

HB 1853

RELATING TO THE STATE ETHICS CODE

A BILL FOR AN ACT

RELATING TO THE STATE ETHICS CODE.

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

1 SECTION 1. The purpose of this Act is to improve the
2 administration of the state ethics code by clarifying provisions
3 on gifts disclosure statements, retention of financial
4 disclosure statements, investigations, and training.

5 SECTION 2. Section 84-11.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~[§~~84-11.5~~]~~ **Reporting of gifts.** (a) Every legislator
8 and employee shall file a gifts disclosure statement with the
9 state ethics commission ~~[on]~~ no later than June 30 of each year
10 if all the following conditions are met:

11 (1) The legislator or employee, or spouse or dependent
12 child of a legislator or employee, received directly
13 or indirectly from one source any gift or gifts valued
14 singly or in the aggregate in excess of \$200, whether
15 the gift is in the form of money, service, goods, or
16 in any other form;



1 (2) The source of the gift or gifts have interests that
2 may be affected by official action or lack of action
3 by the legislator or employee; and

4 (3) The gift is not exempted by subsection (d) from
5 reporting requirements under this subsection.

6 (b) The report shall cover the period from June 1 of the
7 preceding calendar year through [~~June 1~~] May 31 of the year of
8 the report.

9 (c) The gifts disclosure statement shall contain the
10 following information:

- 11 (1) A description of the gift;
- 12 (2) A good faith estimate of the value of the gift;
- 13 (3) The date the gift was received; and
- 14 (4) The name of the person, business entity, or
15 organization from whom, or on behalf of whom, the gift
16 was received.

17 (d) Excluded from the reporting requirements of this
18 section are the following:

- 19 (1) Gifts received by will or intestate succession;



- 1 (2) Gifts received by way of distribution of any inter
2 vivos or testamentary trust established by a spouse or
3 ancestor;
- 4 (3) Gifts from a spouse, fiance, fiancée, any relative
5 within four degrees of consanguinity or the spouse,
6 fiance, or fiancée of such a relative. A gift from
7 any such person is a reportable gift if the person is
8 acting as an agent or intermediary for any person not
9 covered by this paragraph;
- 10 (4) Political campaign contributions that comply with
11 state law;
- 12 (5) Anything available to or distributed to the public
13 generally without regard to the official status of the
14 recipient;
- 15 (6) Gifts that, within thirty days after receipt, are
16 returned to the giver or delivered to a public body or
17 to a bona fide educational or charitable organization
18 without the donation being claimed as a charitable
19 contribution for tax purposes; and
- 20 (7) Exchanges of approximately equal value on holidays,
21 birthday, or special occasions.



1 (e) Failure of a legislator or employee to file a gifts
2 disclosure statement as required by this section shall be a
3 violation of this chapter.

4 (f) This section shall not affect the applicability of
5 section 84-11.

6 (g) For purposes of this section, "legislator or employee"
7 includes any individual who was a legislator or employee for any
8 portion of the period from June 1 of the preceding calendar year
9 through May 31 of the year of the report."

10 SECTION 3. Section 84-17.5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) All financial disclosure statements filed by a
13 legislator, employee, or delegate to a constitutional convention
14 shall be maintained by the state ethics commission [~~during the~~
15 ~~term of office of the legislator, employee, or delegate and~~] for
16 a period of six years thereafter. Upon the expiration of the
17 six-year period, the financial disclosure statement and all
18 copies thereof shall be destroyed."

19 SECTION 4. Section 84-31, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



1 "(b) Charges concerning the violation of this chapter
2 shall be in writing, signed by the person making the charge
3 under oath, except that any charge initiated by the commission
4 shall be signed by three or more members of the commission. The
5 commission shall notify in writing every person against whom a
6 charge is received and afford the person an opportunity to
7 explain the conduct alleged to be in violation of the chapter.
8 The commission may investigate~~[,]~~ the charges after compliance
9 with this section~~[, such charges]~~ and render an informal
10 advisory opinion to the alleged violator. The commission shall
11 investigate all alleged violations and charges on a confidential
12 basis, having available all the powers herein provided, and
13 proceedings at this stage shall not be public~~[-]~~; provided that
14 the commission may refer any matter to another governmental law
15 enforcement agency. If the informal advisory opinion indicates
16 a probable violation, the person charged shall request a formal
17 opinion or within a reasonable time comply with the informal
18 advisory opinion. If the person charged fails to comply with
19 ~~[such]~~ the informal advisory opinion or if a majority of the
20 members of the commission determine that there is probable cause
21 for belief that a violation of this chapter might have occurred,



1 a copy of the charge and a further statement of the alleged
2 violation shall be personally served upon the alleged violator.
3 Service shall be made by personal service upon the alleged
4 violator wherever found or by registered or certified mail with
5 request for a return receipt and marked deliver to addressee
6 only. If after due diligence service cannot be effected
7 successfully in accordance with the above, service may be made
8 by publication if so ordered by the circuit court of the circuit
9 wherein the alleged violator last resided. The state ethics
10 commission shall submit to the circuit court for its
11 consideration in issuing its order to allow service by
12 publication an affidavit setting forth facts based upon the
13 personal knowledge of the affiant concerning the methods, means,
14 and attempts made to locate and effect service by personal
15 service or by registered or certified mail in accordance with
16 the above. Service by publication when ordered by the court
17 shall be made by publication once a week for four successive
18 weeks of a notice in a newspaper of general circulation in the
19 circuit of the alleged violator's last known state address. The
20 alleged violator shall have twenty days after service thereof to
21 respond in writing to the charge and statement."



1 SECTION 5. Section 84-43, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~+~~§84-43~~+~~] Ethics training course. (a) The state
4 ethics commission shall establish, design, supervise, and
5 conduct ethics training [~~designed specifically~~] for the officers
6 and employees to whom this part applies.

7 (b) The ethics training course shall include:

- 8 (1) Explanations and discussions of the ethics laws,
9 administrative rules, and relevant internal policies;
- 10 (2) Specific technical and legal requirements;
- 11 (3) The underlying purposes and principles of ethics laws;
- 12 (4) Examples of practical application of the laws and
13 principles; and
- 14 (5) A question-and-answer participatory segment regarding
15 common problems and situations.

16 The [~~state ethics~~] commission shall develop the methods and
17 prepare any materials necessary to implement the course.

18 (c) The [~~state ethics~~] commission shall:

- 19 (1) Administer the ethics training course;
- 20 (2) Designate those of its legal staff who are to conduct
21 the ethics training course; and



1 (3) Notify each officer or employee enumerated in section
2 84-41 that their attendance in this course is
3 mandatory.

4 ~~[(d) The ethics training course shall be held in January~~
5 ~~of each year for those who have not attended the course~~
6 ~~previously. The course shall last at least two hours in length.~~

7 ~~(e)]~~ (d) The ~~[state ethics]~~ commission may repeat the
8 course as necessary to accommodate all persons who are required
9 to attend.

10 ~~[(f)]~~ (e) Each state agency shall provide to the ~~[state~~
11 ~~ethics]~~ commission the names of those required to take the
12 course in a timely manner and assist the commission by providing
13 adequate meeting facilities for the ethics training course."

14 SECTION 6. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.



H.B. NO. 1853

1 SECTION 7. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 8. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect upon its approval.

7

INTRODUCED BY:  _____

JAN 18 2018



H.B. NO. 1853

Report Title:

State Ethics Commission; State Ethics Code; Gift Disclosure Statements; Financial Disclosures; Investigations; Training

Description:

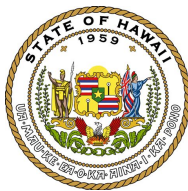
Clarifies State Ethics Code provisions on gifts disclosure statements, retention of financial disclosure statements, investigations, and training.

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



HB 1853

TESTIMONY



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813
50th ANNIVERSARY 1968-2018

Committee: Committee on Labor & Public Employment
Bill Number: H.B. 1853
Hearing Date/Time: February 8, 2018, 10:30 a.m.
Re: Testimony of the Hawaii State Ethics Commission in **SUPPORT** of
H.B. 1853, Relating to Ethics

Dear Chair Johanson and Committee Members:

The Hawaii State Ethics Commission (“Commission”) supports H.B. 1853, which makes several modest amendments to the Ethics Code, Hawaii Revised Statutes (“HRS”) chapter 84.

Section 2: Gifts reporting law

Currently, the reporting period for each gifts disclosure statement is from June 1 of the preceding calendar year through June 1 of the year of the report, meaning that any gift received on June 1 technically must be reported twice. The Commission respectfully requests that the reporting period be exactly one year (rather than a year and a day) and thus changed to June 1 to May 31.

Additionally, the gifts reporting law currently requires “[e]very legislator and employee” to file a gifts disclosure statement, but is unclear as to whether that requires former employees/legislators to file gifts disclosure statements. (For example, if a legislator receives a gift in February and leaves office in March – prior to the gifts disclosure statement deadline in June – the legislator may never file a gifts disclosure statement.) The proposed amendment to HRS § 84-11.5 would make clear that gifts received while a legislator or employee is in office must be reported by June 30, even if the legislator or employee leaves office prior to June 30.

Section 3: Retention of financial disclosure statements

Currently, the Commission is required to retain financial disclosure statements for six years after the filer leaves state office; H.B. 1853 changes the retention period to six years total, which is consistent with the statute of limitations for violations of the Ethics Code.

Given that the Commission is required to destroy the records six years after the filer leaves office, the current system requires the Commission to track the employment status of several thousand individuals to ensure that records are destroyed as required by statute. As one may imagine, this is administratively difficult for the Commission. Further, because the limitations period for Ethics Code violations is six years, there does not seem to be much reason to hold financial disclosure statements for longer than six years. As such, the Commission

respectfully requests that financial disclosure statements be maintained for six years after filing, rather than for six years after the filer leaves state office.

Section 4: Referrals to other law enforcement agencies

The proposed statutory language simply memorializes current practices: the Commission treats all complaints, charges, and investigations as confidential, but will refer cases to the Department of the Attorney General and other law enforcement agencies as appropriate.

Section 5: Ethics training

While the Commission supports mandatory ethics education, the Commission believes the amendments in H.B. 1853 would provide some flexibility in training.

In 2017, the Commission conducted 46 training sessions for 2,341 individuals. Generally, the Commission staff can conduct a full training session, covering all aspects of the Ethics Code, in about 90 minutes; by law, however, certain high-level state officials are required to attend a training that lasts a minimum of two hours, resulting in some training sessions that take up unnecessary and precious time for both trainees and Commission staff.

H.B. 1853 also eliminates language requiring the Commission to conduct mandatory training in January of each year for officials who have not previously attended the course. New state officials often complain that January is the worst time to attend an ethics training because of the start of legislative session (and the need to prepare for – and attend – legislative briefings). The Commission offers training throughout the year, and the Commission would like the flexibility to continue to schedule mandatory training sessions at regular intervals to accommodate newly elected or appointed officials.

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony on H.B. 1853.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



House Committee on Labor & Public Employment
Chair Aaron Johanson, Vice Chair Daniel Holt

02/08/2018 10:30 AM Room 309
HB1853 – Relating to the State Ethics Code

TESTIMONY / SUPPORT
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Johanson, Vice Chair Holt, and members of the committee:

Common Cause Hawaii supports HB1853 which would clarify State Ethics Code provisions on gifts disclosure statements, retention of financial disclosure statements, investigations and training.

We believe that this is a fair, housekeeping measure that will reduce confusion for those who are required to file disclosure statements, and those charged with ensuring compliance.

Thank you for the opportunity to offer testimony **supporting HB1853**.

HB-1853

Submitted on: 2/5/2018 5:34:40 PM

Testimony for LAB on 2/8/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez		Support	No

Comments:

HB 1853

**LATE
TESTIMONY**