



HAWAII STATE ETHICS COMMISSION

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

Committee: Committee on Judiciary
Bill Number: S.B. 144
Hearing Date/Time: February 7, 2019, 9:00 p.m.
Re: Testimony of the Hawai'i State Ethics Commission in **SUPPORT** of
S.B. 144, Relating to Lobbyists

Dear Chair Rhoads and Committee Members:

The Hawai'i State Ethics Commission ("Commission") supports S.B. 144, which makes two modest changes to the Lobbyists Law's enforcement provision, Hawai'i Revised Statutes ("HRS") § 97-7. As explained below, the Commission also respectfully requests an additional amendment, to HRS § 97-6(c), to harmonize the Lobbyists Law with the Uniform Information Practices Act, HRS chapter 92F.

First, this bill removes the outdated requirement that the Ethics Commission prove an individual *willfully* failed to file a lobbying report. This existing statutory language – requiring the Commission to prove that an individual *intended* not to file a lobbying report – is held over from a time when violations of the Lobbyists Law were criminal offenses. The penalties have been civil, rather than criminal, for quite some time, but the criminal law state-of-mind (or *mens rea*) requirement remains. As such, the Commission respectfully asks that the references to the word "wilfully" be removed.

Second, this bill amends the Lobbyists Law so that its enforcement language is similar to the enforcement language of the Ethics Code (which was amended by the Legislature in 2017)¹ to ensure consistency and uniformity in Commission activity.

¹ In 2017, the Legislature amended HRS § 84-39 (entitled "Administrative Fines") – the enforcement section of the State Ethics Code, HRS chapter 84 – to read in relevant part:

- (b) No fine shall be assessed under this section unless:
 - (1) The state ethics commission convenes a hearing in accordance with section 84-31(c) and chapter 91 and a decision has been rendered by the commission; or
 - (2) The state ethics commission and respondent agree to resolve any charge of an alleged violation prior to completion of the contested case process and the resolution includes payment of an administrative fine or restitution, or both.

Additional requested amendment

The Commission also respectfully requests that an additional section be inserted (as Section 3) to S.B. 144, to delete the penultimate sentence of HRS § 97-6(c), as follows:

SECTION 3. Section 97-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator in the same manner as provided in subsection (b). Upon the commission's issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity to:

- (1) Be heard;
- (2) Subpoena witnesses and require the production of any books or papers relative to the proceedings;
- (3) Be represented by counsel; and
- (4) Have the right of cross-examination.

All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission's findings shall be based on competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. [~~Copies of transcripts of record shall be available only to the~~

See Act 50 of 2017, available at https://www.capitol.hawaii.gov/session2017/bills/GM1150_PDF.

In its legislative package, the Commission had proposed an amendment to HRS § 97-7(b) to make the enforcement provisions of the Ethics Code (HRS § 84-39) and the Lobbyists Law (HRS § 97-7) virtually identical. The proposed language for HRS § 97-7(b) was changed prior to introduction, but the Commission does not object to those changes (and supports the current proposed language).

~~complainant and the alleged violator at their own expense.]~~ All fees collected under this chapter shall be deposited into the general fund.

The stricken language above conflicts with the policies underlying the Uniform Information Practices Act, insofar as contested case hearings before the Commission are public (and there does not seem to be any public policy favoring a restriction on access to transcripts). As such, the Commission requests that S.B. 144 be amended to provide for this proposed change to HRS § 97-6(c).²

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony on S.B. 144.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel

² There is a separate issue as to the cost for respondents and the public to access these transcripts; while the Legislature is obviously welcome to address that issue via statute as well, the Commission believes it can resolve that question via administrative rule.