



LATE TESTIMONY

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COMMITTEE ON JUDICIARY
Friday, February 29, 2016, 10:00 a.m., Room 016
SB 2600, Relating to Ethics

Piilani Kaopuiki, Legislative Committee, League of Women Voters
TESTIMONY

Chair Keith-Agaran, Vice-Chair Shimabukuro and Committee Members:

The League of Women Voters of Hawaii strongly opposes SB 2600 which is a far-reaching effort to repeal Ethics Laws and change Ethics Code administration.

Gift law interpretation

The preamble to this bill makes clear it is the recent controversy over public school teacher travel that drives the measure. The prominent ethics issue is whether teachers can directly accept in-kind travel compensation. However, the suggested remedy would apply to **anyone** covered by the Ethics Code; this is an overreaction to a specific problem with teacher travel.

A person may receive income even if no money changes hands, and we all know this. There are many kinds of income (not just a paycheck) such as bonuses, awards, and gifts. If a travel agency, hotel or airline gives a state employee an in-kind gift of travel, hotel accommodations or an airline ticket, well, that's a gift to that individual from such a vendor.

Therein lies the ethics problem. HRS section 84-11 is clear when it prohibits a state employee from soliciting, accepting, or receiving any gift, *including travel*, under circumstances where it can reasonably be inferred that the gift is intended to influence the employee in performing the employee's official duties, or is intended to reward the employee for official action.

The bill also describes how the ethics commission's advisory opinion on a public school teacher accepting free travel may unintentionally deprive students of learning opportunities outside the classroom and also make it difficult for teachers to afford activities that are contingent upon their participation. Yet the Ethics Commission has suggested at least two ways teachers could continue to accompany students on official school trips without running into ethics problems.

Most teachers appear able and willing to adapt to the way they've been doing business with travel vendors where necessary. Unfortunately, the clarion call of a few now sounds like "dedicated teachers vs. the Ethics Commission," or even more inaccurately "dedicated teachers vs. the Ethics Commission's Executive Director."

The teacher's travel cost for an official school trip is a legitimate expense of the trip, one which could be appropriately paid for by the state or by external private fundraising. The Ethics Commission has simply advised that a public school teacher should not be involved in selecting a tour company which solicits students and parents for the trip and then receive a free trip. We heartily agree; otherwise, it could confuse the issue of whose financial interest the teacher serves.



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Standards for Interpreting the Ethics Code

This bill would also repeal Section 2, Chapter S84-1, "Construction." This section requires that the Ethics Code "be liberally construed to promote high standards of ethical conduct in state government." The Ethics Code is supposed to be broadly interpreted so that it covers a wide range of conduct, and repealing HRS 84-11 would strip the Ethics Commission of its ability to apply the law reasonably and fairly. Without a "Construction" clause, the Commission's ability to promote high standards of ethical conduct in state government will be compromised; no one should support this move.

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 improperly dilute state ethics statutes.

Gift Law Violations Determined by Finding of Actual Intent Vs. Inference of Impropriety

Section 2 of this bill proposes to delete the phrase "it can reasonably be inferred" from Chapter 84-11 language that currently prohibits legislators and employees from soliciting, accepting, or receiving any gift "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."

Deleting the phrase "it can reasonably be inferred," means it would be possible for a legislator or employee to accept any gift from a person or organization as long as the gift is not "intended" to influence the individual. 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.

This makes a mockery of, Article XIV of our State Constitution which says that the Ethics Code is established "so that public confidence in public servants will be preserved." The State Ethics Code, Chapter 84-11, Gifts, already says everything that needs to be said regarding gift law violations. The changes proposed here are totally unacceptable.

Advisory Opinions to be Signed by a Majority of Commission Members

It is not necessary for Commission Members to sign advisory opinions issued by the ethics Commission. Requiring volunteer Commissioners to do so confuses the role of staff and volunteers, adds an unnecessary burden to service by Board Commissioners, and could jeopardize prompt issuance of advisory opinions. The requirement is heavy handed.



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Appointment to the Ethics Commission

The Ethics Commission has five members selected in a manner which assures their independence and impartiality in accordance with Article XIV of the Hawaii State Constitution. Similar to the judicial selection process, the Judicial Council nominates two individuals for each vacancy on the Commission. The nominees' names are sent to the Governor, who selects one of the nominees for appointment. Senate confirmation of appointees is not required, but the League has no objection to Senate confirmation of the Governor's selections. However, Commission members should not be appointed by the legislature, for this approach jeopardizes Commission independence.

Conclusion

Every step forward promoting ethical conduct helps improve public confidence in government, and this bill is a giant step backwards. We applaud all positive efforts to help public employees better understand and avoid actions, whether inadvertent or conscious, that would violate the Ethics Code. We say "yes" to teacher travel on educational trips at no expense to the teacher and "no" to having the teacher select travel vendors and promote or procure the trip. Thank you for the opportunity to submit testimony.



LATE TESTIMONY

46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

TESTIMONY FOR SENATE BILL 2600, RELATING TO ETHICS

Senate Committee on Judiciary and Labor
Hon. Gilbert S.C. Keith-Agaran, Chair
Hon. Maile S.L. Shimabukuro, Vice Chair

Monday, February 29, 2016, 10:00 AM
State Capitol, Conference Room 016

Honorable Chair Keith-Agaran 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 in support of Senate Bill 2600, 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 trip, 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 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.

Yet, teacher travel is merely one issue for which the Ethics Commission criticized teachers in 2015. During HSTA's state elections, the commission argued that teacher mailboxes could not be used to distribute campaign materials. While the Hawaii Labor Relations Board issued an injunction barring implementation of

the commission's ruling during the election process, the decision—rendered in the middle of the election, it should be noted—nonetheless left teachers in limbo for weeks and remains a point of contention for union elections occurring in 2016. The HSTA-BOE Master Agreement enumerates elections as a permissible use of teacher mailboxes and bulletin boards, stating in Article IV, subsection (e): “The Association shall have the right to use school mailboxes. Items that may be placed upon said bulletin boards shall be restricted to:...3) elections and appointments.” The Ethics Commission also accused Sen. Suzanne Chun Oakland of ethics violations surrounding use of Capitol grounds to plan and host Children and Youth Day, an event that invites more than 30,000 people to celebrate the keiki experience and participate in civic engagement.

We believe that the commission's attacks on teachers and children are sorely misplaced, particularly in light of potential ethical dilemmas posed by high-dollar lobbyists for big business, biotechnology, private prisons, and the vacation industry, to name just a few. Providing for legislative approval of two Ethics Commission appointments would advance public accountability, as the commission would no longer be beholden to a single branch of government (the executive), thereby inhering in the commission a system of checks and balances. Moreover, requiring potential violations to be evaluated on actual, rather than perceived, impropriety would, in turn, force the commission to issue advisories and decisions reflecting the existence or nonexistence of a direct link between “gifts” (of which teacher travel is not, we, like our strategic partners at HSTA, maintain) and influence over ensuing action, rather than appearances and assumptions that lack convincing evidence of wrongdoing.

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 shores, 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



LATE TESTIMONY

Democracy Under the Rule of Law is Based on Public Access

February 27, 2016

Senate Committee on Judiciary and Labor
Hawai'i State Legislature

Re: S.B.2600, Relating to Ethics
Monday, February 29, 2016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and Committee on Judiciary and Labor members:

Thank you for the opportunity to testify in **strong opposition** to S.B. 2600.

The authors of this measure would severely compromise the Hawai'i State Ethics Commission, and thereby put the integrity of our democratic system of government at significantly greater risk.

First, the authors of S.B. 2600 strike at the heart of our standards of conduct, by proposing to repeal the construction clause, which reads:

§84-1 Construction. This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

But of course the commissioners of the Hawai'i State Ethics Commission, who administer and enforce our statutory standards of conduct (Chapter 84)--as well as our lobbyists code (Chapter 97)--should continue to assume that Chapter 84 is designed to "promote high standards of ethical conduct in state government," as stated at §84-1.

Second, by striking out the words "it can reasonably be inferred that" at §84-11, the authors of S.B. 2600 effectively propose that intention to influence a legislator or employee must be *known*, rather than be reasonably *inferred*. But since it may always be argued that another's intentions are not known to one, the appropriate ethical standard is of course the avoidance of the *appearance* of impropriety. To instead pretend to require certainty about another's intentions merely makes the enforcement of these standards of conduct impossible.

Third, at §84-21, the authors of S.B. 2600 propose to have two of the five Hawai'i State Ethics Commission members appointed, not by the Governor, but by the House and the Senate themselves. But it is of course critical that the ethics commissioners be "selected in a manner which assures their independence and impartiality," as required by Article XIV of the Constitution of the State of Hawai'i.

Please reject SB 2600.

Sincerely,

R. Elton Johnson, III
Open Law Alliance

Date: February 29, 2016

To: The Honorable Senator Gilbert S. C. Keith-Agaran, Chair
& Members of the Senate Committee on Judiciary & Labor

From: Christine Trecker

Subject: SB 2600 Relating to Ethics – **Oppose**

The Hawaii State Ethics Commission plays a vital role in fighting corruption in government. SB2600 is a dangerous bill that will effectively undermine its ability to protect the public interest.

SB2600 proposes that the gifts law (HRS, Section 84-11) be repealed so that the determination of gifts law violations be based on “actual intent to influence the recipient of the gift” vs. the current language that the determination of violations be based on “an inference of impropriety.” You don’t need to be a legal expert to conclude that having to prove “actual intent” is such a high bar that it will undoubtedly undermine the Commission’s ability to watchdog unethical behavior and, in turn, erode public trust in government.

SB2006 refers to the Ethics Commission’s Advisory Opinion No. 2015-1 as rationale to narrow the gifts law. In this case the Commission ruled that free travel and other benefits teachers receive from student tour companies should be considered prohibited gifts because the recipient teachers promote these tours to parents and schools. In this case, was the Commission’s decision “subjective” and “overly broad” as SB2006 argues? Hardly. While it’s understandable that the teachers and schools that this ruling impacts may be angry about it, the ruling should not be considered “detrimental to the public” as the bill states and should definitely not trigger a fundamental change to Hawaii’s gifts law as this bill proposes.

Further, I have serious concerns about the provision in this bill requiring two of the five members of the State Ethics Commission be appointed by each chamber of the legislature. I’m sure most would agree it is not in the public interest to have those being monitored by the Ethics Commission appointing members.

I urge you to make strong ethics laws a priority and oppose this bill. Thank you.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 29, 2016 9:45 AM
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB2600 on Feb 29, 2016 10:00AM

SB2600

Submitted on: 2/29/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Oppose	No

Comments: Absolutely not.

Please note that testimony submitted less than 24 hours prior to the hearing, 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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SB2600

Submitted on: 2/29/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Peggy McArdle	Individual	Oppose	No

Comments: Shameful.

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Subject: *Submitted testimony for SB2600 on Feb 29, 2016 10:00AM*

SB2600

Submitted on: 2/29/2016

Testimony for JDL on Feb 29, 2016 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Terez Amato Lindsey	Individual	Oppose	No

Comments:

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