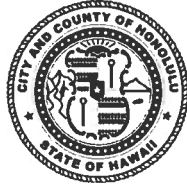


**ETHICS COMMISSION  
KOMIKINA LAWENA HANA KŪPONO  
CITY AND COUNTY OF HONOLULU**

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March 4, 2024

The Honorable Dos Santos-Tam, Chair  
and Members  
Committee on Executive Matters and Legal Affairs  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawaii 96813

Dear Chair Dos Santos-Tam and Councilmembers:

SUBJECT: Bill 26 (2022), Proposed CD2 – Comments

Thank you for the opportunity to offer comments on Bill 26 (2022), Proposed CD2.

Generally, we support the intent of this measure, which is to update the City's gifts law. As you know, one of the Ethics Commission's long-standing strategic objectives is to update ethics programs—including the gifts law—for compliance, effectiveness, and efficiency.

However, Bill 26 (2022), Proposed CD2, offers language that changes the intent of the bill. Rather than streamline and simplify the law, the Proposed CD2 makes gifts analysis more difficult and compliance more burdensome.

We list our concerns below in the same order as in the Proposed CD2 summary. Where possible, we suggest language to address these issues:

- Item B. 5. Amends the definition of "prohibited source." The Proposed CD2 includes the phrase "current and substantial financial relationship." We request that "current and substantial" be deleted because this phrase limits the timeframe within which a prohibited source could wield influence or give a reward or gratuity. Influence may precede a relationship or official action and a gratuity or reward may follow such relationship or action. Further, "substantial" is a subjective standard relating to personal viewpoints and perspectives.

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The Honorable Dos Santos-Tam, Chair  
and Members  
March 4, 2024  
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- Item B. 7. Adds a new subsection (c). We request that this provision be deleted. If applied, this subsection would allow an officer or employee to accept a gift, thus creating a conflict of interest, then avoid carrying out their city duties by declaring such conflict of interest. In actuality, a conflict of interest occurs when your public duties or responsibilities may conflict with a pre-existing business, financial, or personal interest, not one that you created by accepting a gift.
- Item B.8. Allows gifts valued in the aggregate up to \$200 per fiscal year. The Commission believes that this threshold is too high based on peer jurisdiction research and careful analysis. The Commission requests that the value be changed to "negligible" value as defined in the Proposed CD2 as \$50 or less.
- Item B.9. Requires gifts disclosures. Adding a gifts disclosure would result in a significant workload impact for the Commission. The Commission already reviews approximately 850 disclosures annually and would be unable to absorb gifts disclosure work without additional budget and staff. We would request at least one (1) additional FTE and the necessary equipment to support such work. Alternatively, if the threshold is reduced to a negligible value of \$50 or less as suggested in Item B.8., a gifts disclosure would not be necessary.
- Item C. Requires training on gift disclosure provisions. The Commission requests delayed implementation of this provision until July 1, 2025. The Commission has already launched all-employee biennial ethics training for the Calendar Year (CY) 2023-2024 biennium and would be unable to accommodate this mandate until it develops biennium training for CY 2025-2026. In the meantime, newsletters, flyers, and other outreach materials can be distributed to inform officers and employees of gifts law changes.

The Commission remains committed to passing gifts legislation and looks forward to further discussion and refinement of this measure. Thank you for the opportunity to offer comments on Bill 26 (2022), Proposed CD2. We are available for questions should you have any.

Sincerely,



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Jan K. Yamane  
Executive Director and Legal Counsel