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# A BILL FOR AN ACT

RELATING TO GOVERNMENTAL STANDARDS OF CONDUCT.

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

1           SECTION 1. The legislature finds that the state ethics  
2 commission administers and enforces governmental ethics laws,  
3 issues advisory opinions, educates public officials and  
4 employees on matters relating to ethics in government, and  
5 investigates charges of alleged ethical violations. Pursuant to  
6 section 84-31(a)(2), Hawaii Revised Statutes, the commission,  
7 upon request, issues advisory opinions on whether the facts and  
8 circumstances of a particular case constitute or will constitute  
9 a violation of the state ethics code. Occasionally, however,  
10 these advisory opinions appear to be based upon subjective and  
11 overly broad applications of the state ethics code that can be  
12 detrimental to the public. For example, in its Advisory Opinion  
13 No. 2015-1, the commission found ethical violations in the  
14 longstanding practice of public school teachers receiving free  
15 travel and other benefits from tour companies when chaperoning  
16 students on out-of-state educational trips. The commission  
17 found that when public school teachers planning these excursions



1 select the tour company, design and organize the itinerary with  
2 the tour company, decide which teachers will travel with the  
3 students, and promote the trip to the students and their parents  
4 using materials prepared by the tour company, the teachers help  
5 generate substantial revenue for tour companies and are,  
6 essentially, "rewarded" for their efforts in the form of free  
7 travel and other benefits from the tour companies they selected  
8 and promoted. The commission determined that the dual role as  
9 teacher and tour company representative places public school  
10 teachers in a conflict of interest under the state ethics code  
11 and also raises concerns under the gifts law and the fair  
12 treatment law.

13 The gifts law under section 84-11, Hawaii Revised Statutes,  
14 prohibits an employee from soliciting, accepting, or receiving  
15 any gift, including travel, under circumstances where it can be  
16 reasonably be inferred that the gift is intended to influence  
17 the employee in performing the employee's official duties or is  
18 intended to reward the employee for official action. The state  
19 ethics commission found that because the gifts law is based upon  
20 an appearance of impropriety, it is immaterial whether the  
21 employee is actually influenced by the gift or whether the donor



1 actually intended to influence the employee. The commission  
2 stated that if it appears to a reasonable person that the gift  
3 is given to influence or reward the employee for official  
4 action, the employee is prohibited from accepting the gift.  
5 Under that standard, the commission found it reasonable to infer  
6 that the free travel and other benefits offered to public school  
7 teachers by a tour company were intended as both an incentive  
8 for the teachers to promote the trip to students and parents and  
9 a reward for the teachers' efforts in generating revenue for the  
10 tour company. The commission therefore concluded that the free  
11 travel and other benefits were prohibited gifts.

12 The legislature finds that the state ethics commission's  
13 advisory opinion on public school teachers accepting free travel  
14 from tour companies may have the unintended effect of depriving  
15 students of valuable learning opportunities outside of the  
16 classroom, by making it difficult for teachers to afford  
17 activities that are largely contingent upon their participation.  
18 In particular, the treatment of free travel from tour companies  
19 as prohibited gifts does not provide an equitable response to  
20 the challenges of requiring public school teachers to pay for  
21 their own travel on work-related trips in the absence of



1 available funding from the department of education. Public  
2 school teachers dedicate personal time and resources to  
3 coordinate the trips, chaperone students, and plan curriculum,  
4 oftentimes supervising students in other cities and countries  
5 for entire days and for the duration of the trip. Public school  
6 teachers participating in student educational trips assume  
7 additional work responsibilities that exceed normal duties, and  
8 teachers often sacrifice vacation time with their own families  
9 to accompany their students on the trips. Given these  
10 considerations, the legislature believes that the state ethics  
11 code should be more strictly interpreted and applied to avoid  
12 unfair restrictions placed upon student educational trips and  
13 other activities that benefit the public.

14 The legislature further finds that the ability of the state  
15 ethics commission to provide oversight and guidance on matters  
16 of governmental ethics would be greatly enhanced if commission  
17 members had a better understanding of the roles and  
18 responsibilities of public officials and employees who are  
19 subject to the commission's decisions and advice. Currently,  
20 commission members are appointed by the governor from a panel of  
21 ten persons nominated by the judicial council. The legislature



1 believes that increased diversity among the commission's  
2 membership, through appointments to the commission made by  
3 multiple branches of government, would significantly benefit the  
4 public.

5 Accordingly, the purpose of this Act is to clarify and  
6 enhance the application of the state ethics code by:

7 (1) Repealing the standards:

8 (A) Requiring a liberal interpretation of the state  
9 ethics code; and

10 (B) Allowing determinations of gifts law violations  
11 based upon an inference of impropriety, to  
12 instead require a finding of actual intent to  
13 influence the recipient of the gift;

14 (2) Requiring that advisory opinions rendered by the  
15 commission be approved and signed by a majority of the  
16 commission members; and

17 (3) Requiring that two of the five members of the state  
18 ethics commission be appointed by each chamber of the  
19 legislature.

20 SECTION 2. Section 84-11, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           **"§84-11 Gifts.** No legislator or employee shall solicit,  
2 accept, or receive, directly or indirectly, any gift, whether in  
3 the form of money, service, loan, travel, entertainment,  
4 hospitality, thing, or promise, or in any other form, under  
5 circumstances in which ~~[it can reasonably be inferred that]~~ the  
6 gift is intended to influence the legislator or employee in the  
7 performance of the legislator's or employee's official duties or  
8 is intended as a reward for any official action on the  
9 legislator's or employee's part."

10           SECTION 3. Section 84-21, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           **"§84-21 State ethics commission established; composition.**

13 (a) There is established within the office of the auditor for  
14 administrative purposes only a commission to be known as the  
15 state ethics commission. The commission shall consist of five  
16 members appointed ~~[by the governor from a panel of ten persons~~  
17 ~~nominated by the judicial council.]~~ as follows:

18           (1) Three members appointed by the governor from a list of  
19           six persons nominated by the judicial council;



1        (2) One member appointed by the president of the senate  
2        from a list of two persons nominated by the judicial  
3        council; and

4        (3) One member appointed by the speaker of the house of  
5        representatives from a list of two persons nominated  
6        by the judicial council;

7 provided that no list of nominees submitted pursuant to this  
8 subsection shall include any nominee that is currently pending  
9 selection from any other list of nominees submitted pursuant to  
10 this subsection.

11        Each member of the commission shall be a citizen of the  
12 United States and a resident of the State. Members of the  
13 commission shall hold no other public office.

14        (b) The chairperson of the commission shall be elected by  
15 the majority of the members of the commission. The term of each  
16 member of the commission shall be for four years. No person  
17 shall be appointed consecutively to more than two terms as a  
18 member of the commission. A vacancy on the commission shall be  
19 filled for the remainder of the unexpired term by the respective  
20 appointing authority in the same manner as the original



1 appointment [~~, except that the judicial council shall nominate~~  
2 ~~for gubernatorial appointment two persons for a vacancy~~].

3 (c) No member of the commission shall hold office for more  
4 than one hundred and twenty days after the expiration of the  
5 member's term. If the [~~governor~~] respective appointing  
6 authority fails to appoint a person to a vacant office within  
7 sixty days after receipt of the list of nominees from the  
8 judicial council, the council shall select a person from its  
9 list of nominees to fill the vacant office, notwithstanding  
10 subsection (b) and section 26-34 to the contrary.

11 (d) The [~~governor~~] respective appointing authority may  
12 remove or suspend any member of the commission appointed by the  
13 respective appointing authority upon the filing of a written  
14 finding with the commission, and upon service of a copy of the  
15 written finding on the member to be removed or suspended."

16 SECTION 4. Section 84-31, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) The ethics commission shall have the following powers  
19 and duties:

20 (1) It shall prescribe forms for the disclosures required  
21 by article XIV of the Hawaii constitution and section



1 84-17 and the gifts disclosure statements required by  
2 section 84-11.5 and shall establish orderly procedures  
3 for implementing the requirements of those provisions;  
4 (2) It shall render advisory opinions upon the request of  
5 any legislator, employee, or delegate to the  
6 constitutional convention, or person formerly holding  
7 such office or employment as to whether the facts and  
8 circumstances of a particular case constitute or will  
9 constitute a violation of the code of ethics[~~-~~];  
10 provided that no advisory opinion shall be rendered  
11 unless approved and signed by three or more members of  
12 the commission. If no advisory opinion is rendered  
13 within thirty days after the request is filed with the  
14 commission, it shall be deemed that an advisory  
15 opinion was rendered and that the facts and  
16 circumstances of that particular case do not  
17 constitute a violation of the code of ethics. The  
18 opinion rendered or deemed rendered, until amended or  
19 revoked, shall be binding on the commission in any  
20 subsequent charges concerning the legislator,  
21 employee, or delegate to the constitutional



1 convention, or person formerly holding such office or  
2 employment, who sought the opinion and acted in  
3 reliance on it in good faith, unless material facts  
4 were omitted or misstated by such persons in the  
5 request for an advisory opinion;

6 (3) It shall initiate, receive, and consider charges  
7 concerning alleged violation of this chapter, initiate  
8 or make investigation, and hold hearings;

9 (4) It may subpoena witnesses, administer oaths, and take  
10 testimony relating to matters before the commission  
11 and require the production for examination of any  
12 books or papers relative to any matter under  
13 investigation or in question before the commission.  
14 Before the commission shall exercise any of the powers  
15 authorized in this section with respect to any  
16 investigation or hearings it shall by formal  
17 resolution, supported by a vote of three or more  
18 members of the commission, define the nature and scope  
19 of its inquiry;

20 (5) It may, from time to time adopt, amend, and repeal any  
21 rules, not inconsistent with this chapter, that in the



1 judgment of the commission seem appropriate for the  
2 carrying out of this chapter and for the efficient  
3 administration thereof, including every matter or  
4 thing required to be done or which may be done with  
5 the approval or consent or by order or under the  
6 direction or supervision of or as prescribed by the  
7 commission. The rules, when adopted as provided in  
8 chapter 91, shall have the force and effect of law;

9 (6) It shall have jurisdiction for purposes of  
10 investigation and taking appropriate action on alleged  
11 violations of this chapter in all proceedings  
12 commenced within six years of an alleged violation of  
13 this chapter by a legislator or employee or former  
14 legislator or employee. A proceeding shall be deemed  
15 commenced by the filing of a charge with the  
16 commission or by the signing of a charge by three or  
17 more members of the commission. Nothing herein shall  
18 bar proceedings against a person who by fraud or other  
19 device, prevents discovery of a violation of this  
20 chapter;



1 (7) It shall distribute its publications without cost to  
2 the public and shall initiate and maintain programs  
3 with the purpose of educating the citizenry and all  
4 legislators, delegates to the constitutional  
5 convention, and employees on matters of ethics in  
6 government employment; and

7 (8) It shall administer any code of ethics adopted by a  
8 state constitutional convention, subject to the  
9 procedural requirements of this part and any rules  
10 adopted thereunder."

11 SECTION 5. Section 84-1, Hawaii Revised Statutes, is  
12 repealed.

13 [~~"§84-1 Construction. This chapter shall be liberally  
14 construed to promote high standards of ethical conduct in state  
15 government."~~]

16 SECTION 6. Notwithstanding any other law to the contrary,  
17 the incumbent members of the state ethics commission serving on  
18 the effective date of this Act shall continue to serve until the  
19 expiration of their respective terms, except that the two  
20 incumbent members whose terms expire the earliest following the  
21 effective date of this Act shall be replaced in accordance with



1 this section. No later than sixty days after the effective date  
2 of this Act, the judicial council shall separately submit to the  
3 president of the senate and the speaker of the house of  
4 representatives, a list of two nominees for appointment to the  
5 commission; provided that no nominee shall be included on both  
6 lists. If the respective appointing authority fails to make an  
7 appointment pursuant to this section within sixty days of  
8 receiving the list of nominees from the judicial council, the  
9 judicial council shall make the appointment in accordance with  
10 section 84-21(c), Hawaii Revised Statutes. Upon and for each  
11 appointment made pursuant to this section, the incumbent member  
12 of the commission whose term at that time expires the earliest  
13 following the effective date of this Act shall be immediately  
14 discharged from office and the newly appointed member shall  
15 begin the member's service. After all commission appointments  
16 required by this section have been accomplished, every  
17 appointment to the commission shall be made in accordance with  
18 section 3 of this Act.

19 SECTION 7. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

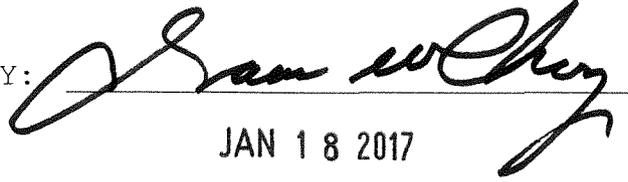


# H.B. NO. 31

1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
JAN 18 2017



# H.B. NO. 31

**Report Title:**

State Ethics Commission; State Ethics Code; Gifts Law

**Description:**

Repeals the standards (1) requiring a liberal interpretation of the state ethics code; and (2) allowing determinations of gifts law violations under the state ethics code based upon an inference of impropriety, to instead require a finding of actual intent to influence the recipient of the gift. Requires state ethics commission advisory opinions to be approved and signed by a majority of the commission members. Requires that 2 of the 5 members of the state ethics commission be appointed by each chamber of the legislature.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

