

Honolulu, Hawaii

MAR 03 2016

RE: S.B. No. 2600

S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
S.B. No. 2600 entitled:

"A BILL FOR AN ACT RELATING TO ETHICS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Repeal the standards that:
  - (A) Require a liberal interpretation of the State Ethics Code; and
  - (B) Allow the determinations of gift 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;
- (2) Require State Ethics Commission advisory opinions to be approved and signed by a majority of the commission members; and
- (3) Require that two of the five members of the State Ethics Commission be appointed by the Legislature, with each house appointing one member.

Your Committee received testimony in support of this measure from the Department of Education, Hawaii State Teachers



Association, and IMUAlliance. Your Committee received testimony in opposition to this measure from the Hawaii State Ethics Commission, Common Cause Hawaii, League of Women Voters of Hawaii, Open Law Alliance, and eight individuals.

Your Committee finds that the State Ethics Commission, upon request, issues advisory opinions on whether the facts and circumstances of a particular case constitute or will constitute a violation of the State Ethics Code. In Advisory Opinion No. 2015-1, the Commission found ethical violations in the longstanding practice of public school teachers receiving free travel and other benefits from tour companies when chaperoning students on out-of-state educational trips. The Commission determined that the dual role as teacher and tour company representative places public school teachers in a conflict of interest under the State Ethics Code and also raises concerns under the gifts law and the fair treatment law. Some believe that this advisory opinion may have an unintended effect of depriving students of valuable learning opportunities outside of the classroom, by making it difficult for teachers to afford activities that are largely contingent upon their participation and may be based on a subjective and overly broad application of the State Ethics Code. This measure creates a more narrow interpretation and application of the State Ethics Code and gifts law.

Your Committee notes the concerns raised by the State Ethics Commission that this measure will significantly lower the minimum standards of conduct required of state employees and will erode public confidence in state government. The Commission stated in its written testimony that its advisory opinion was intended to help teachers and the Department of Education understand how the State Ethics Code applied to a school's Spring Break trip and the Commission's concerns were based on the way the trips were structured. The Commission has explained that the issues with the State Ethics Code under its advisory opinion can be addressed if the trips are organized differently, such as if the teachers are not directly involved in selecting the company and soliciting the student and their parents. While noting that changing the ways school trips are organized may add extra time and work for teachers and schools, the Executive Director of the State Ethics Commission testified that public confidence in government will be upheld because the established process will be followed without the appearance of impropriety.



Accordingly, your Committee has amended this measure by:

- (1) Deleting the purpose section;
- (2) Deleting language that would have amended the laws relating to gifts, the composition and appointing authorities of the members of the State Ethics Commission, and the interpretation of the State Ethics Code;
- (3) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2600, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2600, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



GILBERT S.C. KEITH-AGARAN, Chair



The Senate  
 Twenty-Eighth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 2600</b>	Committee Referral: <b>JDL</b>	Date: <b>2/29/16</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	/			
SHIMABUKURO, Maile S.L. (VC)	/			
GABBARD, Mike	/			
KAHELE, Kaiali'i	/			
KIM, Donna Mercado				/
THIELEN, Laura H.	/			
SLOM, Sam	/			
<b>TOTAL</b>	<b>6</b>			<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes