



HAWAII STATE ETHICS COMMISSION

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

February 19, 2013

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair
Honorable Members
House Committee on Finance
Hawaii State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on HB No. 208 HD 1, Relating to Lobbyists**

Hearing: Wednesday, February 20, 2013, 3:30 p.m.
State Capitol, Conference Room 308

Testimony From: Hawaii State Ethics Commission

Thank you for considering the Hawaii State Ethics Commission's testimony
in support of HB No. 208 HD 1.

HB No. 208, in its original form, amended Hawaii Revised Statutes ("HRS") chapter 97, the State's Lobbyists Law. Specifically, this bill amended the Penalties section of the Lobbyist Law, HRS sections 97-7(a)(1) and (a)(2), by removing the word "wilfully."

As the law currently reads, persons who either: (1) fail to file a required lobbying statement or report; or (2) file a statement or report containing false information or a material omission of any fact can be assessed an administrative fine **only where the person acted "wilfully."**

The requirement that a person's conduct be "wilful" is a relic of an older version of the Lobbyists Law. As originally enacted, the Lobbyists Law imposed criminal sanctions for violations, i.e., a violation of chapter 97 was a criminal misdemeanor. As with all criminal sanctions, the statute required proof that the act for which the person was charged was committed with a certain state of mind or mens rea. In this case, the term "wilful" refers to the requisite state of mind that was required to be proven before the criminal penalty could be imposed for violation of the Lobbyist Law.

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In 2001, the Lobbyists Law was decriminalized; however, in what appears to have been a simple oversight, the word “wilfully” was not removed from the law.

In its current form, a person is subject only to an administrative fine for violation of the Lobbyists Law. This being the case, the State Ethics Commission believes that it is unnecessary and inconsistent with the statute’s purpose to limit the penalty provisions, HRS sections 97-7(a)(1) and (a)(2), to only those situations where a person acts “wilfully.”

To illustrate the absurdity of the state of mind requirement: a person could spend thousands of dollars on lobbying activities, all of which must be reported, not file any expenditure or other lobbyist report, and avoid an administrative penalty simply because the person professed ignorance of his legal reporting requirements. And, that same person could continue not reporting the thousands of dollars spent on lobbying activities each year as long as he maintained his ignorance of the Lobbyists Law. That situation is inconsistent with the statutory purpose and renders the State Ethics Commission virtually toothless to enforce the reporting requirements of the Lobbyists Law.

HB No. 208 HD 1 removed the word “wilfully” in HRS sections 97-7(a)(1) and (a)(2). However, HB No. 208 HD 1 replaced “wilfully” with “negligently” in HRS 97-7(a)(2). Thus, in its current form, the bill allows penalties against a person who “negligently files a statement or report containing false information or a material omission of any fact.” Although this language is an improvement on the current law, the State Ethics Commission continues to believe that it is not appropriate to attach a state of mind requirement to this law. This is a civil violation punishable only by a fine. Other laws administered by the State Ethics Commission, such as the State Ethics Code, do not contain this state of mind requirement. To require proof of a state of mind before the law can be enforced will hamper the Commission in its enforcement efforts.

Although generally supportive of HB No. 208 HD 1, the State Ethics Commission strongly urges the Committee to amend the statute to be consistent with its current administrative enforcement structure by removing the word “negligently” from HRS sections 97-7(a)(2).

The State Ethics Commission appreciates the Committee’s consideration of its testimony in support of HB No. 208 HD 1, Relating to Lobbyists.

HB208

Submitted on: 2/18/2013

Testimony for FIN on Feb 20, 2013 15:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Wynnie Hee	League of Women Voters-Hawaii	Support	No

Comments: The League of Women Voters, both nationally and locally, wholeheartedly supports campaign finance reform, including HB208 regulating lobbyists.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB208

Submitted on: 2/17/2013

Testimony for FIN on Feb 20, 2013 15:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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