upon and for each
11 appointment made pursuant to this section, the incumbent member
12 of the commission whose term at that time expires the earliest
13 following the effective date of this Act shall be immediately
14 discharged from office and the newly appointed member shall
15 begin the member's service. After all commission appointments
16 required by this section have been accomplished, every
17 appointment to the commission shall be made in accordance with
18 section 3 of this Act.

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21



S.B. NO. 2600

1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY: Michelle Solari

[Handwritten signature]

Clara A. Miskin

[Handwritten signature]



S.B. NO. 2600

Report Title:

State Ethics Commission; State Ethics Code; Gifts Law

Description:

Repeals the standards (1) requiring a liberal interpretation of the state ethics code; and (2) allowing determinations of gifts law violations under the state ethics code to be based upon an inference of impropriety, to instead require a finding of actual intent to influence the recipient of the gift. Requires state ethics commission advisory opinions to be approved and signed by a majority of the commission members. Requires that two of the five members of the state ethics commission be appointed by each chamber of the legislature.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

