



HAWAII STATE ETHICS COMMISSION

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

January 17, 2014

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
Honorable Members
House Committee on Judiciary
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on House Bill No. 601, Relating to Standards of Conduct**

Hearing: Tuesday, January 21, 2014, 2:00 p.m.
State Capitol, Conference Room 325

Testimony From: Hawaii State Ethics Commission

The Honorable Karl Rhoads, Chair; The Honorable Sharon E. Har, Vice Chair;
and Honorable Members of the House Committee on Judiciary:

Thank you for the opportunity to testify on H.B. 601. This bill makes a number of changes to Hawaii Revised Statutes (“HRS”) chapter 84, the State Ethics Code and HRS chapter 97, the State Lobbyists Law. The Hawaii State Ethics Commission (“Commission”) supports the intent of the bill to raise standards of ethical conduct for legislators and employees. The Commission, however, has concerns and questions about a number of provisions in the bill and opposes some of the bill’s proposed amendments to the State Ethics Code and the State Lobbyists Law.

H.B. 601 amends HRS chapter 84 by:

- Prohibiting legislative interns from being paid by private employers.
- Prohibiting legislators and state employees from receiving gifts from lobbyists or lobbying organizations, with some limited exceptions.¹

¹ HRS section 84-11, the Gifts Law, reads:

§84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, 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 is intended as a reward for any official action on the legislator’s or employee’s part.

- Allowing legislators and state employees to accept gifts that are not required to be reported under the Gifts Reporting Law.²
- Adding exceptions to the Gifts Reporting Law to provide that gifts received from nonprofit organizations comprised of government agencies, and gifts from out of state governments that are reported to the Commission within thirty days of receipt need not be reported on an annual gifts disclosure report.
- Amending the Post Employment Law so that the post employment restrictions applicable to legislators shall be two years instead of one year.

² HRS section 84-11.5 the Gifts Reporting Law, reads, in relevant part:

§84-11.5 Reporting of gifts. (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all of the following conditions are met:

- 1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
- 2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the legislator or employee; and
- 3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

....

(d) Excluded from the reporting requirement of this section are the following:

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

....

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

- Amending the Definitions section to include definitions for “legislative employee,” “lobbyist,” and “person.”

H.B. 601 amends HRS chapter 97 by:

- Prohibiting lobbyists and lobbying organizations from offering gifts to legislators or state employees.
- Requiring lobbyists and lobbying organizations to report campaign contributions on their lobbyists reports filed with the Commission.

While the Commission generally supports the intent of this bill as in keeping with its mission to support high standards of ethical conduct, the Commission does have the following concerns:

- It is not clear whether this bill intends to prohibit gifts from lobbyists to all state employees or only to employees of the legislature. Sections 2 and 3 of the bill indicate that the restriction applies to all state employees. However, section 4 of the bill also amends the Definitions section to add a definition of “legislative employee.” This term appears nowhere else in the bill or in the current statute. The inclusion of this term is confusing.
- The bill specifically allows the acceptance of opening day gifts from lobbyists. However, it has been the Commission’s experience that some of these offered gifts can be inappropriate and should be prohibited.
- Section 2 of the bill states that the prohibition on gifts from lobbyists is only in effect during lobbying reporting periods plus an additional twelve months thereafter. However, the lobbying reporting periods encompass the entire calendar year. For this reason, references to a time period during which the restriction is in effect appear to be unnecessary and confusing.
- The Commission is unsure as to the intent behind the amendments in section 5 of the bill. The bill re-titles HRS section 84-11, the Gifts Law, to read “Gifts; prohibition when conflict of interest,” and yet the amendment to this section makes no reference to conflicts of interests and appears to be entirely unrelated to conflicts of interests.
- The amendment to the Gifts Law allows the acceptance of any gift that is exempted from gifts reporting requirements under the Gifts Reporting Law. The Gifts Law and the Gifts Reporting Law are two distinct provisions in the State Ethics Code, however. By amending the Gifts Law to allow the acceptance of all gifts that are not required to be reported, this bill opens the door to the acceptance of gifts that may be inappropriate and should be prohibited.

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- Section 6 of the bill adds two additional exceptions to the gifts reporting requirement. The Commission is concerned that these proposed exceptions could allow the acceptance of gifts that may be inappropriate and should be prohibited. For this reason, the Commission opposes these exceptions.
- Section 8 of the bill requires lobbyists and lobbying organizations to report campaign contributions on their lobbying reports. The Commission has concerns about this provision. First, the Commission has no experience or expertise in the area of campaign spending. The Commission believes that information about campaign contributions should more properly be handled by the Campaign Spending Commission. Second, the Commission is unsure of the intent of this provision. As written, it would require the reporting of campaign contributions only by those individuals and organizations who meet the threshold requirements for filing lobbying reports. An organization that did not engage in lobbying but nevertheless spent considerable money in an effort to defeat a candidate would not be captured by this provision. If the intent is to require reporting by such organizations, then the Commission again believes that the Campaign Spending Commission is the appropriate agency to administer this law.

Thank you for the opportunity to testify on H.B. 601.