



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

Date: 04/01/2016

Time: 09:30 AM

Location: 016

Committee: Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1713, HD2, SD1 RELATING TO ETHICS.

Purpose of Bill: Exempts extracurricular service of employees from the state ethics code if certain conditions are met. Defines detached remuneration and extracurricular service. (SD1)

Department's Position:

The Department of Education supports HB 1713, HD2, SD1, which exempts extracurricular service of State employees from the State Ethics Code if certain conditions are met.

In its Advisory Opinion dated August 4, 2015, the Hawaii Ethics Commission concluded that acceptance by teachers and other DOE employees of free travel and other free benefits from private tour companies violated five sections or subsections of the State Ethics Code.

These sections include:

1. The "Gifts Law", HRS 84-11
2. The "Gifts Reporting Law", HRS 84-11.5
3. The "Fair Treatment Law", HRS 84-13
4. Conflicts of Interest, HRS 84-14(a)(2)
5. Conflicts of Interest, HRS 84-14(d)

If teachers and other employees of the Department are prohibited from accepting free travel, an important educational opportunity may be denied Hawaii's public school students. The statutory revisions proposed in HB 1713, HD2, SD1 would recognize the indispensable role teachers play in making educational travel possible. This measure would permit teachers and other State employees who provide extracurricular services, such as travel planning and chaperoning, to accept limited remuneration in the form of

free travel.

For over thirty years, Hawaii's public school students have been afforded the opportunity to participate in educational trips that enrich their academic experience and allow them to develop a more global perspective. Inspired by the possibility of connecting curriculum to real-world experiences, teachers and other DOE employees voluntarily commit their own time to research, plan, and implement these trips. This does not arise from a desire on the employees' part for personal gain, but from a love of helping students grow and experience new things. Without the dedication of educators who expend their own vacation time to teach and chaperone students for the duration of these trips, many students would not have the opportunity to visit such distant, historical, and enriching places.

The Department respectfully requests your favorable consideration of this measure and thanks you for the opportunity to testify.



HAWAII STATE ETHICS COMMISSION

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

SENATE COMMITTEE ON JUDICIARY AND LABOR
The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

H.B. No. 1713, H.D. 2, S.D. 1, Relating to Ethics

Decision Making: Friday, April 1, 2016, 9:30 a.m.

The State Ethics Commission (“Commission”) **opposes** H.B. No. 1713, H.D. 2, S.D. 1, which creates a blanket exemption to the State Ethics Code for employees who engage in “extracurricular service” that is related to their state duties. The bill is unnecessary, overly broad, and contrary to the stated purpose of the State Ethics Code.

H.B. No. 1713, H.D. 2, S.D. 1 appears intended to respond to the concerns raised by the Commission in Advisory Opinion No. 2015-1, regarding the free travel and other personal benefits that a number of Department of Education (“DOE”) teachers were receiving from the tour companies that the teachers selected to organize student trips. In the advisory opinion, the Commission explained that the State Ethics Code prohibits teachers from accepting free travel from the tour companies because of the way the trips are organized and arranged. Specifically, in response to a request by a DOE complex area office for guidance, the Commission advised that the State Ethics Code prohibits teachers from accepting free travel and other benefits from tour companies where the teachers planned a Spring Break trip, decided which teachers would travel as chaperones, selected the tour company that would organize the trip, and solicited their students and parents of their students to participate in the trip using the tour company’s promotional material. Teachers received free travel and other benefits from the tour company based on the number students who purchased tour packages. The value of the travel for some of those trips may exceed \$6,000.

The manner in which the Spring Break trip was organized raised issues under numerous sections of the State Ethics Code, namely the conflicts of interests law, the fair treatment law (misuse of position), and the gifts law. Teachers simply cannot use their official positions to, in essence, serve as a private company’s sales representatives; and they cannot accept free travel and other personal benefits under circumstances in which it can reasonably be inferred that the travel and other benefits are offered to influence the teachers in actions that they take as teachers or reward them for their actions.

The Commission’s advice regarding student trips chaperoned by teachers appears to have been misunderstood. The Commission has never stated that the State Ethics Code prohibits student trips or that the State Ethics Code prohibits teachers from

servicing as chaperones on those trips. The Commission has never said that teachers must pay if they are going to chaperone the students.

Rather, the Commission's advisory opinion was intended to help teachers and the DOE understand how the State Ethics Code applied to one school's Spring Break trip and others trips that were similarly organized. As stated above, the Commission's concern about the free travel and other personal benefits that teachers were receiving was because of the way student trips were structured, i.e., the teachers' role in selecting the tour company, soliciting the students and their parents, and then being given free trips.

The Commission repeatedly has explained that the State Ethics Code issues can be addressed if the trips are organized differently, i.e., if the teachers are not directly involved in selecting the company and soliciting the students and their parents. It simply is unnecessary to create an exception in the State Ethics Code so that teachers can accept free travel from tour companies. If the DOE believes that the trips are part of the DOE student learning experience and should continue, the DOE can develop a process that addresses the Commission's concerns and protects its teachers from actions that may violate the State Ethics Code.

In fact, the DOE was developing a Student Travel Policy and Guidelines to address the Commission's concerns that were raised in Advisory Opinion No. 2015-1. Under that policy, the DOE would create a "pre-approved" student travel vendor list. Teachers could propose a travel itinerary, and their school's Student Activities Coordinator ("SAC") would select the tour company that offered the desired itinerary. Communications with the students' parents about the trip would be through the SAC, and the chaperones for the students would be selected by the principal. In addition, the draft policy would create a "fund" to pay the travel expenses of the teacher-chaperones as well as to provide scholarships for students who are financially unable to participate. The Board of Education ("BOE") subsequently adopted a travel policy that superseded the DOE's policy; however, the DOE's policy that was being developed clearly demonstrates that the DOE can structure student travel in a way that is consistent with the State Ethics Code.

Moreover, the BOE's travel policy appears to structure student travel in a way that is consistent with the State Ethics Code. The BOE's policy requires that all student trips be either "private" or "school-sponsored." For "school-sponsored" trips, the BOE policy's requirement that the tour companies be selected in accordance with the State Procurement Code likely removes those teachers who may chaperone the students from the selection process. It also appears that the DOE and/or the school will be responsible for the teachers' travel expenses. Stated differently, it is the Commission's understanding that the BOE does not expect teachers to receive free travel and other benefits directly from the tour company for "school sponsored" trips. For "private trips," the BOE's travel policy provides that teachers who may travel as chaperones will do so outside of their official duties as DOE teachers and in their private capacities, i.e., not as DOE employees. The BOE's policy regarding "private trips" appears to address the

Commission's concerns that teachers were taking action and receiving the free travel in their official DOE capacities.

In short, it is unnecessary to change the State Ethics Code so that student trips can continue or to enable teachers to serve as chaperones on those trips. The student travel policies developed by both the DOE and the BOE demonstrate that student trips can be structured in ways that are consistent with the State Ethics Code.

In addition to teacher travel, H.B. No. 1713, H.B. 2, S.D. 1 will have the unintended effect of allowing employees to secure substantial personal benefits while performing services relating to their state jobs. The term "extracurricular service" contemplated by the bill is unduly broad and includes virtually any activity by any employee, so long as it is somewhat related to an employee's state job duties. For example, a Department of Accounting and General Services motor pool mechanic is asked to help recommend new cars that the motor pool intends to purchase. The employee, outside of his work hours, meets with car dealership representatives to learn about their companies' vehicles. One sales representative invites the employee to an expensive dinner to talk about his company's fleet; another loans the employee a vehicle for the employee's personal use. The bill likely would exempt the employee from the State Ethics Code, meaning that the employee can accept the dinner and the free use of the vehicle. Allowing employees to accept those types of personal benefits is clearly inconsistent with the State Ethics Code.

The Hawaii Constitution mandates that there be a code of ethics, which must be liberally construed, to promote high standards of ethical conduct in state government. To this end, the Commission is charged with administering and enforcing the State Ethics Code to ensure that public confidence in public servants is preserved. In order to maintain the integrity of the statute, amendments creating exemptions to the statute should be made sparingly and only when absolutely necessary. For the foregoing reasons, H.B. No. 1713, H.B. 2, S.D. 1 is completely unnecessary and so broad that it allows employees to engage in conduct contrary to the purpose and intent of the statute. In short, this bill significantly weakens the State Ethics Code and is contrary to the constitutional mandate.

The Commission urges the Committee to hold H.B. No. 1713, H.B. 2, S.D. 1.

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony.



Senate Judiciary + Labor Committee
Chair Gilbert Keith-Agaran, Vice Chair Maile Shimabukuro

Friday, 04/01/2016 at 9:30 AM in Room 016
HB 1713 HD2 SD2 – Relating to Ethics

TESTIMONY — OPPOSE
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee:

Common Cause Hawaii strongly opposes HB 1713 HD2 SD2 which would seriously undermine the State Ethics Code.

A primary focus of Common Cause is on promoting strong ethics in government. It is unfortunate that the general public is increasingly cynical about governmental ethics. We believe it is important to counter this perception by maintaining and enforcing a strong ethics code.

The bill in its original form exempted teachers from the gifts ban of the State Ethics Code.

Now, HB1713 as written, would (under certain circumstances) exempt the “extracurricular” service of **any state employee** covered by the ethics code from the ban on accepting gifts under the State Ethics Code.

In other words, HB1713 would exempt all state employees from this portion of the State Ethics Code.

We understand that the origin of this bill was a concern by certain Department of Education (DOE) teachers with the application of Board of Education (BOE) directives to the DOE administration concerning teacher initiated trips for students, in response to an advisory opinion by the Ethics Commission. While we appreciate teachers' past efforts to provide travel opportunities to students, we are concerned that any such travel must be handled in ways that ensure fair treatment of possible travel agencies and avoid the perception that teachers are developing trips for their own personal reasons.

This past summer, the BOE designated three of its members as a committee to develop recommendations, and in September 2015, directed the DOE to implement the committee's recommendations. **We believe that these directives successfully address the major ethical concern with the current procedure, which is: selection by a teacher of a travel agent; soliciting business for said travel agency; promoting that agency; and in return obtaining free travel and often other perks such as hotel accommodations, per diem or other gifts.** The BOE directives handle this by removing the teacher from the selection process and using normal state procurement procedures to select a travel agency for all official DOE trips. The directive includes requiring travel agencies to donate to a teacher travel fund which, in turn, would be used to compensate the teacher chaperones for travel expenses, and perhaps other expenses according to policy to be developed by DOE.

Thus, under the BOE's recommendations, teachers already would not have to pay for their travel on approved trips.

We oppose this bill on the premise that we should be upholding Hawaii's ethics laws, not water it down for teachers and all state employees.

Lastly: This bill, if passed, will set a negative precedent: that any agency or department that does not agree with its department directives, can appeal to the State Legislature to alter rules which guide or govern that department.

In light of the above, **we urge you to defer HB 1713 SD2.**

Thank you for the opportunity to testify **in strong opposition to HB 1713 SD2.**



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COMMITTEE ON JUDICIARY AND LABOR
Friday, April 1, 2016, 9:30 a.m. Room 016
HB1713, HD2, SD1 Relating to Ethics

Piilani Kaopuiki, Legislative Committee, League of Women Voters

Chair Keith-Agaran, Vice-Chair Shimabukuro and Committee Members:

The League of Women Voters of Hawaii strongly opposes HB 1713 HD2, SD1 which (under certain circumstances) exempts the “extracurricular” service of any state employee covered by the ethics code from the ban on accepting gifts under the State Ethics Code.

If anything, the SD1 version of this bill has deteriorated since the HD2 was passed. Now any state employee (not just certain school employees) may accept “detached remuneration” for “extracurricular trips.” We do recognize that this change was prompted after the Attorney General advised that the Legislature may exempt specific conduct from the State Ethics Code, specific classes of employees may not be exempted.

The prominent ethics issue is whether state employees can accept in-kind travel compensation, whether on school sponsored trips or so-called “extracurricular” trips. Creation of an “extracurricular” category for trips is ill-advised for many reasons, including ethics. Yet HRS section 84-11 is clear when it prohibits a state employee from soliciting, accepting, or receiving any gift, including travel, under circumstances where it can reasonably be inferred that the gift is intended to influence the employee in performing the employee’s official duties, or is intended to reward the employee for official action.

Every step forward promoting ethical conduct helps improve public confidence in government, and this bill is a giant step backwards. Our State Constitution, Article XIV, says that the Ethics Code is established “so that public confidence in public servants will be preserved.” We applaud all positive efforts to help public employees better understand and avoid actions, whether inadvertent or conscious, that would violate the Ethics Code.

We urge you to hold this bill. Thank you for the opportunity to submit testimony.



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