

Commission on Improving Standards of Conduct

Ethics Discussion

Public Meeting, June 1st, 2022

Topics of Discussion

- Ethics Commissions:
 - Independent Budget Commission
 - Streamlining
- Lobbyists:
 - Gift Regulation
 - Training
 - Disclosures
- Legislators:
 - Conflicts of Interest
 - Disclosures
- Anti-Nepotism
- Transparency:
 - Legislative Allowance Expenditures
- Legislator Civility/Aloha Rule

Ethics Commissions

State & County Ethics Commissions

Adequacy of Funding for Watchdog Agencies

- Hawai'i State Ethics Commission has 4-6 attorneys and 1 investigator position to oversee approximately 60,000 employees;
- Several county ethic boards/commissions are limited to an assigned deputy corporation counsel, with no funding for full-time/independent staff.
- Genuine question as to whether the various ethics agencies are adequately funded and able to fulfill constitutional mandate.

Independent Commission on Budget

Adequacy of Funding for Watchdog Agencies

- One possible outcome is to recommend an independent commission to analyze the workload and recommend specific budget allocations, similar to the Commission on Salaries. At the very least, the Selection Commission should recommend full-time and independent staff assigned to each ethics agency.
- Help elevate the importance of appropriately resourcing ethics training, advice, and enforcement at both the State and County level.

Streamlining:

Make It Easier for Lobbyists and Others to Follow the Law

- Attempt to avoid requiring multiple filings with different agencies.
- Increase flexibility for agencies to establish reciprocal processes to allow one-stop filing, and a consistent database between different agencies.
- Statutory flexibility allows for opportunities for improvement.

Lobbyists

Lobbyists Gift Regulation

Legal Precedent

- United States v. Harris, 347 U.S. 612 (1954) (upholding the constitutionality of federal lobbyist disclosures);
- Schickel v. Dilger, 925 F.3d 858, 864 (6th Cir. 2019) (upholding a lobbyist gift ban); and
- Preston v. Leake, 660 F.3d 726, 729-30 (4th Cir. 2011) (holding that a lobbyist contribution ban, which defined contributions to include gifts, did not violate the First Amendment).

Lobbyists Gift Regulation

Potential Regulation Options

- Ban lobbyists from offering prohibited gifts, with some potential exceptions. See, e.g., San Francisco; Alabama; Colorado; Connecticut; Iowa; and Minnesota.
- Focus on mirroring existing exceptions for legislators and state employees.

Lobbyist Training

Mandatory Training Common Practice in Other Jurisdictions

- At least 21 jurisdictions require registered lobbyists to take training on a periodic basis:
 - 15 states (AL; AK; CA; IL; LA; MA; ME; MD; NV; NY; OR; TN; UT; WA; and WV); and
 - 6 cities (San Francisco; Los Angeles; Miami-Dade County; Cook County; Chicago; and Philadelphia).

Lobbyists Training

Proposed Requirements

WHO:

All registered lobbyists would be required to complete a mandatory training program.

WHEN:

- (1) Prior to filing initial lobbyist registration;
- (2) Repeat training before renew registration for next legislative cycle (every 2 years)

TYPE OF TRAINING:

- (1) Live, online webinars;
- (2) Self-directed, online training module.

Lobbyist Disclosures

Proposed Requirements

- Require lobbyists to report administrative rules or bill numbers lobbied on:
 - Replace Haw. Rev. Stat. § 97-3(c)(5) with “The identity, by bill, resolution number, or similar identifier, of legislative or administrative action that was commented on, supported, or opposed by the person filing the statement during the statement period.”
 - *Prior language:* “[The statement shall contain the following information: . . .(5) The subject area of the legislative and administrative action that was supported or opposed by the person filing the statement during the statement period.”

Other Lobbyist Prohibitions

Discussion Concepts:

- Prohibit lobbyists from fundraising for candidates. If you are a lobbyist, you cannot fundraise for a candidate by holding fundraisers or bundling contributions, and if you fundraise, you cannot lobby. Lobbyists may still donate subject to the contribution limits.
- Prohibit lobbyists who are advising the campaign of any sitting elected official, running for re-election or higher office, from representing any entities under the jurisdiction of the committees that the elected officials are sitting on.

Legislators

Legislators

Conflicts of Interest (Amending House and Senate Rules)

- Legislators are not subject to the conflict of interest portion of Haw. Rev. Stat. Chapter 84.
- Propose amending House & Senate rules to:
 - Make recusal a default requirement, rather than simply disclosure of the potential conflict;
 - Define conflict as personal, familial, business, property, or financial interest; and
 - Specify that conflict of interest exemptions must be general and apply to a broad class.

Legislator Financial Disclosures

Proposed Requirements:

- Require Legislators to disclose business connections with lobbyists or lobbying organizations.
- Propose new subsection Haw. Rev. Stat. § 84-17(f)(8) requiring every member of the Legislature to disclose:
 - The name of any lobbyist or organization that is required to file lobbying contributions and expenditures reports that is:
 - A partner of the filer;
 - An employee of the filer;
 - An officer or director of the filer's employer; or
 - A client of the filer, the filer's partner, or the filer's employer where the client provided at least \$10,000 of income during the preceding calendar year.

Legislator Financial Prohibition

Discussion Topic (Proposal 1)

- Prohibit legislators from working as lobbyists or for lobbying entities

Legislators Financial Prohibition

Discussion Topic (Proposal 2)

- Designate Legislators as full-time employees;
- Prohibit secondary employment or similar financial relationships; and
- Consider directing the Commission on Salaries to consider ethical concerns as a factor in determining salaries.

Legislators Contact Disclosure

Discussion Topic

- Require every elected official to report a monthly lobbyist meeting disclosure contact log.

Nepotism

Prohibiting Nepotism

Bright-Line Rule about Promotion/Hiring Decisions

- Discrete proposal limited to family members;
- Avoids complicated determinations under the Fair Treatment law;
- Ensures greater integrity in the procurement process; and
- 27 states have enacted nepotism laws in some form.

Proposed Legislative Concept

- Prohibit the employment, hiring, or promotion of a family member or member of a household;
- Prohibit the hiring or supervision of a business owned by a relative; and
- Allow the continuation of a job assignment already existing at the date of passage.

Transparency

Legislative Allowance

Post Expenditures Online to Increase Transparency

- Legislators receive an annual legislative allowance to cover expenses reasonably related to their legislative duties
- Current legislative allowance for each member is \$13,804 (set to increase with salary adjustments in 2023).
- To promote transparency and public confidence that legislative allowance funds are spent appropriately, amend Haw. Rev. Stat. § 24-1 to require each house of the Legislature to post on its website for public inspection legislative allowance expenditures on a rolling basis for each member.

Legislative Allowance

Prohibit Duplicate Payments by Allowance and Campaign Funds

- Campaign Spending Law permits legislators to use campaign funds for “ordinary and necessary expenses” connected to their duties as an office holder.
- Examples of “ordinary and necessary expenses” for which campaign funds may be used: legislative newsletters, conferences, and state travel.
- Legislators also may use legislative allowance funds for some of the same expenses.
- To prevent duplicate payments, amend HRS § 24-1 to prohibit legislators from claiming legislative allowance funds as payment or reimbursement for any expenses paid with campaign funds.

Aloha/Civility Rule

Aloha/Civility Rule

Examples of Existing Allegations

- Three types of complaints have come in:
 - Where a lobbyist or member of the public has been threatened by a Legislator, e.g., “we’ll cut the funding to your program unless you”
 - Where a state employee has been threatened by a Legislator, e.g., “take this official action or we’ll cut positions in your budget.”
 - Rudeness that goes beyond the pale, such as direct swearing, cursing, etc., directed to a constituent.

Aloha/Civility Rule

Existing Mechanisms May Not Work

- Lobbyists and state employees may not want to come forward under existing House & Senate rules, recognizing the potential for retaliation and understandable concern about a lack of objective review.
- Haw. Rev. Stat. Chapter 84 may address certain situations, but there is some difficulty in separating legitimate exercise of legislative discretion and abuse of power. Further, the appropriate remedy may ultimately require referral back to the Legislature.