



# HAWAII STATE ETHICS COMMISSION

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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.

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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.<sup>1</sup>

### 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.

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<sup>1</sup> 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.<sup>2</sup>

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."<sup>3</sup>

### 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

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<sup>2</sup> Hawaii State Constitution, Art. XIV.

<sup>3</sup> 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.