

STATE OF HAWAII DEPARTMENT OF EDUCATION

P.O. BOX 2360 HONOLULU, HAWAI'I 96804

> Date: 03/22/2016 Time: 02:00 PM Location: 325

Committee: House Judiciary

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 2425, SD2 RELATING TO ETHICS.

Purpose of Bill: Exempts extracurricular service of employees from the state ethics code

if certain conditions are met. Defines detached remuneration and

extracurricular service. Takes effect on 1/7/2059. (SD2)

Department's Position:

The Department of Education (Department) supports SB 2425, SD2, which exempts extracurricular service of State employees from the State Ethics Code if certain conditions are met.

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)

If teachers and other employees of the Department are prohibited from accepting free travel, an important educational opportunity may be denied Hawaii's public school students. The statutory revisions proposed in SB 2425, SD2, would recognize the indispensable role teachers play in making educational travel possible. This measure would permit teachers and other State employees who provide extracurricular services, such as travel planning and chaperoning, to accept limited remuneration in the form of

free travel.

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 and other Department employees 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, many students would not have the opportunity to visit such distant, historical, and enriching places.

The Department respectfully requests your favorable consideration of this measure and thanks you for the opportunity to testify.

HOUSE COMMITTEE ON EDUCATION The Honorable Karl Rhoads, Chair The Honorable Joy A. San Buenaventura, Vice Chair

S.B. No. 2425, S.D. 2, Relating to Ethics

Hearing: Tuesday, March 22, 2016, 2:00 p.m.

The State Ethics Commission ("Commission") **opposes** S.B. No. 2425, S.D. 2, which creates a blanket exemption to the State Ethics Code for employees who engage in "extracurricular service" that is related to their state duties. The bill is unnecessary, overly broad, and contrary to the stated purpose of the State Ethics Code.

S.B. No. 2425, S.D. 2 is intended to address the concerns raised by the Commission in 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 the 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 the travel for some of those trips may exceed \$6,000.

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. <u>The Commission has never stated that the State Ethics Code prohibits student trips or that the State Ethics Code prohibits teachers from the Sta</u>

House Committee on Education Senate Bill No. 2425, S.D. 2, Relating to Ethics Page 2

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. Teachers could propose a travel itinerary, and their 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, and the chaperones for the students would be selected by the principal. 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 ("BOE") 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.

Moreover, the BOE's travel policy appears to structure student travel in a way that is consistent with the State Ethics Code. The BOE's policy requires that all student trips be either "private" or "school-sponsored." For "school-sponsored" trips, the BOE policy's requirement that the tour companies be selected in accordance with the State Procurement Code likely removes those teachers who may chaperone the students from the selection process. It also appears that the DOE and/or the school will be responsible for the teachers' travel expenses. Stated differently, it is the Commission's understanding that the BOE does not expect teachers to receive free travel and other benefits directly from the tour company for "school sponsored" trips. For "private trips," the BOE's travel policy provides that teachers who may travel as chaperones will do so outside of their official duties as DOE teachers and in their private capacities, i.e., not as DOE employees. The BOE's policy regarding "private trips" appears to address the

House Committee on Education Senate Bill No. 2425, S.D. 2, Relating to Ethics Page 3

Commission's concerns that teachers were taking action and receiving the free travel in their official DOE capacities.

In short, it is unnecessary to change the State Ethics Code so that student trips can continue or to enable teachers to serve as chaperones on those trips. The student travel policies developed by both the DOE and the BOE demonstrate that student trips can be structured in ways that are consistent with the State Ethics Code.

In addition to teacher travel, S.D. No. 2425, S.D. 2 will have the unintended effect of allowing employees to secure substantial personal benefits while performing services relating to their state jobs. The term "extracurricular service" contemplated by the bill is unduly broad and includes virtually any activity by any employee, so long as it is somewhat related to an employee's state job duties. For example, a Department of Accounting and General Services motor pool mechanic is asked to help recommend new cars that the motor pool intends to purchase. The employee, outside of his work hours, meets with car dealership representatives to learn about their companies' vehicles. One sales representative invites the employee to an expensive dinner to talk about his company's fleet; another loans the employee a vehicle for the employee's personal use. The bill likely would exempt the employee from the State Ethics Code, meaning that the employee can accept the dinner and the free use of the vehicle. Allowing employees to accept those types of personal benefits is clearly contrary to the statute's purpose, i.e., to preserve public confidence in state government.

The Commission urges the Committee to hold S.B. No. 2425, S.D. 2.

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



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COMMITTEE ON JUDICIARY Tuesday, March 22, 2016, 2:00 p.m., Room 325 SB2425, SD2 Relating to Ethics TESTIMONY

Piilani Kaopuiki, Legislative Committee, League of Women Voters

Chair Rhoads, Vice-Chair San Buenaventura and Committee Members:

The League of Women Voters of Hawaii strongly opposes SB2425 SD2 which would exempt the extracurricular service of public employees from the state ethics code if certain conditions are met, and defines detached remuneration and extracurricular service.

Hawaii Revised Statutes, Part II - Code of Ethics, Section 84-11 - Gifts, is very clear in expressing the intent of the community regarding the receipt and acceptance of gifts. It cites in clear terms the reasonable inference that private gifts that influence or reward an employee for actions in the performance of their public duties is not acceptable. This Section is powerful protection for the community against the behavior of individuals who inappropriately wish to accept gifts from parties with whom the state transacts business, whether that behavior is blatant or seemingly benign. The Section is a solid tool for the ethics commission or anyone to use in education and enforcement.

Making this unnecessary exemption to Chapter 84 is a bad idea because it is precedent setting and broad. The bill would allow *all* state employees (not just teachers) to take advantage of efforts that began in response to a small but powerful teacher constituency. SD2 is not limited to school employees, but is directed at "an employee".

Creation of an "extracurricular" category is also ill-advised for many reasons, including ethics. "Extracurricular service" is defined in detail, but establishing an exemption for extracurricular service is especially bad because the original intent was to respond to a type of employee who already had alternate solutions readily available.

The Ethics Commission has suggested at least two ways teachers could continue to accompany students on official school trips without running into ethics problems. Importantly this Commission advice seems to correspond with the draft policy already prepared by the Department of Education and the Board of Education regarding procedures for school-sponsored trips and non-official school trips. That makes this bill unnecessary for teachers, and certainly unnecessary for other state employees.



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Unfortunately, the clarion call of those interested in "extracurricular" trips now sounds like "dedicated teachers vs. the Ethics Commission," or even more inaccurately "dedicated teachers vs. the Ethics Commission's Executive Director." Every step forward promoting ethical conduct helps improve public confidence in government.

Our State Constitution, Article XIV, says that the Ethics Code is established "so that public confidence in public servants will be preserved." We applaud all positive efforts to help public employees better understand and avoid actions, whether inadvertent or conscious, that would violate the Ethics Code.

Let's get back on track to properly support the many dedicated teachers who recognize the value of enrichment trips outside of the classroom. This would mean accepting the advice of the Ethics Commission without trying to create a perverse exemption to the state Ethics Code.

We urge you to defer this bill but respectfully request that the legislature prepare and pass a resolution acknowledging teacher effort. We request that the Department of Education procure official student trips that include the legitimate cost of teacher travel. We think the DOE policy already offers a chance to do this in a timely manner following the advice of the Ethics Commission and at the most economical cost.

Thank you for the opportunity to submit testimony.



House Judiciary Committee Chair Karl Rhoads, Vice Chair Joy San Buenaventura

Tuesday, 03/22/2016 at 02:00 PM in Room 325 SB 2425 SD2– Relating to Ethics

TESTIMONY Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Rhoads, Vice Chair San Buenaventura, and members of the Committee:

Common Cause opposes SB 2425 which would exempt all state employees from provisions of 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. **SB2425** is a far-reaching bill that exempts thousands of people from portions of the Ethics Code. It is of concern to us that the legislature's attempts, over the past few years, to exempt various groups from ethics provisions send a message to the public that the legislature is not interested in promoting high standards of ethical conduct.

We understand that the origin of this bill was a concern by certain DOE teachers with the application of Board of Education directives to the DOE administration concerning teacher initiated trips for students, in response to an advisory opinion by the Ethics Commission. What we don't understand is why the DOE did not promptly implement the BOE's directive on this matter—the development of which the State Superintendent's office participated in--instead coming to the legislature to overturn the position of the BOE. The problems for students and teacher travel this year appear to have been the result of inaction by the DOE, rather than the impossibility of holding such trips under the Ethics Commission's ruling.

This past summer, the BOE designated three of its members as a committee to develop recommendations, working with the Superintendent and the Ethics Commission staff and in September 2015, directed the DOE to implement the committee's recommendations. We believe that these directives successfully address the major ethical concern with the current procedure, which is: selection by a teacher of a travel agent; soliciting business for said travel agency; promoting that agency; and in return obtaining free travel and often other perks such as hotel accommodations, per diem or other gifts. The BOE directives handle this by removing the teacher from the process of selecting the travel agent, instead using normal state procurement procedures to select a travel agency pool for all official DOE trips. The directive includes requiring travel agencies to donate to a travel fund which would be used to compensate the teacher chaperones for travel expenses, and perhaps other expenses according to policy to be developed by DOE. It could also be used to ensure that all students would be able to participate in approved travel—something that is not now the case for teacher-initiated trips.

Thus, under the BOE's plan, teachers would not have to pay for their travel on approved trips, and the opportunity to travel would be extended to more students.

CCHI is also concerned that SB2425 extends an exemption from all parts of the ethics code to all employees when carrying out "extracurricular service," not only from the gift section, but other sections as well. It is not clear what range of activities might fall under the designation of "extracurricular service," but this exemption appears to promise a very wide ranging exemption from the ethics code. Doing this may cause unanticipated problems for the state, and further undermine public confidence in the conduct of government.

While our purview is to comment specifically on good government issues, it would be irresponsible for us to exclude that from a public policy standpoint, there are clear red flags in this bill related to the state's liability for the public school children who may take part in these "extracurricular activities," a concern recognized by the BOE in developing their directive.

SUGGESTION

If the Legislature wishes to express concern with the impact of the BOE directives on teachers and students, we suggest that the legislature consider passing a resolution, rather than a bill, specifying the concerns and asking that the BOE and DOE attempt to address these concerns as both parties continue to develop policies on travel.

In light of the above, we urge you to defer SB 2425.

Thank you for the opportunity to testify in strong opposition to SB 2425.





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> Corey Rosenlee President Justin Hughey Vice President Amy Perruso Secretary-Treasurer

TESTIMONY BEFORE THE HOUSE COMMITTEE ON JUDICIARY

Wilbert Holck Executive Director

RE: SB 2425, SD 2 - RELATING TO ETHICS.

TUESDAY, MARCH 22, 2016

COREY ROSENLEE, PRESIDENT HAWAII STATE TEACHERS ASSOCIATION

Chair Rhoads and Members of the Committee:

The Hawaii State Teachers Association <u>strongly supports SB 2425, SD2</u>, relating to ethics, <u>with suggested amendments</u>.

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. Educators give up their own 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.

That said, teachers believe in promoting the highest standards of ethical conduct, by which we conduct ourselves each day. We model for our students the values through which a more engaged, animated, and upstanding society is forged. Therefore, we understand that there may be unintended consequences engendered by passing a broad ethics exemption for state employees and support amending this measure by limiting it to educational travel, if necessary to ensure passage, and have included a suggested rewrite of the bill to narrow its scope accordingly (see below, edits crossed out and in bold).

Hawaii teachers, being the lowest paid in the nation, cannot afford to pay for travel expenses out of their own pockets. If we delay on exempting teachers for travel or conferences, however, thousands of students will be denied worthwhile educational experiences. Accordingly, the Hawaii State Teachers Association asks your committee to **strongly support** this bill.

RELATING TO ETHICS.

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

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

- "§84- Extracurricular service Educational travel; exemption. (a) An employee may engage in extracurricular service educational travel as provided in this section, and not be in violation of part II of this chapter.
- (b) To be exempt from part II of this chapter pursuant to subsection (a), the conduct of the employee shall comply with the following:



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Wilbert Holck Executive Director

- (1) The employee shall not solicit, accept, or receive, directly or indirectly any gift for engaging in extracurricular service educational travel, as provided in section 84-11; provided that the employee may receive detached remuneration for the performance of extracurricular services educational travel;
- (2) The detached remuneration received by the employee shall only be used by the employee in connection with the performance of the extracurricular services educational travel; and
- (3) The detached remuneration received by the employee shall not be provided by a business or other undertaking in which the employee has a substantial financial interest, or in which the employee is engaged as legal counsel, advisor, consultant, representative, or in any other agency capacity.

(c) As used in this section:

"Detached remuneration" means a benefit or economic value that is received by an employee in exchange for the employee's performance of an extracurricular service that is consistent, supplemental, or complementary to the employee's existing job duties or description with a state agency, including but not limited to the receipt of travel.

"Educational travel" means intra-state, interstate, or international travel for public school students arranged through a for-profit or nonprofit travel agency or tour company designed to enhance student learning and assist students in meeting the Hawaii common core performance standards."

SECTION 2. Any existing policy, procedure, or rule previously adopted by any department or other state agency shall be reviewed for consistency and compliance with this Act within ninety days of the effective date of this Act.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 7, 2059.





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TESTIMONY FOR SENATE BILL 2425, SENATE DRAFT 2, RELATING TO ETHICS

House Committee on Judiciary
Hon. Karl Rhoads, Chair
Hon. Joy A. San Buenaventura, Vice Chair

Tuesday, March 22, 2016, 2:00 PM State Capitol, Conference Room 325

Honorable Chair Rhoads and committee members:

I am Kris Coffield, representing IMUAlliance, a nonpartisan political advocacy organization that currently boasts over 350 members. On behalf of our members, we offer this testimony <u>in strong support</u> of Senate Bill 2425, SD 2, relating to ethics.

According to three of the Hawai'i State Department of Education's general learner outcomes, public school students are to become community contributors, complex thinkers, and effective communicators. Each of these GLOs requires and advances a cosmopolitan outlook on the world, in which curricular questions are integrated with real-life experiences that promote critical thinking and collaborative problem-solving.

Perhaps nowhere is this better advanced than in field trips involving the application of learned content and skills in extracurricular settings. From the musicianship of mainland band performances to the civic engagement of We The People competitions, group educational travel provides academic enrichment that broadens local students' learning beyond Hawai'i, increasing achievement through global knowledge formation. In some cases, this global perspective is literal, such as when teachers coordinate trips in foreign countries to forge cultural exchanges. No amount of textbook reading, internet research, or art history study can replace the experience of reliving the storming of the Bastille in the French language or gazing upon Michelangelo's *The Last Judgement* on the ceiling of the Sistine Chapel. Teachers spend countless hours instructing students on how to appreciate different

historical, cultural, narrative, and linguistic spaces. School-sponsored trips, as the Board of Education has deemed them, deepen that appreciation into understanding.

Yet, last year, the Hawai'i State Ethics Commission raised conflict-of-interest concerns regarding school-sponsored trips, prohibiting teachers from accepting free travel and accommodations from tour companies while serving as chaperones. According to the Ethics Commission, teachers who coordinate optional trips through tour companies, including their own travel costs, are functioning as agents for private travel enterprises to entice bookings from parents, while simultaneously accepting illicit individual benefits. In essence, the Ethics Commission is suggesting that our state's hardworking teachers are reviewing travel company brochures, thinking, "Oh, I've always wanted to go to Washington D.C. in March," then arranging school-sponsored trips as a cover for personal vacations.

Nothing could be further from the truth. In reality, teachers spend weeks, and sometimes months, planning each school-sponsored trips, ensuring that they are aligned with and extend classroom lessons, communicating with parents, coordinating with students, and, of course, chaperoning the trips themselves. Notably, chaperoning a trip is a 24/7 task, in which teachers are constantly preparing content, supervising conduct, purchasing supplies, and providing safety for their pupils.

Moreover, teachers perform these functions at no cost. Already the worst paid education professionals in the country (ranking fifty-first out of fifty states and the District of Columbia for starting and median teacher salary adjusted for cost of living, according to a 2015 WalletHub study), teachers who coordinate and chaperone student travel are, in effect, working for free-even working themselves into debt, given their need to subsidize a significant portion of their own travel costs, like meals. Administrators and departmental employees, including student activity coordinators, cannot and should not be tasked with trip coordination, as they are too overburdened with managing financial, academic, and personnel tasks to spend months planning student travel. Administrators are also not personally responsible for classroom content and do not develop deep relationships with students based on daily interactions, and thus are not ideally equipped to connect travel with individual student needs. Again, school-sponsored trips are not vacations. They are educational experiences that bring core classroom content to life, delivering what cannot be captured in a standard-the humanity, sublimity, historicity, and worldliness that turn students into lifelong learners. It's like promteachers often assist in the selection or places at which to host prom, including Waikiki hotels. Is prom the next student activity to be burned by the Ethics Commission?

We must free our teachers and students from the yoke of common corporate standards and the tyranny of toxic testing. In turn, we should offer educational opportunities that allow our educators and children to critically engage with the world around them, both within our island community and beyond our shares, fostering intellectual voyages that will chart our state's course through the 21st Century. Mahalo for the opportunity to testify in strong support of this bill.

Sincerely, Kris Coffield Executive Director IMUAlliance From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 18, 2016 5:36 PM

To: JUDtestimony

Cc: ndavlantes@aol.com

Subject: Submitted testimony for SB2425 on Mar 22, 2016 14:00PM

SB2425

Submitted on: 3/18/2016

Testimony for JUD on Mar 22, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Oppose	No

Comments: There is no need to create a blanket exemption to the State Ethics Code for employees who engage in "extracurricular service" that is related to their state duties. The DOE can come up with a process that provides for the travel while addressing the Comissions' concerns and protecting teachers from actions that may violate the State Ethics Code. This bill is an unnecessary over-reaction.

Please note that testimony submitted <u>less than 24 hours prior to the hearing</u>, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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TO: Members of the Committee on Judiciary

FROM: Natalie Iwasa

HEARING: 2 p.m. Tuesday, March 22, 2016

SUBJECT: SB 2425, SD2 Ethics Code Exemptions - OPPOSED

Aloha Chair and Committee Members,

Thank you for allowing me the opportunity to provide testimony on SB 2425, SD2, which would provide exemptions from the ethics code under certain situations. I oppose this measure.

While I understand the frustration teachers have expressed regarding the ruling related to class travel, we should not water down our ethics laws by providing exemptions, especially since there are other options available for class trips that would not violate our current ethics code.

I urge you to **vote "no"** on this bill.