

SUNSHINE LAW MEETING  
MINUTES OF THE HAWAII STATE ETHICS COMMISSION

STATE OF HAWAII

Date: February 3, 2022  
Time: 9:00 a.m.  
Location: Held via Zoom video and audio conference  
Present: State Ethics Commission Members

Melinda S. Wood, Chair (via video conference)  
Wesley F. Fong, Vice Chair (via video conference)  
Reynard D. Graulty, Commissioner (via video conference)  
Harry J. McCarthy, Commissioner (via video conference)  
Beverley Tobias, Commissioner (via video conference)

State Ethics Commission Staff

Robert D. Harris, Executive Director (via video conference)  
Susan D. Yoza, Associate Director (via video conference)  
Nancy C. Neuffer, Staff Attorney (via video conference)  
Bonita Y.M. Chang, Staff Attorney (via video conference)  
Kee M. Campbell, Staff Attorney (via video conference)  
Patrick W.C. Lui, Computer Specialist (via audio conference)

Sandy Ma, Common Cause Hawaii

**CALL TO ORDER**

Chair Wood called the meeting to order at 9:01 a.m. and confirmed that all Commissioners, except for Commissioner Tobias, and all staff were present. Chair Wood announced that if the Commission's videoconference connection was lost during the meeting, the meeting would be recessed and reconvened after the connection was restored; members of the public were asked to check the Commission's website ([www.ethics.hawaii.gov](http://www.ethics.hawaii.gov)) for information about reconnecting to the meeting.

**Agenda Item No. I: 2022 Legislative Session – Commission's input/guidance on legislative matters**

Executive Director Harris referred to the list of 2021 bills of interest. He said the bills were still technically alive, but the Legislature's focus would likely be on the bills

introduced this year. The Commission previously developed its position on the 2021 bills and Commissioners had no questions about those bills.

- a) Hawaii State Ethics Commission measures.

**HB 1475/SB 2039, Relating to Mandatory Ethics Training (2022).** Executive Director Harris summarized HB 1475, the Commission’s mandatory ethics education bill. Executive Director Harris has informed legislators that the purpose of the bill is to increase the number of participants who take the ethics online training. He said that he would like to focus on increasing employee participation in a positive way rather than through aggressive enforcement action. He also said that HGEA wanted the training to take place during work time, which Executive Director Harris said he supports.

Vice Chair Fong made and Commissioner Grauly seconded a motion to support HB 1475 and its companion bill, SB 2039. The motion carried unanimously (Wood, Fong, Grauly, and McCarthy voting).

- b) Gifts and gifts reporting.

**HB 1871/SB 2714, Relating to Gifts (2022).** Executive Director Harris said that HB 1871 and SB 2714 appear to be in response to the Commission’s administrative rules on gifts. He explained that the bills provide a blanket exception to the gifts law for items such as bentos and manapua, regardless of the source of the gift. He said that some legislators feel there is too much uncertainty in the gifts law and one way to address this is to provide them with guidance to clarify the law. He also said that HB 1871 would move the gifts law back to allow lobbying firms to spend thousands of dollars buying \$25 gifts for legislators on a regular basis. This is what the administrative rules were intended to curb.

Commissioner McCarthy suggested that the Commission include commentary in its testimony on the bill to provide general guidelines about the law. Chair Wood added that the right amount of guidance should be provided for people to make informed decisions for themselves or to call the Commission’s office if they are uncertain.

Executive Director Harris recommended that the Commission oppose HB 1871 and SB 2714, but at the same time try to provide more “black and white” guidance to legislators about the gifts law. He said that lobbyists previously understood that in order to speak to a legislator, they had to bring a gift. The Commission is trying to move away from this, but HB 1871 is moving in the direction of allowing more gifts.

Commissioner Grauly said that the Commission’s rules are very clear and strict, but not practical. He said that legislators receive a lot of gifts of aloha and that having a \$25 threshold made more sense to him. He did not believe that a \$25 gift would affect a legislator’s actions, whether the gift comes from a neighborhood board member, someone in the community, or a lobbyist. He said that gifts above the \$25 threshold should be reviewed more closely.

Staff Attorney Chang said the concern with the bill is that it applies not just to legislators, but to all state employees. She said the Commission could take a narrower approach by amending its rules or issuing guidance to legislators about gifts. Executive Director Harris added that the bill would allow gifts of aloha to a health inspector and the appearance from the public's perspective is that this is inappropriate. He said that a gift of banana bread to a legislator from a neighbor is not something the Commission wants to regulate and is something that can be clarified by the Commission.

[Commissioner Tobias joined the meeting via video conference at approximately 9:30 a.m.]

Executive Director Harris suggested that the Commission oppose the bill, but inform the Legislature that it would like to take more time to clarify the gifts law. He said that before the next legislative session, the Commission can look at its administrative rules to see what improvements can be made. He preferred for the Commission to have more control over this issue versus having something put into the gifts statute.

Commissioner Grauly said that the Legislature will want this issue resolved and put to bed. He wondered whether other states have a problem with gifts of aloha which are part of our culture. He did not believe that people give gifts of aloha to influence legislators – only to show appreciation. He said that instead of studying this issue more, he would prefer to go with what we know under the circumstances and put a dollar amount into the bill. He said that the Commission should consider the cultural atmosphere in which decisions are made and added that he was only talking about a small gesture of appreciation.

Chair Wood noted that the bill applies not just to legislators, but to all state employees and this makes a difference to her. She said that the Commission may come up with an interpretation that will allow for tokens of aloha, but without setting a dollar amount as provided by the bill.

Commissioner McCarthy made and Vice Chair Fong seconded a motion to table the discussion of this matter for further review by staff so that the Commission can decide at its next meeting on February 16, 2022, whether to support or oppose the bill.

Commissioner Tobias said that she is concerned about employees in positions of power, such as inspectors, and how their actions will be influenced by gifts. She said that people appreciate gifts and will look favorably upon such gifts such that she wondered whether even small gifts might influence their actions.

Chair Wood also asked staff to gather more information about other states' laws. Commissioner McCarthy said that he would like staff to discuss the factors in favor of support for the bill and opposition to the bill, with some examples.

Further discussion followed about what the Commission's response will be if the bill is scheduled for a hearing before the Commission's next meeting on February 16.

Commissioner Grauly said that until the Commission takes a position, its position should be that it has no position on the bill and the matter is under review. He noted that the bill will still have to go through other committee hearings.

Executive Director Harris said he would recommend the Commission respond to the bill by informing the Legislature that it understands its concerns about the lack of clarity in the Commission's rules and will try to provide greater clarity through the rule-making process. This will allow the Commission to craft its rules more narrowly.

Chair Wood called for a vote on the motion to allow for more information gathering and to have the Commission make a decision about the bill at its meeting on February 16, 2022. The motion carried (Fong, Grauly, and McCarthy voting aye; Tobias voting nay; Wood abstaining).

Executive Director Harris said that if the bill comes up for a hearing before the next meeting, he will not submit testimony but will be available at the hearing for questions. Vice Chair Fong suggested that Executive Director Harris respond that the Commission is taking the matter under advisement pending further review and will get back to Legislature.

**HB 2069/SB 3037, Relating to Gifts (2022).** Executive Director Harris said that the Governor introduced this bill, which addresses the handling and disposition of protocol gifts. He recommended that the Commission submit comments to clarify the distinction between protocol gifts to an individual and protocol gifts to the State.

Commissioner Grauly made and Commissioner McCarthy seconded a motion to submit comments on HB 2069 and SB 3037 as recommended by the Executive Director. The motion carried unanimously (Wood, Fong, Grauly, McCarthy, and Tobias voting).

- c) Public accountability agency (no new bills introduced).
- d) Post-employment (no new bills introduced).
- e) Conflicts of interests.

**HB 1786 and HB 2159/SB 3127, Relating to Workforce Development Boards (2022).** Executive Director Harris said that these three bills are essentially the same and are trying to comport with a federal statute that requires the development of a written conflict of interest policy for workforce development boards. The bills were already heard and staff submitted comments supporting the development of ethics policies and offering to assist with this. Executive Director Harris said that one line in the bill implies that the Governor would be given the discretion to determine what is a conflict of interest under federal and state law. He said that this language comes from the federal law, but staff will work with the Director of the Department of Labor and Industrial Relations to clarify that we are not delegating the Commission's ability to

interpret the ethics code to the Governor as this would present constitutional challenges.

Vice Chair Fong made and Commissioner Tobias seconded a motion to support the development of ethics policies as provided by these bills, but also to clarify that the Commission is not giving up its jurisdiction with respect to the state ethics laws. The motion carried unanimously (Wood, Fong, Graulty, McCarthy, and Tobias voting).

**HB 1820, Relating to Casino Gambling (2022).** Executive Director Harris explained that this bill creates a Gaming Control Commission and requires adoption of a code of ethics that is separate from and in addition to HRS chapter 84. He recommended that the Commission support this provision in the bill without taking a position on the rest of the bill.

Commissioner Tobias made and Commissioner Graulty seconded a motion to submit comments in support of the language in HB 1820 that provides for standards of ethics that are in addition to HRS chapter 84. The motion carried unanimously (Wood, Fong, Graulty, McCarthy, and Tobias voting).

f) Financial Disclosures.

**HB 1849/SB 2123, Relating to State Boards and Commissions (2022).** Executive Director Harris explained that HB 1849 requires amounts reported by nonpaid volunteer board members to be redacted from their public financial disclosures. This bill has already been heard and based on past precedent, staff testified in opposition to the bill. Executive Director Harris added that the conflict of interest law is based on whether someone has a substantial financial interest and the disclosure of dollar amounts helps the public determine whether a filer has a substantial financial interest or not.

Commissioner Graulty made and Vice Chair Fong seconded a motion to oppose HB 1849 and SB 2123. The motion carried unanimously (Wood, Fong, Graulty, McCarthy, and Tobias voting).

**SB 2776, Relating to Prison Reform; HB 1749, Relating to Housing; and HB 1820, Relating to Casino Gambling (2022).** Executive Director Harris explained that these bills deal with who is required to file a financial disclosure statement and the Commission has precedent on this subject. HB 1749 exempts a task force from the financial disclosure requirements. Executive Director Harris explained that this provision is unnecessary as the Commission has minimal oversight with respect to task forces. He said that if the boards in the other bills exercise significant powers, they cannot be exempted from the financial disclosure requirement under the State Constitution.

Vice Chair Fong made and Commissioner Tobias seconded a motion to submit comments on the financial disclosure provisions of SB 2776, HB 1749, and HB 1820 as discussed by the Executive Director. The motion carried unanimously (Wood, Fong, Graulty, McCarthy, and Tobias voting).

- g) Fair Treatment (no new bills introduced).
- h) Lobbyist Law (no new bills introduced).
- i) Budget.

**HB 2500, Making Appropriations to Provide for the Expenses of the Legislature, the Auditor, the Legislative Reference Bureau, the Ombudsman, and the Ethics Commission (2022).** Executive Director Harris said this bill was being heard in the afternoon and staff already submitted testimony in support of the bill. He said the bill includes funding to move the Commission's investigator position to a full-time position, to update the office servers, to provide for salary increases authorized by the Legislature for all legislative agencies, and to cover predicted rent increases. He explained that the bill provides 100% of what the Commission requested for its budget.

Commissioner Fong asked whether the budget includes funding for neighbor island Commissioners to travel to Oahu for Commission meetings. Executive Director Harris said that funds for travel are included in the budget based upon what was in the Commission's 2020 budget.

- j. Short form bills (no discussion).
- k. Other.

Executive Director Harris covered the remaining bills and the Commissioners by consensus agreed with his recommendations with respect to those bills as follows:

**SB 2138, Relating to State Employees (2022).** Executive Director Harris recommended supporting this bill, which would add interns into the definition of "employee" for purposes of the Ethics Code.

**HB 1933, Relating to Persons Working with Children (2022).** Executive Director Harris said staff submitted comments on this bill, which establishes a conflict of interest requirement for non-state employees working with children. He said the bill mentions former state employees who contract with the State, and staff submitted comments that there are existing post-employment laws for former employees who contract with the State.

**SB 2405, Relating to Public Employees (2022).** Executive Director Harris said this bill prohibits state agencies from barring employees from holding public office on a per se basis, and requires a case-by-case analysis of each situation. He recommended the Commission monitor this bill for now and see whether it will impact the Commission.

**HB 1593, Relating to Employment (2022).** Executive Director Harris said this bill creates an exchange program for civil service employees between the State, counties, and other organizations. The bill would require compliance with HRS chapter 84. He recommended the Commission follow this bill to make sure the Commission

stays within its jurisdiction and does not trample on the jurisdiction of other ethics boards, such as the Honolulu Ethics Commission. He asked for a motion from the Commission on this bill.

Vice Chair Fong made and Commissioner Gaulty seconded a motion to submit comments on HB 1593 to make sure the Commission's jurisdiction under the bill is clear. The motion passed unanimously (Wood, Fong, Gaulty, McCarthy, and Tobias voting).

### **Agenda Item No. II: Consideration and Approval of a Draft Quick Guide for Legislators**

Executive Director Harris provided an update on the Quick Guide on Gifts for Legislators.

Chair Wood asked whether any member of the public wished to comment on any matters. Executive Director Harris said that Sandy Ma of Common Cause Hawai'i sent a message before she left the meeting saying that Common Cause Hawai'i will be opposing HB 1871 and SB 2714, Relating to Gifts.

### **ADJOURNMENT OF SUNSHINE LAW MEETING**

At approximately 10:31 a.m., Commissioner Gaulty made and Vice Chair Fong seconded a motion to adjourn the Sunshine Law Meeting. The motion carried unanimously (Wood, Fong, Gaulty, McCarthy, and Tobias voting).

The meeting was adjourned at 10:32 a.m.

Minutes approved on February 16, 2022.