

JAN 20 2017

---

---

# A BILL FOR AN ACT

RELATING TO ETHICS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. (a) The legislature finds that maintaining the  
2 public's trust in government officials is vital to the strength  
3 of our democracy. As article XIV of the state constitution  
4 proclaims, "The people of Hawaii believe that public officers  
5 and employees must exhibit the highest standards of ethical  
6 conduct and that these standards come from the personal  
7 integrity of each individual in government." While some of our  
8 sister states have been rocked by corruption scandals in recent  
9 years--caused by poor ethics laws, inadequate enforcement of  
10 those laws, or both--Hawaii takes pride in its strong ethics  
11 laws, and the commitment of more than 50,000 state employees who  
12 demonstrate the ideals of public service every day.

13           (b) The legislature recognizes the importance of ethics  
14 education and advice in preventing ethics violations. This Act  
15 will clarify existing statutes to enable the ethics commission  
16 and its staff to better educate and advise state employees,



# S.B. NO. 458

1 legislators, lobbyists, and the public. This Act is based on  
2 the following findings:

3 (1) A recent statutory change designed to clarify the  
4 application of the ethics code to task force members  
5 had the unintended effect of changing the law with  
6 respect to legislators as well. This Act restores  
7 earlier language that protects legislators when  
8 carrying out a "legislative function";

9 (2) Hawaii's lobbyist law, chapter 97, Hawaii Revised  
10 Statutes, is both under- and over-inclusive. Amending  
11 the definitions of "lobbying" and "lobbyist" will  
12 provide additional transparency to the public while  
13 relieving some individuals (specifically, certain  
14 representatives of charitable, nonprofit  
15 organizations) from having to register as lobbyists.  
16 Similarly, several provisions of the lobbyists law can  
17 be streamlined to avoid unnecessary paperwork and to  
18 remove obsolete provisions that pertain to criminal  
19 penalties that no longer exist;



1           (3) Various fines for violations have not been increased  
2           since they were first authorized. The following are  
3           examples:

4           (A) The current maximum penalty that the ethics  
5           commission can impose for a violation of the  
6           ethics code is \$500 per violation. This penalty  
7           amount has not been adjusted since being set by  
8           the legislature in 1992. Adjusted for inflation,  
9           an equivalent penalty would be approximately \$857  
10          in 2016 dollars. The legislature believes that  
11          the current statutory penalty should be increased  
12          to \$1,000;

13          (B) The maximum penalty for violating chapter 97,  
14          Hawaii Revised Statutes, regulating lobbyists has  
15          remained at \$500 since 1995. This Act increases  
16          the fine to \$1,000 to account for inflation;

17          (C) The fine for legislators, employees, and board or  
18          commission members for failing to file a  
19          financial disclosure report on time was set in  
20          1995 at \$50. An equivalent fine would be  
21          approximately \$80 in 2016 dollars. This Act



1 increases the fine to \$75 to account for  
2 inflation; and

3 (D) The fine for candidates for state elective office  
4 for failing to timely file a financial disclosure  
5 report was set in 1995 at \$25. An equivalent  
6 fine would be approximately \$40 in 2016 dollars.  
7 This Act increases the fine to \$50 to account for  
8 inflation; and

9 (4) The expense of sending letters by registered mail,  
10 return receipt requested, to those who fail to file  
11 their financial disclosures on time is no longer  
12 justified. In 2016, the ethics commission sent nearly  
13 one hundred letters, each letter costing \$14.87 in  
14 postage. The commissions spent over \$1,000 in postage  
15 for a communication that could have been sent to  
16 users' state e-mail accounts or by first-class mail.

17 (c) The purpose of this Act is to provide additional  
18 clarity and consistency in the administration and enforcement of  
19 Hawaii's ethics laws, and to promote integrity in state  
20 government, by:

# S.B. NO. 458

- 1           (1) Clarifying the procedures used by the state ethics  
2           commission and its staff for providing advice on  
3           ethics issues; educating employees, legislators,  
4           lobbyists, and the general public; collecting and  
5           publishing information from public employees,  
6           candidates, and lobbyists; and resolving  
7           investigations;
- 8           (2) Restoring previous statutory language protecting  
9           legislators when carrying out a "legislative  
10          function";
- 11          (3) Clarifying the fair treatment and conflict of interest  
12          law with respect to task force members and legislators  
13          by restoring previous statutory language regarding a  
14          legislator's "legislative function" and requiring the  
15          ethics commission to adopt rules regarding disclosures  
16          for task force members;
- 17          (4) Increasing the maximum penalties that the commission  
18          may impose and increasing the threshold for filing  
19          lobbying expenditure reports and registering as a  
20          lobbyist to account for inflation;



1 (5) Allowing the commission to notify individuals who fail  
2 to file their financial disclosures by the statutory  
3 deadline by e-mail or first-class mail, or both,  
4 rather than by registered mail, return receipt  
5 requested;

6 (6) Removing the mens rea requirement to prove a violation  
7 of chapter 97, Hawaii Revised Statutes, recognizing  
8 that the failure to file a report required by chapter  
9 97, Hawaii Revised Statutes, is no longer a criminal  
10 offense;

11 (7) Clarifying the definition of "lobbying" to promote  
12 transparency in the legislative process;

13 (8) Granting the employer of a lobbyist the ability to  
14 terminate a registered lobbyist, in the event that a  
15 lobbyist does not terminate oneself; and

16 (9) Making technical, nonsubstantive amendments for the  
17 purposes of clarity and consistency.

18 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is  
19 amended as follows:

20 1. By amending subsection (a) to read:



1           "(a) No department of the State other than the attorney  
2 general may employ or retain any attorney, by contract or  
3 otherwise, for the purpose of representing the State or the  
4 department in any litigation, rendering legal counsel to the  
5 department, or drafting legal documents for the department;  
6 provided that the foregoing provision shall not apply to the  
7 employment or retention of attorneys:

8           (1) By the public utilities commission, the labor and  
9 industrial relations appeals board, and the Hawaii  
10 labor relations board;

11           (2) By any court or judicial or legislative office of the  
12 State; provided that if the attorney general is  
13 requested to provide representation to a court or  
14 judicial office by the chief justice or the chief  
15 justice's designee, or to a legislative office by the  
16 speaker of the house of representatives and the  
17 president of the senate jointly, and the attorney  
18 general declines to provide [~~such~~] the representation  
19 on the grounds of conflict of interest, the attorney  
20 general shall retain an attorney for the court,



- 1           judicial, or legislative office, subject to approval  
2           by the court, judicial, or legislative office;
- 3           (3) By the legislative reference bureau;
- 4           (4) By any compilation commission that may be constituted  
5           from time to time;
- 6           (5) By the real estate commission for any action involving  
7           the real estate recovery fund;
- 8           (6) By the contractors license board for any action  
9           involving the contractors recovery fund;
- 10          (7) By the office of Hawaiian affairs;
- 11          (8) By the department of commerce and consumer affairs for  
12          the enforcement of violations of chapters 480 and  
13          485A;
- 14          (9) As grand jury counsel;
- 15          (10) By the Hawaii health systems corporation, or its  
16          regional system boards, or any of their facilities;
- 17          (11) By the auditor;
- 18          (12) By the office of ombudsman;
- 19          (13) By the insurance division;
- 20          (14) By the University of Hawaii;
- 21          (15) By the Kahoolawe island reserve commission;



- 1 (16) By the division of consumer advocacy;
- 2 (17) By the office of elections;
- 3 (18) By the campaign spending commission;
- 4 (19) By the Hawaii tourism authority, as provided in
- 5 section 201B-2.5;
- 6 (20) By the division of financial institutions for any
- 7 action involving the mortgage loan recovery fund;
- 8 (21) By the office of information practices; [~~or~~]
- 9 (22) By the state ethics commission; or
- 10 (23) By a department, if the attorney general, for reasons
- 11 deemed by the attorney general to be good and
- 12 sufficient, declines to employ or retain an attorney
- 13 for a department; provided that the governor waives
- 14 the provision of this section."

15 2. By amending subsection (c) to read:

16 "(c) Every attorney employed by any department on a full-

17 time basis, except an attorney employed by the public utilities

18 commission, the labor and industrial relations appeals board,

19 the Hawaii labor relations board, the office of Hawaiian

20 affairs, the Hawaii health systems corporation or its regional

21 system boards, the department of commerce and consumer affairs



1 in prosecution of consumer complaints, insurance division, the  
2 division of consumer advocacy, the University of Hawaii, the  
3 Hawaii tourism authority as provided in section 201B-2.5, the  
4 office of information practices, the state ethics commission, or  
5 as grand jury counsel, shall be a deputy attorney general."

6 SECTION 3. Section 84-13, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§84-13 Fair treatment.** (a) No legislator or employee  
9 shall use or attempt to use the legislator's or employee's  
10 official position to secure or grant unwarranted privileges,  
11 exemptions, advantages, contracts, or treatment, for oneself or  
12 others; including but not limited to the following:

13 (1) Seeking other employment or contract for services for  
14 oneself by the use or attempted use of the  
15 legislator's or employee's office or position~~[-]~~;

16 (2) Accepting, receiving, or soliciting compensation or  
17 other consideration for the performance of the  
18 legislator's or employee's official duties or  
19 responsibilities except as provided by law~~[-]~~;

20 (3) Using state time, equipment or other facilities for  
21 private business purposes~~[-]~~; or



1           (4) Soliciting, selling, or otherwise engaging in a  
2           substantial financial transaction with a subordinate  
3           or a person or business whom the legislator or  
4           employee inspects or supervises in the legislator's or  
5           employee's official capacity.

6           (b) Nothing [herein] in this section shall be construed to  
7           prohibit a legislator from introducing bills and resolutions,  
8           ~~[or to prevent a person from serving on a task force or]~~ from  
9           serving on ~~[a task force committee,]~~ committees, or from making  
10          statements or taking ~~[official]~~ action ~~[as a legislator, or a~~  
11          ~~task force member or a task force member's designee or~~  
12          ~~representative.]~~ in the exercise of the legislator's legislative  
13          functions. Every legislator~~[, or task force member or designee~~  
14          ~~or representative of a task force member]~~ shall ~~[file a full and~~  
15          ~~complete public disclosure of]~~ publicly disclose the nature and  
16          extent of the interest or transaction ~~[which]~~ that the  
17          legislator ~~[or task force member or task force member's designee~~  
18          ~~or representative]~~ believes may be affected by ~~[the legislator's~~  
19          ~~or task force member's official action.]~~ legislative action.  
20          The state ethics commission shall establish rules to provide for  
21          this public disclosure.



1        (c) Nothing in this section shall be construed to prevent  
2 a person from serving on a task force or a task force committee,  
3 or from making statements or taking official action as a task  
4 force member or a task force member's designee or  
5 representative. Every task force member or task force member's  
6 designee or representative shall publicly disclose the nature  
7 and extent of any interest or transaction which the task force  
8 member or task force member's designee or representative  
9 believes may be affected by the task force member's official  
10 action. The state ethics commission shall establish rules to  
11 provide for this public disclosure."

12        SECTION 4. Section 84-14, Hawaii Revised Statutes, is  
13 amended by amending subsection (f) to read as follows:

14        "~~(f) [Subsections (a), (b), and (d) shall not apply to a~~  
15 ~~task force member or the designee or representative of that task~~  
16 ~~force member whose service as a task force member would not~~  
17 ~~otherwise cause that member, designee, or representative to be~~  
18 ~~considered an employee, if the task force member or the designee~~  
19 ~~or representative of that task force member complies with the~~  
20 ~~disclosure requirements under section 84-17.] Nothing in this~~  
21 section shall be construed to prevent a person from serving on a



1 task force or a task force committee, or from making statements  
2 or taking official action as a task force member or a task force  
3 member's designee or representative. Every task force member or  
4 task force member's designee or representative shall publicly  
5 disclose the nature and extent of any interest or transaction  
6 that the task force member or task force member's designee or  
7 representative believes may be affected by the task force  
8 member's official action. The state ethics commission shall  
9 establish rules to provide for this public disclosure."

10 SECTION 5. Section 84-17, Hawaii Revised Statutes, is  
11 amended by amending subsections (i) and (j) to read as follows:

12 "(i) Failure of a legislator, a delegate to the  
13 constitutional convention, or employee to file a disclosure of  
14 financial interests as required by this section shall be a  
15 violation of this chapter. Any legislator, delegate to a  
16 constitutional convention, or employee who fails to file a  
17 disclosure of financial interests when due shall be assessed an  
18 administrative fine of [~~\$50-~~] \$75. The ethics commission, upon  
19 the expiration of the time allowed for filing, shall release to  
20 the public a list of all persons who have failed to file  
21 financial disclosure statements. The [~~state~~] ethics commission



1 shall notify a person, by [~~registered mail, return receipt~~  
2 ~~requested~~] electronic mail to the person's state e-mail address  
3 or by first-class mail, of the failure to file, and the  
4 disclosure of financial interests shall be submitted to the  
5 commission not later than 4:30 p.m. on the tenth day after  
6 notification of the failure to file has been mailed to the  
7 person. If a disclosure of financial interests has not been  
8 filed within ten days of the due date, an additional  
9 administrative fine of \$10 for each day a disclosure remains  
10 unfiled shall be added to the administrative fine. All  
11 administrative fines collected under this section shall be  
12 deposited in the State's general fund. Any administrative fine  
13 for late filing shall be in addition to any other action the  
14 commission may take under this chapter for violations of the  
15 state ethics code. The commission may waive any administrative  
16 fines assessed under this subsection for good cause shown.

17 (j) The chief election officer, upon receipt of the  
18 nomination paper of any person seeking a state elective office,  
19 including the office of delegate to the constitutional  
20 convention, shall notify the ethics commission of the name of  
21 the candidate for state office and the date on which the person



1 filed the nomination paper. The ethics commission, upon the  
2 expiration of the time allowed for filing, shall release to the  
3 public a list of all candidates who have failed to file  
4 financial disclosure statements and shall immediately assess a  
5 late filing penalty fee against those candidates of [~~\$25~~] \$50,  
6 which shall be collected by the [~~state~~] ethics commission and  
7 deposited into the general fund. The ethics commission may  
8 investigate, initiate, or receive charges as to whether a  
9 candidate's financial disclosure statement discloses the  
10 financial interests required to be disclosed. After proceeding  
11 in conformance with section 84-31, the ethics commission may  
12 issue a decision as to whether a candidate has complied with  
13 section 84-17(f) and this decision shall be a matter of public  
14 record."

15 SECTION 6. Section 84-31, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) The ethics commission shall have the following powers  
18 and duties:

19 (1) It shall prescribe forms for the disclosures required  
20 by article XIV of the Hawaii constitution and section  
21 84-17 and the gifts disclosure statements required by



1 section 84-11.5 and shall establish orderly procedures  
2 for implementing the requirements of those provisions;  
3 (2) It shall render advisory opinions upon the request of  
4 any legislator, employee, or delegate to the  
5 constitutional convention, or person formerly holding  
6 [such] the office or employment as to whether the  
7 facts and circumstances of a particular case  
8 constitute or will constitute a violation of the code  
9 of ethics, section 11-8, or section 11-316. If no  
10 advisory opinion is rendered within [~~thirty~~] ninety  
11 days after the request is filed with the commission,  
12 it shall be deemed that an advisory opinion was  
13 rendered and that the facts and circumstances of that  
14 particular case do not constitute a violation of the  
15 code of ethics. The opinion rendered or deemed  
16 rendered, until amended or revoked, shall be binding  
17 on the commission in any subsequent charges concerning  
18 the legislator, employee, or delegate to the  
19 constitutional convention, or person formerly holding  
20 [such] the office or employment, who sought the  
21 opinion and acted in reliance on it in good faith,



1 unless material facts were omitted or misstated by  
2 [~~such~~] the persons in the request for an advisory  
3 opinion;

4 (3) It shall initiate, receive, and consider charges  
5 concerning alleged violation of this chapter, initiate  
6 or make investigation, and hold hearings[+]. The  
7 commission and the subject of any investigation or  
8 charge may agree to resolve any alleged violation of  
9 this chapter at any time. The resolution shall be in  
10 writing and shall be signed by three or more members  
11 of the commission and by the subject of any  
12 investigation or charge. The resolution shall have  
13 the force and effect of a final decision and order  
14 issued after a contested case hearing and shall not be  
15 appealable;

16 (4) It may subpoena witnesses, administer oaths, and take  
17 testimony relating to matters before the commission  
18 and require the production for examination of any  
19 books or papers relative to any matter under  
20 investigation or in question before the commission.  
21 Before the commission shall exercise any of the powers



1 authorized in this section with respect to any  
2 investigation or hearings, it shall by formal  
3 resolution[7] supported by a vote of three or more  
4 members of the commission, define the nature and scope  
5 of its inquiry;

6 (5) It may, from time to time, adopt, amend, and repeal  
7 any rules, not inconsistent with this chapter, that in  
8 the judgment of the commission seem appropriate [~~for~~  
9 ~~the carrying out of~~] to implement this chapter and for  
10 the efficient administration thereof, including every  
11 matter or thing required to be done or which may be  
12 done with the approval or consent or by order or under  
13 the direction or supervision of or as prescribed by  
14 the commission. The rules, when adopted as provided  
15 in chapter 91, shall have the force and effect of law;

16 (6) It shall have jurisdiction for purposes of  
17 investigation and taking appropriate action on alleged  
18 violations of this chapter in all proceedings  
19 commenced within six years of an alleged violation of  
20 this chapter by a legislator or employee or former  
21 legislator or employee. A proceeding shall be deemed



1 commenced by the filing of a charge with the  
2 commission or by the signing of a charge by three or  
3 more members of the commission. Nothing [~~herein~~] in  
4 this paragraph shall bar proceedings against a person  
5 who by fraud or other device, prevents discovery of a  
6 violation of this chapter;

7 (7) It shall distribute its publications without cost to  
8 the public and shall initiate and maintain programs  
9 with the purpose of educating the citizenry and all  
10 legislators, delegates to the constitutional  
11 convention, and employees on matters of ethics in  
12 government employment [~~and~~]. It may issue guidance  
13 regarding the application of this chapter, provided  
14 that the guidance shall not have the force and effect  
15 of law;

16 (8) It shall administer any code of ethics adopted by a  
17 state constitutional convention, subject to the  
18 procedural requirements of this part and any rules  
19 adopted thereunder [~~-~~]; and

20 (9) It may authorize its staff to provide confidential  
21 guidance to any individual as to whether the facts and



1           circumstances of a particular case constitute or would  
2           constitute a violation under this chapter, section 11-  
3           8, or section 11-316; provided that nothing in this  
4           paragraph shall establish an attorney-client  
5           relationship between the person seeking advice and the  
6           commission or its staff. Any written guidance  
7           rendered by commission staff advising that proposed  
8           conduct is allowable, until amended or revoked, shall  
9           be binding upon the commission in any subsequent  
10           charges concerning the individual who sought the  
11           guidance and acted in reliance on it in good faith,  
12           unless material facts were omitted or misstated by the  
13           persons in the request for guidance.

14 Nothing in this subsection shall prevent the commission or its  
15 staff from investigating alleged violations of this chapter."

16           SECTION 7. Section 84-39, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "~~§~~84-39~~§~~ **Administrative fines.** (a) Where an  
19 administrative fine has not been established for a violation of  
20 a provision of this chapter, any person, including a legislator  
21 or employee, who violates a provision of this chapter shall be



1 subject to an administrative fine imposed by the ethics  
2 commission that shall not exceed [~~\$500~~] \$1,000 for each  
3 violation. All fines collected under this section shall be  
4 deposited in the general fund.

5 (b) No fine shall be assessed under this section unless:

6 (1) The commission convenes a hearing in accordance with  
7 section 84-31(c) and chapter 91[+] and

8 [~~(2)~~] A] a decision has been rendered by the commission[-];  
9 or

10 (2) The commission and respondent agree to resolve an  
11 alleged violation prior to completion of the contested  
12 case process and the resolution includes payment of an  
13 administrative fine or restitution, or both."

14 SECTION 8. Section 97-1, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§97-1 Definitions. When used in this chapter:

17 [~~(1)~~] "Administrative action" means the proposal, drafting,  
18 consideration, amendment, enactment, or defeat by any  
19 administrative agency of any rule, regulation, or  
20 other action governed by section 91-3.



1       ~~[(2)]~~ "Administrative agency" means a commission, board,  
2                   agency, or other body, or official in the state  
3                   government that is not a part of the legislative or  
4                   judicial branch.

5       ~~[(3)]~~ "Contribution" includes a gift, subscription,  
6                   forgiveness of a loan, advance, or deposit of money,  
7                   or anything of value and includes a contract, promise,  
8                   or agreement, whether or not enforceable, to make a  
9                   contribution.

10       ~~[(4)]~~ "Expenditure" includes a payment, distribution,  
11                   forgiveness of a loan, advance, deposit, or gift of  
12                   money, or anything of value and includes a contract,  
13                   promise, or agreement, whether or not enforceable, to  
14                   make an expenditure. "Expenditure" also includes  
15                   compensation or other consideration paid to a lobbyist  
16                   for the performance of lobbying services.

17       ~~["Expenditure" excludes the expenses of preparing~~  
18       ~~written testimony and exhibits for a hearing before~~  
19       ~~the legislature or an administrative agency.]~~

20       ~~[(5)]~~ "Legislative action" means the sponsorship, drafting,  
21                   introduction, consideration, modification, enactment,



1 or defeat of any bill, resolution, amendment, report,  
2 nomination, appointment, or any other matter pending  
3 or proposed in the legislature.

4 ~~[(6)]~~ "Lobbyist" means any individual who ~~[fex]~~:

5 (1) Receives or expects to receive, either by employment  
6 or contract, more than \$1,000 in monetary or in-kind  
7 compensation in any calendar year for engaging in  
8 lobbying, either personally or through his or her  
9 agents; or

10 (2) For pay or other consideration:

11 (A) [engages] Engages in lobbying in excess of five  
12 hours in any month of any reporting period  
13 described in section 97-3; [ex-spends]

14 (B) Engages in lobbying in excess of ten hours during  
15 any calendar year;

16 (C) Engages in lobbying on three or more bills,  
17 resolutions, or both, during any legislative  
18 session; or

19 (D) Spends more than [\$750] \$1,000 of the person's or  
20 any other person's money lobbying during any  
21 reporting period described in section 97-3.



1       [~~(7)~~] "Lobbying" means communicating directly or through an  
2       agent, or soliciting others to communicate, with any  
3       official in the legislative or executive branch, for  
4       the purpose of attempting to influence legislative or  
5       administrative action or a ballot issue. "Lobbying"  
6       shall not include the preparation and submission of a  
7       grant application pursuant to chapter 42F by a  
8       representative of a nonprofit organization, but shall  
9       include any communication with any official in the  
10      legislative or executive branch for the purpose of  
11      attempting to influence action on any existing or  
12      future grant application.

13      [~~(8)~~] "Person" means a corporation, individual, union,  
14      association, firm, sole proprietorship, partnership,  
15      committee, club, or any other organization or a  
16      representative of a group of persons acting in  
17      concert."

18      SECTION 9. Section 97-2, Hawaii Revised Statutes, is  
19      amended by amending subsection (d) to read as follows:

20      "(d) A lobbyist shall file a notice of termination within  
21      ten days after the lobbyist ceases the activity which required



1 the lobbyist's registration[-]; provided that if the lobbyist  
2 fails to file a notice of termination, the person who employed  
3 or contracted for the services of the lobbyist may file the  
4 notice of termination. The lobbyist and the ~~employer~~ person  
5 who employed or contracted for the services of the lobbyist  
6 shall remain subject, however, to the requirements of chapter 97  
7 for the period during which the registration was effective."

8 SECTION 10. Section 97-3, Hawaii Revised Statutes, is  
9 amended by amending subsections (a), (b), and (c) to read as  
10 follows:

11 "(a) The following persons shall file a statement of  
12 expenditures with the state ethics commission on March 31,  
13 May 31, and January 31 of each year and within thirty days after  
14 adjournment sine die of any special session of the legislature:

- 15 (1) Each lobbyist;
- 16 (2) Each person who spends [~~\$750~~] \$1,000 or more of the  
17 person's or any other person's money in any [~~six-month~~  
18 period] reporting period described in this section for  
19 the purpose of attempting to influence legislative or  
20 administrative action or a ballot issue by  
21 communicating or urging others to communicate with



1 public officials; provided that any amounts expended  
2 for travel costs, including incidental meals and  
3 lodging, shall not be included in the tallying of the  
4 [~~\$750,~~] \$1,000 and need not be reported; and provided  
5 further that any amounts expended by a nonprofit  
6 organization to prepare and submit a grant application  
7 pursuant to chapter 42F shall likewise not be included  
8 in the tallying of the \$1,000 and need not be  
9 reported; and

10 (3) Each person who employs or contracts for the services  
11 of one or more lobbyists, whether independently or  
12 jointly with other persons. If the person is an  
13 industry, trade, or professional association, only the  
14 association is the employer of the lobbyist.

15 (b) The March 31 report shall cover the period from  
16 January 1 through the last day of February. The May 31 report  
17 shall cover the period from March 1 through April 30. The  
18 January 31 report shall cover the period from May 1 through  
19 December 31 of the previous year. The report to be filed within  
20 thirty days after adjournment sine die of a special session of  
21 the legislature shall:



- 1       (1) ~~[cover]~~ Cover the period from May 1 through  
2       adjournment sine die of that special session ~~[and~~  
3       ~~shall apply]~~ ;
- 4       (2) Be filed only by persons listed in subsection (a) who  
5       engage in lobbying activities, or who make  
6       expenditures, for the purpose of attempting to  
7       influence legislative action considered during a  
8       special session; and
- 9       (3) Apply to and include only those expenditures and  
10       contributions that relate to legislative action  
11       considered during that special session~~[-]~~ ;
- 12 provided that those expenditures and contributions included in  
13 the report need not be included by the person filing the report  
14 in any subsequent statement of expenditures.
- 15       (c) The statement shall contain the following information:
- 16       (1) The name and address of each person with respect to  
17       whom expenditures for the purpose of lobbying in the  
18       total sum of \$25 or more per day was made by the  
19       person filing the statement during the statement  
20       period and the amount or value of ~~[such]~~ the  
21       expenditure;



- 1           (2) The name and address of each person with respect to  
2           whom expenditures for the purpose of lobbying in the  
3           aggregate of \$150 or more was made by the person  
4           filing the statement during the statement period and  
5           the amount or value of [~~such~~] the expenditures;
- 6           (3) The total sum or value of all expenditures for the  
7           purpose of lobbying made by the person filing the  
8           statement during the statement period [~~in excess of~~  
9           \$750 ~~during the statement period~~]; provided that the  
10          sum or value of each expenditure is itemized in the  
11          following categories, as applicable:
- 12           (A) Preparation and distribution of lobbying  
13           materials;
- 14           (B) Media advertising;
- 15           (C) Compensation paid to lobbyists;
- 16           (D) Fees paid [~~to consultants or~~] for consultant  
17           services;
- 18           (E) Entertainment and events;
- 19           (F) Receptions, meals, food, and beverages;
- 20           (G) Gifts;
- 21           (H) Loans; [~~and~~]



# S.B. NO. 458

1           (I) Interstate transportation, including incidental  
2                   meals and lodging; and

3           (J) Other disbursements;

4           (4) The name and address of each person making  
5                   contributions to the person filing the statement for  
6                   the purpose of lobbying in the total sum of \$25 or  
7                   more during the statement period and the amount or  
8                   value of [~~such~~] the contributions; and

9           (5) The subject area of the legislative and administrative  
10                   action which was supported or opposed by the person  
11                   filing the statement during the statement period."

12           SECTION 11. Section 97-4.5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14           "~~[+] §97-4.5 [+] Lobbyist [list.]~~ registration statements.

15 ~~[As soon as is feasible after the commencement of each regular~~  
16 ~~session of the legislature, the state ethics commission shall~~  
17 ~~publish a list of registered lobbyists, the names of the persons~~  
18 ~~whom they represent, and other pertinent information but shall~~  
19 ~~not include in such list the addresses of the lobbyists. The~~  
20 ~~list shall be supplemented from time to time as may be~~  
21 ~~necessary.]~~ All lobbyist registration statements shall be posted



1 on the ethics commission's website within a reasonable time  
2 after filing, and may be removed from the website after four  
3 years."

4 SECTION 12. Section 97-6, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) The state ethics commission shall administer and  
7 implement this chapter, and shall have the following powers and  
8 duties:

- 9 (1) Initiate, receive, and consider charges concerning  
10 alleged violations of this chapter, and investigate or  
11 cause to be investigated on a confidential basis, the  
12 activities of any person to determine whether the  
13 person is in compliance with this chapter[+]. The  
14 commission and the subject of any investigation or  
15 charge may agree to resolve any alleged violation of  
16 this chapter at any time. The resolution shall be in  
17 writing and shall be signed by three or more members  
18 of the commission and by the subject of any  
19 investigation or charge. The resolution shall have  
20 the force and effect of a final decision and order



1           issued after a contested case hearing and shall not be  
2           appealable;

3           (2) Prescribe forms for the statements and reports  
4           required by sections 97-2 and 97-3 and establish  
5           orderly procedures for implementing the requirements  
6           of those provisions;

7           (3) Render advisory opinions upon the request of any  
8           person subject to this chapter. If no advisory  
9           opinion is rendered within [~~thirty~~] ninety days after  
10          the request is filed with the commission, it shall be  
11          deemed that an advisory opinion was rendered and that  
12          the facts and circumstances of that particular case do  
13          not constitute a violation of this chapter. The  
14          opinion rendered or deemed rendered, until amended or  
15          revoked, shall be binding on the commission in any  
16          subsequent charges concerning the person subject to  
17          this chapter who sought the opinion and acted in  
18          reliance on it in good faith, unless material facts  
19          were omitted or misstated by the person in the request  
20          for an advisory opinion;



- 1           (4) Issue subpoenas, administer oaths, and exercise those  
2           powers conferred upon the commission by section 92-16;
- 3           (5) Adopt rules, not inconsistent with this chapter, as in  
4           the judgment of the commission seem appropriate for  
5           the carrying out of this chapter and for the efficient  
6           administration of this chapter, including every matter  
7           or thing required to be done or which may be done with  
8           the approval or consent or by order or under the  
9           direction or supervision of, or as prescribed by, the  
10          commission. The rules, when adopted as provided in  
11          chapter 91, shall have the force and effect of law;  
12          [and]
- 13          (6) Have jurisdiction for purposes of investigation and  
14          taking appropriate action on alleged violations of  
15          this chapter in all proceedings commenced within three  
16          years of an alleged violation of this chapter. A  
17          proceeding shall be deemed commenced by the filing of  
18          a charge with the commission or by the signing of a  
19          charge by three or more members of the commission.  
20          Nothing shall bar proceedings against a person who by



1 fraud or other device prevents discovery of a  
2 violation of this chapter[-];

3 (7) Issue guidance regarding the application of this  
4 chapter, provided that the guidance shall not have the  
5 force and effect of law;

6 (8) Authorize its staff to provide confidential guidance  
7 to any individual as to whether the facts and  
8 circumstances of a particular case constitute or will  
9 constitute a violation under this chapter; provided  
10 that nothing in this paragraph shall establish an  
11 attorney-client relationship between the person  
12 seeking advice and the commission or its staff. Any  
13 written guidance rendered by commission staff advising  
14 that proposed conduct is allowable, until amended or  
15 revoked, shall be binding upon the commission in any  
16 subsequent charges concerning the individual who  
17 sought the guidance and acted in reliance on it in  
18 good faith, unless material facts were omitted or  
19 misstated by the persons in the request for guidance.

20 Nothing in this subsection shall prevent the commission or its  
21 staff from investigating alleged violations of this chapter."



1 SECTION 13. Section 97-7, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Any person who:

4 (1) [~~Wilfully fails~~] Fails to file any statement or report  
5 required by this chapter;

6 (2) [~~Wilfully files~~] Files a statement or report  
7 containing false information or material omission of  
8 any fact;

9 (3) Engages in activities prohibited by section 97-5; or

10 (4) Fails to provide information required by section 97-2  
11 or 97-3;

12 shall be subject to an administrative fine imposed by the  
13 commission that shall not exceed [~~\$500~~] \$1,000 for each  
14 violation of this chapter. All fines collected under this  
15 section shall be deposited into the general fund."

16 SECTION 14. The state ethics commission, in its  
17 discretion, may make any changes that it deems necessary to  
18 internal procedures or forms to aid in the implementation of  
19 this Act.

20 SECTION 15. If any provision of this Act, or the  
21 application thereof to any person or circumstance, is held



# S.B. NO. 458

1 invalid, the invalidity does not affect other provisions or  
2 applications of the Act that can be given effect without the  
3 invalid provision or application, and to this end the provisions  
4 of this Act are severable.

5 SECTION 16. This Act does not affect rights and duties  
6 that matured, penalties that were incurred, and proceedings that  
7 were begun before its effective date.

8 SECTION 17. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 18. This Act shall take effect upon its approval.  
11

INTRODUCED BY:

*Paul N. Witt*  
By Request



# S.B. NO. 458

**Report Title:**

State Ethics Commission Package; Government; Ethics; Lobbyists

**Description:**

Clarifies the powers and duties of the state ethics commission; increases fines for ethics violations. Restores protection for legislators when carrying out a legislative function. Clarifies what is an expenditure for lobbyists and what is considered lobbying. Amends requirements for filing statements of expenditures.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

