



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

Date: 02/29/2016

Time: 10:00 AM

Location: 016

Committee: Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 2600 RELATING TO ETHICS.

Purpose of Bill: 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.

Department's Position:

The Department of Education (Department) supports SB 2600, which provides that violations of the "Gifts Law" set forth in the State Ethics Code must be based upon a finding of actual intent to influence the recipient of the gift. SB 2600 also requires a stricter interpretation of the Ethics Code, makes changes in the Ethics Commission's approval process for Advisory Opinions, and requires legislative appointment of two of the five Ethics Commission members.

In its Advisory Opinion dated August 4, 2015, the Hawaii Ethics Commission concluded that acceptance by teachers and other Department 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)

Although the liberal construction of the ethics code was intended to promote high standards of ethical conduct in state government, its broad application has resulted in unfortunate consequences for Hawaii's public school students.

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 voluntarily commit their own time to research, plan, and implement these trips. This does not arise from a desire on the employee's 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, students would not have the opportunity to visit such distant, historical, and enriching places.

The Department recognizes that educational tour companies exist to help teachers facilitate meaningful and safe travel for students. These companies are equipped with customized itineraries, years of experience, and a network of resources in each destination. Although each company varies in its itineraries and services offered, there is one constant among them: teachers' travel expenses are covered. Providing teachers with free travel is an industry norm that recognizes the indispensable role that teachers play in making the educational trips possible.

The Ethics Commission determined that a reasonable inference could be drawn that this common practice was a gift intended to influence or reward a teacher for selecting a particular tour company. The Department submits that teachers plan trips to best meet their learning objectives and select a company with demonstrated ability to provide a safe, flexible, and appropriate itinerary that meets students' needs.

By requiring actual intent to influence teachers in their selection of tour companies, SB 2600 will help to preserve an important educational opportunity for Hawaii's public school students.

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

S.B. No. 2600, Relating to Ethics

Hearing: Monday, February 29, 2016, 10:00 a.m.

The Hawaii State Ethics Commission (“Commission”) **strongly opposes** S.B. No. 2600, which will significantly “lower” the minimum standards of conduct required of state employees and will erode public confidence in state government. More specifically, the bill: (1) repeals section 84-1, which requires that the statute “be liberally construed to promote high standards of ethical conduct in state government”; (2) amends the gifts law, section 84-11, to allow legislators and employees to accept gifts under circumstances in which it is reasonable to infer that the gift is offered to influence or reward the legislator or employee; and (3) makes the process by which members of the Commission are appointed significantly more political and partial.¹

Advisory Opinion 2015-1 and Free Teacher Travel

S.B. No. 2600 is intended to address the concerns raised by the Commission in its 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 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 some of those trips exceeded \$6,000.

¹ Section 4 of the bill requires that three or more members of the Commission approve advisory opinions. Currently, advisory opinions are rendered by the Commission, which means that a majority of the members must agree to issue the advisory opinion. A majority of the Commission is three or more members. Section 4 of the bill, therefore, is unnecessary.

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; 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 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 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 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.

Senate Bill No. 2600

Even assuming that the Committee concludes that amending the State Ethics Code is necessary and warranted so that teachers can continue to be involved in selecting private tour companies, soliciting their students to participate in trips through the tour companies, and then accepting free travel and other personal benefits from the tour companies, S.B. No. 2600 significantly changes the State Ethics Code by lowering the minimum standards of conduct required of legislators and employees.

The State Constitution and the Legislative Intent

The State Constitution clearly defines the foundation upon which the State Ethics Code is based:

The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government. To keep faith with this belief, the legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of boards, commissions and other bodies.²

To implement the constitutional mandate, the legislature enacted the State Ethics Code, chapter 84, specifically reflecting the legislature's intent that the Commission "enforce the provisions of [the] law so that public confidence in public servants will be preserved."³

Section 2: Broaden the Gifts Law

The gifts law, section 84-11, prohibits legislators and employees from soliciting, accepting, or receiving any gift, which includes money, service, travel, entertainment and hospitality, "under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or in intended as a reward for any official action on the legislator's or employee's part."

Section 2 of the bill, however, renders the gifts law meaningless. By deleting the phrase "it can reasonably be inferred," only those gifts that are offered with the actual

² Hawaii State Constitution, Art. XIV.

³ HRS chapter 84, Preamble.

intent of influencing or rewarding a legislator or an employee are prohibited. Stated differently, under the bill, legislators and employees **can** solicit, accept, or receive **any** gift, including money, from an individual or organization that is trying to influence or reward the legislator or employee so long as the gift is not “intended” to do so. A violation of the gifts law would be determined only upon a finding of actual intent to influence or reward the recipient of the gift. In short, the law would be meaningless.

It is the Commission’s position that removing the phrase “it can reasonably be inferred” from the gifts law is directly contrary to both the constitutional mandate and the stated purpose of the State Ethics Code. The basic premise of the gifts law is that employees and legislators must not solicit or accept gifts under circumstances where there is an appearance of improper influence or reward, because it erodes the public’s confidence in public servants.

Section 3: Change the Way Commission Members are Appointed by Including the Senate President and House Speaker in the Selection Process

The State Constitution mandates that members of the Commission “shall be selected in a manner which assures their independence and impartiality.” Currently, the governor appoints all members of the Commission from a panel of persons nominated by the judicial council. The Commission believes that changing the law to provide that the senate president and the speaker of the house of representatives each appoint a member of the Commission makes the process by which its members are appointed significantly more political and partial.

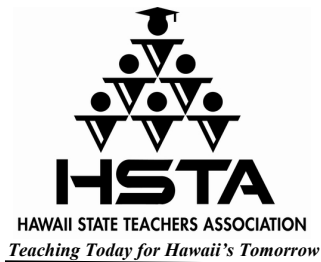
Section 5: Repeal of the Requirement that the Statute be “Liberally Construed” to Promote High Standards of Ethical Conduct in State Government

Section 5 of the bill repeals section 84-1, which requires that the statute “be liberally construed to promote high standards of ethical conduct in state government.” Repealing the requirement that the law be liberally construed is directly contrary to the express legislative intent, i.e., to administer and enforce the provisions of the State Ethics Code “so that public confidence in public servants will be preserved.”

The Commission strongly suggests that repealing section 84-1 is against the public interest and is a blatant attempt to weaken the State Ethics Code.

The Commission urges the Committee to hold S.B. No. 2600.

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



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TESTIMONY BEFORE THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

RE: SB 2600 - RELATING TO ETHICS

MONDAY, FEBRUARY 29, 2016

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Keith-Agaran and Members of the Committee:

The Hawaii State Teachers Association **supports SB 2600**, relating to ethics.

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. For decades, educators have sacrificed their 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.

This is one of two times that the Ethics Commission tangled with teachers in 2015. During statewide HSTA elections last year, the commission contended that teacher mailboxes could not be used for the distribution of campaign materials. Ultimately, the Hawaii Labor Relations Board issued an injunction barring implementation of the commission's ruling during the election, allowing teachers to proceed as they have—again—for decades. Moreover, the HSTA-BOE Master Agreement specifically permits election use of teacher mailboxes, stating in Article IV, subsection (e): “The Association shall have the right to use school mailboxes. Items that may be placed upon said bulletin boards shall be restricted to:...3) elections and appointments.”

To our mind, providing legislative oversight of certain appointments to the Ethics Commission would democratize the selection process and enhance public accountability. Providing for a fact-based system of evaluating potential violations, too, would ensure that the commission's advisories are rendered upon a *clear and incontrovertible link* between “gifts” (of which teacher travel is not, we maintain) and subsequent actions taken, rather than an appearance of possible impropriety that lacks compelling evidence or merit. Thus, the Hawaii State Teachers Association asks your committee to **support** this bill.



Senate Judiciary and Labor Committee
Chair Gil Keith-Agaran, Vice Chair Maile Shimabukuro

Monday, 02/29/2016 at 10:00 AM in Room 016
SB 2600 – Relating to Ethics

TESTIMONY
Carmille Lim, Executive Director, Common Cause Hawaii

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

Common Cause Hawaii strongly opposes SB 2600 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.

SB 2600 would repeal Section 84-1 of the Hawaii Revised Statutes, which reads:

“Construction: This chapter shall be liberally construed to promote high standards of ethical conduct in state government.”

To repeal this section is to severely limit the ability of the Ethics Commission to enforce the ethics code, and sends a message to the public that the Legislature is not interested in promoting high standards of ethical conduct.

This section of the current law intentionally tips the balance in application of the code toward public, rather than private, interest and helps guard against public perception that a given behavior is unethical.

SB 2600 also insists that violations of the gift law be based on actual intent to influence the recipient of the gift rather than on inference of impropriety. Of course, it would be impossible to prove “actual intent to influence,” which would make the gifts law entirely inoperative, thus opening the door to rampant corruption. However: **lobbyist gifts are clearly intended to influence legislators, since their job is to influence legislators.**

Requiring that advisory opinions be approved and signed by a majority of the Ethics Commissioners would effectively slow the process of allowing the Ethics Commission staff to provide advisory opinions— thereby reducing the effectiveness of the Ethics Commission, and thus undermine ethics statutes.

Finally, having the houses of the legislature name two members of the Ethics Commission implies an attempt by the Legislature to control the commission and to ensure that they will not be found in violation of the ethics law.

Taken together, the provisions of this bill, if passed, would suggest that our legislature has little concern with ethics— certainly not the perception politicians would want to convey to the public.

We urge you **defer SB 2600.**

Thank you for the opportunity to testify **in strong opposition to SB 2600.**

February 26, 2016

TO: Chair Gilbert Keith-Agaran, Vice Chair Maile Shimabukuro
Members of the Senate Committee on Judiciary and Labor

From: Barbara Polk

Testimony in strong OPPOSITION to SB 2600

I strongly oppose SB2600 because it would effectively eliminate ethical standards for not only legislators, but also all State employees.

The intent of the bill is transparent in the first part, that would repeal the Construction clause of the ethics code, thereby demonstrating the legislature's lack of interest in promoting “high ethical standards in the conduct of state government,” and leaving themselves and other state employees open to the contempt of the public in cases where an ethical violation would seem clear, but under this change could be contested. Further, the proposed change to limit ethical infractions of the gift law only to cases when “intent to influence” can be proven, despite the fact that intent is almost impossible to prove, would only increase public perceptions that the legislature is corrupt!

I've come to believe, by looking at my own past behavior at times, as well as at that of others, that humans are not always very good at recognizing or abiding by our own ethical standards, either through thoughtless actions or through using weak justifications to excuse ourselves. The Ethics Commission protects legislators and employees with its advisory opinions by discouraging behavior that the public would perceive as unethical when they are being thoughtless or self-justifying, and do not see their behavior in the same light that the public would. No politician, or any public employee, wants to wind up being blasted in the media!

I urge you to defeat this bill, and maintain ethics in government.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 26, 2016 1:07 PM
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB2600 on Feb 29, 2016 10:00AM*

SB2600

Submitted on: 2/26/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Brodie Lockard	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
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To: JDLTestimony
Cc:
Subject: Submitted testimony for SB2600 on Feb 29, 2016 10:00AM

SB2600

Submitted on: 2/26/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
David Monk	Individual	Oppose	No

Comments: Speaking as an individual, I endorse the testimony submitted by Carmille Lim, executive director of Common Cause Hawaii, in opposition to this bill. The growing public cynicism about the political process (as evidenced in part by low voter turnout) would only be fed by passing a measure that substantially weakens ethical standards for state government. I urge that this bill be deferred.

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WRITTEN ONLY
TESTIMONY OF EARL YAMAMOTO

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

Monday, February, 29, 2016
10:00 A.M.
Conference Room 016

SENATE BILL NO. 2600
RELATING TO ETHICS

Chairperson Keith-Agaran and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 2600 by amending portions of Chapter 84. I oppose this measure in its entirety.

Section 1 (page 1, line 9 to page 4, line 13) is devoted to a defense of the longstanding practice of public school teacher receiving free travel and other benefits from tour companies when chaperoning students on out of state education trips. The proposed amendments to address this narrow issue includes repealing the “liberal interpretation” (page 12, lines 13-15) and “inference of propriety” (page 6, line 5) of the State Ethics Code and allowing the Senate President and Speaker of the House to appoint one member each on the five-member of the Ethics Commission (page 6, line 16 to page 7, line 6). This is overkill, the equivalent of using a hammer to kill a pesky insect, and will severely impede the Commission’s ability to effectively watch over legislators and public employees and maintain the public’s confidence in public servants.

The Commission’s Advisory Opinion No. 2015-1 (dated August 19, 2015) on the issue of school excursions and teachers using travel agencies states that the “...Commission has offered to assist the DOE in reviewing policies and procedures to address the State Ethics Code concerns associated with the teacher’s acceptance of free travel and other benefits, including possible ways to fund the teachers’ travel for upcoming student educational trips.” (Opinion, page 9). Rather than passing legislation of questionable merit, the collaboration between the Commission and the Department of Education should be allowed to continue, or encouraged to start if it has not.

Thank you for the opportunity to present my testimony.