



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/29/2016

Time: 10:05 AM

Location: 016

Committee: Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 2425, SD1 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. (SD1)

Department's Position:

The Department of Education (Department) supports SB 2425, SD1, 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, SD1, 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.



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

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. 2425, S.D. 1, Relating to Ethics

Decision Making: Monday, February 29, 2016, 10:05 a.m.

The State Ethics Commission (“Commission”) **opposes** S.B. No. 2425, S.D. 1, 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. 1 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 exceeded \$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. The Commission has never stated that the State Ethics Code prohibits student trips or that the State Ethics Code prohibits teachers from

servicing 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.

In addition to teacher travel, S.D. No. 2425, S.D. 1 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. 1.

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



Senate Judiciary and Labor Committee
Chair Gil Keith-Agaran, Vice Chair Maile Shimabukuro

Monday, 02/29/2016 at 10:05 AM in Room 016
SB 2425 – Relating to Ethics

TESTIMONY

Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Senate Judiciary and Labor Committee:

Common Cause Hawaii strongly opposes SB 2425 which would seriously undermine 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.

We understand that the origin of this bill was a concern by certain Department of Education (DOE) teachers with the application of Board of Education (BOE) directives to the DOE administration concerning teacher initiated trips for students, in response to an advisory opinion by the Ethics Commission. While we appreciate teachers' past efforts to provide travel opportunities to students, we are concerned that any such travel must be handled in ways that ensure fair treatment of possible travel agencies and avoid the perception that teachers are developing trips for their own personal reasons.

This past summer, the BOE designated three of its members as a committee to develop recommendations, 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 selection process and using normal state procurement procedures to select a travel agency for all official DOE trips. The directive includes requiring travel agencies to donate to a teacher travel fund which, in turn, would be used to compensate the teacher chaperones for travel expenses, and perhaps other expenses according to policy to be developed by DOE.

Thus, under the BOE's recommendations, teachers already would not have to pay for their travel on approved trips.

Further, Common Cause Hawaii is also concerned that SB 2425 extends an exemption from all parts of the ethics code to all state employees when carrying out "extracurricular service," not only from the gift section, but other sections as well. It still is not clear what range of activities might fall under the designation of "extracurricular service," but this exemption appears to promise a 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."

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.**



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President
Justin Hughey
Vice President
Amy Perruso
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

RE: SB 2425, SD 1 - RELATING TO ETHICS.

MONDAY, FEBRUARY 29, 2016

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Keith-Agaran and Members of the Committee:

The Hawaii State Teachers Association **strongly supports SB 2425 SD1** relating to ethics.

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 public school educators, if necessary to ensure passage. Perhaps this could be accomplished by putting back in the section from the original bill,

Paragraph (2) shall not apply to a teacher employed by the department of education or a public charter school who plans, organizes, or serves as a chaperone on a student educational trip and who receives a travel benefit, incentive, or gift from a tour or travel company that is to be used in conjunction with the same educational trip on which the teacher serves as a chaperone or plans or organizes.

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.

February 26, 2016

TO: Chair Gilbert Keith-Agaran, Vice-Chair Maile Shimabukuro,
Members of the Senate Committee on the Judiciary and Labor

FROM: Barbara Polk

SUBJECT: OPPOSITION TO SB 2425

I oppose SB because it creates a special exemption from the entire ethics code of teachers, without a careful examination of which parts of the code are of concern and checking to see whether those concerns can be met in ways other than an exception to the ethics code. In general I believe that the Board of Education, in September, adopted a committee report which they directed DOE to implement, that handled both the ethics concerns of the Ethics Commission and the concerns of teachers. I hope legislators have seen that report and consulted with the BOE on this matter.

Below I address policy considerations that also result in my opposition to this bill.

1. This bill undermines the Board of Education in carrying out its responsibilities. It attempts to resolve concerns (not all of which are accurate) expressed by some teachers and some DOE administrators without doing the due diligence which the BOE has done.
2. This bill would usurp DOE's responsibility for policy development to implement the BOE's directives. It is my understanding that DOE is still in process of developing implementing policy.
3. Setting up a special category of "extracurricular service" for ALL State employees may expose the State to liability for a wide variety of unspecified activities, carried out by State employees, that are not part of their employment with the State. The BOE is especially concerned about this liability, and other agency heads may also come to share this concern. I believe it is dangerous for the State to take on this liability.
4. Allowing employees to use State resources for privately organized activities outside their regular duties may result in a substantial financial impact on the State.
5. This bill allows or even encourages state employees (in this case, teachers) to bypass their agency employer. I doubt that the legislature wants to encourage state employees to seek legislative support for any concern they have with the operations or policies of their department—to do so would result in chaos in governmental operations.
6. This bill bypasses established procurement procedures, and may lead to other employees seeking to bypass procedures they do not like.

I ask that the legislature not attempt to micromanage DOE by bypassing the decisions of its Board and the DOE's role in policy making, and not impose unexpected liability on DOE and all other state agencies.

Please do not pass SB2425.