



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Judiciary
Bill Number: H.B. 1381
Hearing Date/Time: February 1, 2019, 2:00 p.m.
Re: Testimony of the Hawai'i State Ethics Commission **SUPPORTING**
THE INTENT of H.B. 1381, Relating to Lobbyists

Dear Chair Lee and Committee Members:

The Hawai'i State Ethics Commission ("Commission") supports the intent H.B. 1381, which amends the post-employment law to prohibit lobbying by former legislators and some executive-branch employees for two years.

Currently, the post-employment law prohibits the following activities, among other things:¹

Legislators – for one year, prohibited from:

- (1) representing any entity, for pay, before either house of the Legislature; and
- (2) representing any entity, for pay, before any state agency, on any matter the legislator worked on while a legislator.

Executive-branch employees subject to Senate confirmation – for one year, prohibited from:

- (1) representing any entity, for pay, before the person's former agency or subdivision thereof;² and
- (2) representing any entity, for pay, before any state agency, on any matter the executive-branch employee worked on while employed by the State.

¹ The post-employment law is more extensive than what is described below; any individual concerned about its application is welcome to contact the Commission for confidential and timely advice. Additionally, the Commission has prepared a "Quick Guide to the Ethics Code" on Post-Employment issues, and it is attached to this testimony.

² Generally, an employee subject to Senate confirmation (such as a department head) is prohibited from representing someone for pay before the entirety of the former employee's agency, whereas a lower-level employee in a large agency is only prohibited from representing someone for pay before that particular subdivision.

In all cases, “represent” means “to engage in direct communication” pursuant to HRS § 84-18(f); in other words, a former legislator or employee may engage in “behind-the-scenes” work (such as drafting testimony for someone else’s signature).

H.B. 1381 would place substantial additional restrictions on former legislators and executive-branch employees subject to Senate confirmation: this measure would extend the one-year periods described above to two years; this measure would also prohibit all lobbying activities – even behind-the-scenes activities – for a two-year period. Former legislators and employees would, however, be permitted to “lobby” on a volunteer basis (for example, on behalf of a non-profit organization) at any time.

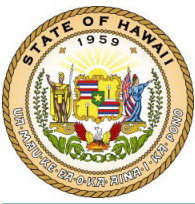
In the past, the Legislature has expressed some concern regarding the effect of ethics restrictions on the State’s ability to recruit and maintain talented public servants, particularly for volunteer members of boards and commissions. The post-employment restrictions in this measure would apply to volunteer members of the Board of Education, Board of Regents, and Real Estate Commission, for example, and could discourage some individuals from being willing to serve.

The Commission supports strong post-employment restrictions to maintain and improve the public’s trust in state government. On balance, the Commission supports the proposed language in H.B. 1381; however, the Commission respectfully suggests that the Committee consider the possible adverse effects on recruitment in its deliberations.

Thank you for your continuing support of the Commission’s work and for considering the Commission’s testimony on H.B. 1381.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



HAWAII STATE ETHICS COMMISSION

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THE STATE ETHICS CODE – A QUICK GUIDE ON POST-EMPLOYMENT LAWS

Are there any restrictions on me once I leave my job with the State of Hawaii? What if I'm an unpaid Board or Commission member?

Yes. The post-employment laws apply to anyone who has worked for the State for at least six months, as an employee, legislator, or unpaid Board/Commission member.

What are the post-employment rules?

There are three restrictions:

1. A one-year restriction on certain kinds of private work;
2. A two-year restriction on contracts with the State; and
3. A permanent restriction on revealing confidential information.

Here's how each one works:

1. **One-year "cooling off" period.** For one year after you leave state employment, you may not:
 - a. represent someone else, for pay, before your former agency; or
 - b. represent someone else, for pay, on any matters you worked on while at your former agency.

In other words, for one year, you may not communicate directly with your former agency on behalf of a private employer. Also, for one year, you can't represent your company before any state agency on matters you worked on while a state employee.

2. **Two-year restriction on certain kinds of contracts.** The Ethics Code prohibits a state agency from contracting with a private company if:
 - a. the private company is assisted by a former employee of the state agency;
 - b. the former employee worked on the same matter while s/he worked for the State; and
 - c. the former employee left state employment less than 2 years ago.

Here's how this works: let's say you work on a project for the State, and you then leave your state job to work for a private company. Your new employer wants to bid on a contract with the State involving the same project. If you assist the company with its bid, and you left your state job less than 2 years ago, the State cannot enter into the contract with your company. In other words, by assisting the company with its bid, you could "taint" the potential contract, costing your new private employer the opportunity to work on that contract. To see how this works in practice, see <http://bit.ly/Hlethics-2017-05>.

3. **Permanent restriction on using or revealing confidential information.** You may not disclose confidential information you learned while employed by the State or use it for anyone's benefit.

I'm retiring, but my agency wants to contract with me to finish up some work. Can we do that?

Yes, within limits. The State can contract directly with a former employee "to act on a matter on behalf of the State"; therefore, the State may enter into a limited contract with a former employee without any "cooling off" period. If you are thinking about doing this, please contact the Ethics Commission for advice.

Can I get help from the Ethics Commission before I leave my job with the State? What about after I leave?

Yes and yes! If you are thinking of leaving your state job, contact us for confidential guidance about what restrictions might apply to you in a new job. If you're already in your new job, you can still call us – it's free, it's fast, and it's confidential.

Is there anything else required by the Ethics Code before I leave State employment?

If you file a financial disclosure form each year, you may need to file an "exit" form. Similarly, you may need to file a final gifts disclosure statement if you received any reportable gifts in the last year. Contact the Ethics Commission for more information.

Chair Lee
Vice Chair San Buenaventura
House Committee on Judiciary

Friday, February 1, 2019
2:00 PM

TESTIMONY IN STRONG SUPPORT OF HB1381 RELATING TO LOBBYISTS

Aloha Chair Lee, Vice Chair San Buenaventura, Members of the House Committee on Judiciary,

My name is Jun Shin. I am a freshman at the University of Hawai‘i at Mānoa, testifying as an individual in **strong support of HB1381 relating to lobbyists.**

Supporting good government initiatives is an important personal priority of mine. When advocating for economic, social, and environmental justice, having an accountable and responsive government goes a long way in having much needed discussions and proper action on issues like climate change, affordable housing, and economic inequality. What this measure does, involves continuing the work on addressing an important area of concern in government, and that is the “revolving door”. The “revolving door” of politics has been defined as, “the means by which government officials leave office to become lobbyists, and by which lobbyists become government officials” [1]. This measure seeks to do this by making sure that former legislators, as well as executive branch employees that were Senate confirmed would not be able to for the course of 24 months participate in representation of interests that they themselves had been involved in in their jobs as public servants, or on official action taken by their former colleagues. This includes a restriction on lobbying during those 24 months.

By putting up a firmer wall in what is described as a “cooling-off process”, this works to further insure the limitation of influence a former government employee has on decisions that are being made, decisions I might add many times involve life or death, whether that employee is a former legislator or cabinet member and in turn, deals with conflicts of interests [2]. These kinds of reforms need to happen, as really, nobody should be getting wealthy from doing the good work of the people in public service. When critical decisions are made and there needs to be tough calls, what’s best for the general public needs to be the priority, and win out in the end over personal interests and consideration of future employment. **I strongly support HB1381 and request for it to be passed through your committee.**

Thank you for the opportunity to testify,

Jun Shin
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[1] <https://theconversation.com/the-revolving-door-why-politicians-become-lobbyists-and-lobbyists-become-politicians-64237>

[2]

https://www.transparency.org/files/content/corruptionqas/Cooling_off_periods_regulating_the_revolving_door_2015.pdf

HB-1381

Submitted on: 1/30/2019 9:55:09 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Brown III	Individual	Support	No

Comments:

HB 1381 Late

HB-1381

Submitted on: 1/31/2019 5:48:12 PM

Testimony for JUD on 2/1/2019 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Kate Paine	Individual	Oppose	No

Comments:

Simply clutter. Let it die.