

HB1713 HD2

Measure Title: RELATING TO ETHICS.

Report Title: State Ethics Code; Exemption of Department of Education and Public Charter School Employees

Description: Exempts school employees of the Department of Education or Charter Schools from the State Ethics Code relating to gifts, gift reporting, and conflicts of interest if certain conditions are met. (HB1713 HD2)

Companion: [SB2601](#)

Package: None

Current Referral: EDU, JDL

Introducer(s): TAKUMI, Rhoads



STATE OF HAWAII '1
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/18/2016
Time: 01:15 PM
Location: 229
Committee: Senate Education

Department: Education
Person Testifying: Kathryn S. Matayoshi, Superintendent of Education
Title of Bill: HB 1713, HD2 RELATING TO ETHICS.
Purpose of Bill: Exempts school employees of the Department of Education or Charter Schools from the State Ethics Code relating to gifts, gift reporting, and conflicts of interest if certain conditions are met. (HB1713 HD2)

Department's Position:

The Department of Education appreciates the Legislature's efforts to preserve educational travel for Hawaii's public school students.

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 Department respectfully requests that consideration be given to adopting language similar to that found in SB 2425, SD 2, which requires that the services performed by the school employee, such as planning, organizing, or chaperoning student travel, be 1)

consistent, supplemental, or complementary to the employee's departmental job duties and 2) known to and approved by the Department.

Thank 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 EDUCATION
The Honorable Michelle N. Kidani, Chair
The Honorable Breene Harimoto, Vice Chair

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

Hearing: Friday, March 18, 2016, 1:15 p.m.

The State Ethics Commission (“Commission”) **opposes** H.B. No. 1713, H.D. 2. This bill amends the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”) to exempt Department of Education (“DOE”) and public charter school employees from certain provisions of the State Ethics Code, Chapter 84, Hawaii Revised Statutes (“HRS”). This bill appears intended to allow a teacher who plans, organizes, or serves as a chaperone on a student educational trip to receive a travel benefit, incentive, or gift from a tour company to be used in conjunction with the same trip. The Commission believes that H.B. No. 1713, H.D. 2 is unnecessary.

H.B. No. 1713, H.D. 2 appears intended to respond to the concerns the Commission raised in Advisory Opinion No. 2015-1 issued on August 19, 2015, regarding the issue of DOE teachers receiving free travel from tour companies the teachers select to organize student educational 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 such 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 to reward the teachers 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 serving as chaperones on these 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 exemptions 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 from which a 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. 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.

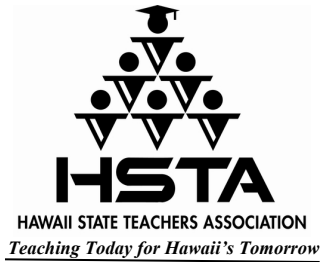
Moreover, the BOE's travel policy appears to structure student travel in a way that is consistent with the State Ethics Code. The BOE's policy requires that all student trips be either "private" or "school-sponsored." For "school-sponsored" trips, the BOE policy's requirement that the tour companies 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. As mandated by the Hawaii Constitution, Article XIV, the State Ethics Code is established "so that public confidence in public servants will be preserved." Exceptions to the State Ethics Code should be made sparingly; too many exceptions weaken the statute. 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. Therefore, H.B. No. 1713, H.D. 2 is not necessary.

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

Thank you for considering the Commission's testimony.



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TESTIMONY BEFORE THE SENATE COMMITTEE ON
EDUCATION

RE: HB 1713, HD 2 - RELATING TO ETHICS.

FRIDAY, MARCH 18, 2016

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Kidani and Members of the Committee:

The Hawaii State Teachers Association **strongly supports HB 1713, HD2,**
relating to ethics, **with suggested amendments.**

If passed, this bill will allow teachers to engage in extracurricular service without having to incur extra costs to pay for their own travel expenses. Each year, educators donate their time to prepare field trips that broaden learning beyond the classroom. Educators give up their own free time to provide students with these trips, which often entail chaperone costs paid by parents. In the past, parents were willing to pay these costs because they saw the educational value of “school-sponsored trips.” These field trips were optional; parents did not *expect* teachers to sacrifice time outside of the workday or work for free.

Yet, last year, the State Ethics Commission ruled that teachers could no longer accept “free travel” to accompany students on school-sponsored trips. This ruling been devastating for teachers who coordinate extracurricular learning excursions, from band trips to visits to our nation’s capital to forays into foreign countries. The Ethics Commission’s ruling led to the cancellation of trips that had been planned for months, if not years. In the wake of this summer’s ruling, teachers immediately put planned trips on hold. For example, Kapolei High School’s band director, Daryl Agena, halted plans to take his students to the mainland to perform, as they had done at Disneyland in 2014. Additional trips may not have been officially cancelled because teachers stopped planning altogether them in the aftermath of the commission’s decision.

It has been suggested that the ethics problem raised by the commission can be solved by asking school administrators to coordinate school-sponsored trips on teachers' behalf. Unfortunately, administrators are already overtasked with managing innumerable tasks, like unnecessarily cumbersome teacher evaluations. More importantly, administrators are not intimately familiar with student needs or the nexus between school-sponsored trips and classroom curricula, and thus would not be well equipped formulate travel plans that bring classroom material to life.

That said, teachers believe in promoting the highest standards of ethical conduct, by which we conduct ourselves each day. We model for our students the values through which a more engaged, animated, and upstanding society is forged. Therefore, we understand that there may be unintended consequences engendered by passing a broad ethics exemption for state employees and support amending this measure by limiting it to educational travel, if necessary to ensure passage, and have included a suggested rewrite of the bill to narrow its scope accordingly (see below).

Hawaii teachers, being the lowest paid in the nation, cannot afford to pay for travel expenses out of their own pockets. If we delay on exempting teachers for travel or conferences, however, thousands of students will be denied worthwhile educational experiences. Accordingly, the Hawaii State Teachers Association asks your committee to **strongly support** this bill.

RELATING TO ETHICS.

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

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"§84- Educational travel; exemption. (a) An employee may engage in educational travel as provided in this section, and not be in violation of part II of this chapter.

(b) To be exempt from part II of this chapter pursuant to subsection (a), the conduct of the employee shall comply with the following:



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(1) The employee shall not solicit, accept, or receive, directly or indirectly any gift for engaging in educational travel, as provided in section 84-11; provided that the employee may receive detached remuneration for the performance of educational travel;

(2) The detached remuneration received by the employee shall only be used by the employee in connection with the performance of the educational travel; and

(3) The detached remuneration received by the employee shall not be provided by a business or other undertaking in which the employee has a substantial financial interest, or in which the employee is engaged as legal counsel, advisor, consultant, representative, or in any other agency capacity.

(c) As used in this section:

"Detached remuneration" means a benefit or economic value that is received by an employee in exchange for the employee's performance of an extracurricular service that is consistent, supplemental, or complementary to the employee's existing job duties or description with a state agency, including but not limited to the receipt of travel.

"Educational travel" means intra-state, interstate, or international travel for public school students arranged through a for-profit or nonprofit travel agency or tour company designed to enhance student learning and assist students in meeting the Hawaii performance standards."

SECTION 2. Any existing policy, procedure, or rule previously adopted by any department or other state agency shall be reviewed for consistency and compliance with this Act within ninety days of the effective date of this Act.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on March 15, 2037.



Senate Education Committee
Chair Michelle Kidani, Vice Chair Breene Harimoto

Friday, 03/18/2016 at 1:15 PM in Room 229
HB 1713 HD2 – Relating to Ethics

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

Dear Chair Kidani, Vice Chair Harimoto, and members of the Committee:

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

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.

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.

SUGGESTION

If the Legislature wishes to express concern with the impact of the BOE directives on teachers and students, **we suggest that the legislature consider passing a resolution, rather than a bill, specifying the concerns and asking that the BOE and DOE attempt to address these concerns as both parties continue to develop policies on travel.**

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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Senate Committee on Education
Senator Michelle Kidani, Chair
Senator Breene Harimoto, Vice Chair

March 18, 2016

Dear Chair Kidani, Vice Chair Harimoto and Committee Members:

This testimony is submitted in support 1713 HD2, exempting school employees of the Department of Education or Charter Schools from the State Ethics Code relating to gifts, gift reporting, and conflicts of interest if certain conditions are met.

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 knows how important educational experiences away from one's home are for our students. Without this exemption, we feel that educational travel in the DOE will decrease sharply, depriving our students and our dedicated teachers/staff who choose to lead our students the invaluable experience of learning outside of the islands.

Thank you for the opportunity to testify. Our support of this bill represents a 75% consensus or more of our voting membership.

Sincerely,

Cheri Nakamura
HE'E Coalition Director

Academy 21
After-School All-Stars Hawaii
Alliance for Place Based Learning
*Castle Complex Community Council
*Castle-Kahuku Principal and CAS
Coalition for Children with Special Needs
*Faith Action for Community Equity
Fresh Leadership LLC
Girl Scouts Hawaii
Harold K.L. Castle Foundation
*Hawai'i Afterschool Alliance
*Hawaii Appleseed Center for Law and Economic Justice
Hawai'i Athletic League of Scholars
*Hawai'i Charter School Network
*Hawaii Children's Action 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
*Kaua'i Ho'okele Council
Keiki to Career Kaua'i
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 () Voting member organizations vote on action items while individual and non-voting participants may collaborate on all efforts within the coalition.*



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

**TESTIMONY FOR HOUSE BILL 1713, HOUSE DRAFT 2, RELATING TO
ETHICS**

**Senate Committee on Education
Hon. Michelle N. Kidani, Chair
Hon. Breene Harimoto, Vice Chair**

**Friday, March 18, 2016, 1:15 PM
State Capitol, Conference Room 229**

Honorable Chair Kidani and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 350 members. On behalf of our members, we offer this testimony in strong support of House Bill 1713, HD 2, relating to ethics.

According to three of the Hawai'i State Department of Education's general learner outcomes, public school students are to become community contributors, complex thinkers, and effective communicators. Each of these GLOs requires and advances a cosmopolitan outlook on the world, in which curricular questions are integrated with real-life experiences that promote critical thinking and collaborative problem-solving.

Perhaps nowhere is this better advanced than in field trips involving the application of learned content and skills in extracurricular settings. From the musicianship of mainland band performances to the civic engagement of We The People competitions, group educational travel provides academic enrichment that broadens local students' learning beyond Hawai'i, increasing achievement through global knowledge formation. In some cases, this global perspective is literal, such as when teachers coordinate trips in foreign countries to forge cultural exchanges. No amount of textbook reading, internet research, or art history study can replace the experience of reliving the storming of the Bastille in the French language or gazing upon Michelangelo's *The Last Judgement* on the ceiling of the Sistine Chapel. Teachers spend countless hours instructing students on how to appreciate different

historical, cultural, narrative, and linguistic spaces. School-sponsored trips, as the Board of Education has deemed them, deepen that appreciation into understanding.

Yet, last year, the Hawai'i State Ethics Commission raised conflict-of-interest concerns regarding school-sponsored trips, prohibiting teachers from accepting free travel and accommodations from tour companies while serving as chaperones. According to the Ethics Commission, teachers who coordinate optional trips through tour companies, including their own travel costs, are functioning as agents for private travel enterprises to entice bookings from parents, while simultaneously accepting illicit individual benefits. In essence, the Ethics Commission is suggesting that our state's hardworking teachers are reviewing travel company brochures, thinking, "Oh, I've always wanted to go to Washington D.C. in March," then arranging school-sponsored trips as a cover for personal vacations.

Nothing could be further from the truth. In reality, teachers spend weeks, and sometimes months, planning each school-sponsored trip, ensuring that they are aligned with and extend classroom lessons, communicating with parents, coordinating with students, and, of course, chaperoning the trips themselves. Notably, chaperoning a trip is a 24/7 task, in which teachers are constantly preparing content, supervising conduct, purchasing supplies, and providing safety for their pupils.

Moreover, teachers perform these functions at no cost. Already the worst paid education professionals in the country (ranking fifty-first out of fifty states and the District of Columbia for starting and median teacher salary adjusted for cost of living, according to a 2015 WalletHub study), teachers who coordinate and chaperone student travel are, in effect, working for free—even working themselves into debt, given their need to subsidize a significant portion of their own travel costs, like meals. Administrators and departmental employees cannot and should not be tasked with trip coordination, as they are too overburdened with managing financial, academic, and personnel tasks to spend months planning student travel. Administrators are also not personally responsible for classroom content and do not develop deep relationships with students based on daily interactions, and thus are not ideally equipped to connect travel with individual student needs. Again, school-sponsored trips are not vacations. They are educational experiences that bring core classroom content to life, delivering what cannot be captured in a standard—the humanity, sublimity, historicity, and worldliness that turn students into lifelong learners.

We must free our teachers and students from the yoke of common corporate standards and the tyranny of toxic testing. In turn, we should offer educational opportunities that allow our educators and children to critically engage with the world around them, both within our island community and beyond our shores, fostering intellectual voyages that will chart our state's course through the 21st Century. Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance



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COMMITTEE ON EDUCATION
Friday, March 18, 2016, 1:15 p.m., Room 229
HB1713, HD2 Relating to Ethics

Piilani Kaopuiki, Legislative Committee, League of Women Voters

Chair Kidani, Vice-Chair Harimoto and Committee Members:

The League of Women Voters of Hawaii opposes HB 1713 HD2 which (under certain circumstances) exempts the “extracurricular” service of school employees from the ban on accepting gifts under the State Ethics Code. It appears designed to enable certain school employees who plan, organize or serve as chaperones on student education trips to receive travel benefits or incentives from companies to be used in conjunction with the same trip.

The prominent ethics issue is whether these employees can directly accept in-kind travel compensation, whether on school sponsored trips or so-called “extracurricular” trips.

Most testimony supporting the bill addresses the selfless efforts of teachers to arrange school trips while supporting the amendment to Section 84-11 creating the gift law exemption for “extracurricular” trips. The Ethics Commission has suggested at least two ways teachers could continue to accompany students on official school trips without running into ethics problems. Most teachers appear able and willing to adapt to the way they’ve been doing business with travel vendors where necessary. So creation of an “extracurricular” category for other trips is ill-advised for many reasons, including ethics.



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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.

Let’s get back on track to properly support the many dedicated school employees who recognize the value of enrichment trips outside of the classroom. This would mean accepting the advice of the Ethics Commission without trying to create a perverse exemption to the state Ethics Code and improper dilution of state ethics statutes.

We urge you to hold this bill but respectfully request that the legislature prepare and pass a resolution acknowledging teacher effort, and requesting that the Department of Education procure official student trips in a timely manner following the advice of the Ethics Commission and at the most economical cost. This would seemingly correspond with the draft policy already prepared by the Department of Education and the Board of Education regarding procedures for school-sponsored trips and non-official school trips.

Thank you for the opportunity to submit testimony.

From: mailinglist@capitol.hawaii.gov
To: [EDU Testimony](#)
Cc: burgharc@gmail.com
Subject: Submitted testimony for HB1713 on Mar 18, 2016 13:15PM
Date: Wednesday, March 16, 2016 11:20:00 AM

HB1713

Submitted on: 3/16/2016

Testimony for EDU on Mar 18, 2016 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Support	No

Comments: Throughout my 40 years as a teacher in 3 different states and Japan, only once did I see an employee abuse the gift rule. I understand the ethics of gift receiving and giving but I truly believe that educators understand them and are very cautious as well. Gifts received are usually for direct use by the teacher with the students or classroom. Mahalo for understanding and looking at this issue with eyes towards the students.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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