
A BILL FOR AN ACT

RELATING TO THE STATE ETHICS COMMISSION.

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

1 SECTION 1. The purpose of this Act is to clarify and
2 modernize the way the state ethics commission provides advice
3 and conducts investigations pursuant to the state ethics code
4 and lobbyists law.

5 SECTION 2. Section 84-31, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) The ethics commission shall have the following powers
8 and duties:

9 (1) It shall prescribe forms for the disclosures required
10 by article XIV of the Hawaii constitution and section
11 84-17 and the gifts disclosure statements required by
12 section 84-11.5 and shall establish orderly procedures
13 for implementing the requirements of those provisions;

14 (2) It shall provide advice upon the request of any person
15 as to whether the facts and circumstances of a
16 particular situation constitute or will constitute a
17 violation of the code of ethics or other laws or rules
18 administered and enforced by the commission, and



1 discuss ways to avoid an appearance of impropriety. A
2 person receiving advice from the commission may
3 request a written summary of that advice. The
4 commission shall treat all advice requests, responses,
5 and related materials as confidential. Written
6 summaries shall be confidential unless the recipient
7 waives confidentiality;

8 [~~2~~] (3) It shall render advisory opinions upon the
9 request of any legislator, employee, or delegate to
10 the constitutional convention, or person formerly
11 holding such office or employment as to whether the
12 facts and circumstances of a particular case
13 constitute or will constitute a violation of the code
14 of ethics. If no advisory opinion is rendered within
15 [~~thirty~~] ninety days after the request is filed with
16 the commission, it shall be deemed that an advisory
17 opinion was rendered and that the facts and
18 circumstances of that particular case do not
19 constitute a violation of the code of ethics. The
20 opinion rendered or deemed rendered, until amended or
21 revoked, shall be binding on the commission in any



1 subsequent charges concerning the legislator,
2 employee, or delegate to the constitutional
3 convention, or person formerly holding such office or
4 employment, who sought the opinion and acted in
5 reliance on it in good faith, unless material facts
6 were omitted or misstated by such persons in the
7 request for an advisory opinion[+]. The commission
8 shall also render public general advisory opinions
9 concerning proper interpretation of the code of ethics
10 and other laws or rules administered and enforced by
11 the commission, if it deems the opinion of sufficient
12 general interest and importance;

13 (4) It may initiate an investigation into alleged,
14 possible, or potential violations of this chapter and
15 other laws or rules administered and enforced by the
16 commission, on a confidential basis, having available
17 all of the powers herein provided, whether the
18 investigation is made based on a charge allegation,
19 other information or indications, or as the commission
20 determines is in the public interest;



1 ~~[(3)]~~ (5) It shall initiate, receive, and consider charges
2 and other information, on a confidential basis,
3 concerning alleged ~~[violation]~~, possible, or potential
4 violations of this chapter~~[7]~~ and other laws or rules
5 administered and enforced by the commission, initiate
6 or make investigation, and hold hearings;
7 ~~[(4)]~~ (6) ~~[(1)]~~ Upon adoption of a resolution defining the
8 scope and nature of the inquiry, supported by a vote
9 of three or more members of the commission, it may
10 subpoena witnesses, administer oaths, and take
11 testimony relating to matters before the commission
12 and require the production for examination of any
13 books or papers relative to any matter under
14 investigation or in question before the commission~~[-~~
15 ~~Before the commission shall exercise any of the powers~~
16 ~~authorized in this section with respect to any~~
17 ~~investigation or hearings it shall by formal~~
18 ~~resolution, supported by a vote of three or more~~
19 ~~members of the commission, define the nature and scope~~
20 ~~of its inquiry];~~



1 [~~(5)~~] (7) It may, from time to time adopt, amend, and
2 repeal any rules, not inconsistent with this chapter,
3 that in the judgment of the commission seem
4 appropriate for the carrying out of this chapter and
5 for the efficient administration thereof, including
6 every matter or thing required to be done or which may
7 be done with the approval or consent or by order or
8 under the direction or supervision of or as prescribed
9 by the commission. The rules, when adopted as
10 provided in chapter 91, shall have the force and
11 effect of law;

12 [~~(6)~~] (8) It shall have jurisdiction for purposes of
13 investigation and taking appropriate action on
14 [~~alleged~~] possible violations of this chapter in all
15 proceedings commenced within six years of [~~an alleged~~]
16 a possible violation of this chapter by a legislator
17 or employee or former legislator or employee. A
18 proceeding shall be deemed commenced by the filing of
19 a charge with the commission or by the signing of a
20 charge by three or more members of the commission.
21 Nothing herein shall bar proceedings against a person



1 who by fraud or other device, prevents discovery of a
2 violation of this chapter;

3 ~~[(7)]~~ (9) It shall distribute its publications without cost
4 to the public and shall initiate and maintain programs
5 with the purpose of educating the citizenry and all
6 legislators, employees, and delegates to the
7 constitutional convention~~[, and employees]~~ on matters
8 of ethics in government employment; and

9 ~~[(8)]~~ (10) It shall administer any code of ethics adopted
10 by a state constitutional convention, subject to the
11 procedural requirements of this part and any rules
12 adopted thereunder.

13 (b) Charges concerning the violation of this chapter shall
14 be in writing, signed by the person making the charge under
15 oath~~[, except]~~; provided that any charge initiated by the
16 commission shall be signed by three or more members of the
17 commission. The commission shall ~~[notify in writing]~~ issue
18 written notice to every person against whom a charge is received
19 and afford the person an opportunity to explain the conduct
20 alleged to be in violation of the chapter. The commission may
21 investigate, after compliance with this section, ~~[such]~~ the



1 charges and render an informal advisory opinion to the alleged
2 violator. The commission shall investigate all charges on a
3 confidential basis, having available all the powers herein
4 provided, and proceedings at this stage shall not be public. If
5 the informal advisory opinion indicates a probable violation,
6 the person charged shall request a formal opinion or within a
7 reasonable time comply with the informal advisory opinion. If
8 the person charged fails to comply with [~~such~~] the informal
9 advisory opinion or if a majority of the members of the
10 commission determine that there is probable cause for belief
11 that a violation of this chapter might have occurred, a copy of
12 the charge and a further statement of the alleged violation
13 shall be personally served upon the alleged violator. Service
14 shall be made by personal service upon the alleged violator
15 wherever found or by registered or certified mail with a request
16 for a return receipt and marked deliver to addressee only. If
17 after due diligence service cannot be effected successfully in
18 accordance with the above, service may be made by publication if
19 so ordered by the circuit court of the circuit wherein the
20 alleged violator last resided. The state ethics commission
21 shall submit to the circuit court for its consideration in



1 issuing its order to allow service by publication an affidavit
2 setting forth facts based upon the personal knowledge of the
3 affiant concerning the methods, means, and attempts made to
4 locate and effect service by personal service or by registered
5 or certified mail in accordance with the above. Service by
6 publication when ordered by the court shall be made by
7 publication once a week for four successive weeks of a notice in
8 a newspaper of general circulation in the circuit of the alleged
9 violator's last known state address. The alleged violator shall
10 have twenty days after service thereof to respond in writing to
11 the charge and statement."

12 SECTION 3. Section 97-6, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) The state ethics commission shall administer and
15 implement this chapter, and shall have the following powers and
16 duties:

- 17 (1) Initiate, receive, and consider charges and other
18 information, on a confidential basis, concerning
19 alleged, possible, or potential violations of this
20 chapter[7] and other laws or rules administered and
21 enforced by the commission, and investigate or cause



1 to be investigated; on a confidential basis, the
2 activities of any person to determine whether the
3 person is in compliance with this chapter;

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

8 (3) Provide advice upon the request of any person as to
9 whether the facts and circumstances of a particular
10 situation constitute or will constitute a violation of
11 this chapter or other laws or rules administered and
12 enforced by the commission and discuss ways to avoid
13 an appearance of impropriety. A person receiving
14 advice from the commission may request a written
15 summary of that advice. The commission shall treat
16 all advice requests, responses, and related materials
17 as confidential. Written summaries shall be
18 confidential unless the recipient waives
19 confidentiality;

20 [~~3~~] (4) Render advisory opinions upon the request of any
21 person subject to this chapter. If no advisory



1 opinion is rendered within [~~thirty~~] ninety days after
 2 the request is filed with the commission, it shall be
 3 deemed that an advisory opinion was rendered and that
 4 the facts and circumstances of that particular case do
 5 not constitute a violation of this chapter. The
 6 opinion rendered or deemed rendered, until amended or
 7 revoked, shall be binding on the commission in any
 8 subsequent charges concerning the person subject to
 9 this chapter who sought the opinion and acted in
 10 reliance on it in good faith, unless material facts
 11 were omitted or misstated by the person in the request
 12 for an advisory opinion[~~+~~]. The commission shall also
 13 render public general advisory opinions concerning
 14 proper interpretations of the laws of this chapter and
 15 other laws or rules administered and enforced by the
 16 commission, if it deems the opinion of sufficient
 17 general interest and importance;

18 [~~4~~] (5) Issue subpoenas, administer oaths, [~~and~~] require
 19 the production for examination of any records or
 20 papers relative to any matter under investigation or



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



1 shall bar proceedings against a person who by fraud or
2 other device prevents discovery of a violation of this
3 chapter~~[-]~~; and

4 (8) Distribute educational and advisory publications and
5 initiate, administer, and maintain training programs
6 for the purpose of training lobbyists on compliance
7 with state lobbying laws and applicable parts of the
8 code of ethics.

9 (b) Charges concerning the violation of this chapter shall
10 be in writing, signed by the person making the charge under
11 oath~~[, except]~~; provided that any charge initiated by the
12 commission shall be signed by three or more members of the
13 commission. The commission shall ~~[notify in writing]~~ issue
14 written notice to every person against whom a charge is received
15 and afford the person an opportunity to explain the conduct
16 alleged to be in violation of the chapter. The commission may
17 investigate, after compliance with this section, ~~[such]~~ the
18 charges and render an informal advisory opinion to the alleged
19 violator. The commission shall investigate all charges on a
20 confidential basis, having available all the powers herein
21 provided, and proceedings at this stage shall not be public. If



1 the informal advisory opinion indicates a probable violation,
2 the person charged shall request a formal opinion or within a
3 reasonable time comply with the informal advisory opinion. If
4 the person charged fails to comply with [~~sueh~~] the informal
5 advisory opinion or if a majority of the members of the
6 commission determine that there is probable cause for belief
7 that a violation of this chapter might have occurred, a copy of
8 the charge and a further statement of the alleged violation
9 shall be personally served upon the alleged violator. Service
10 shall be made by personal service upon the alleged violator
11 wherever found or by registered or certified mail with request
12 for a return receipt and marked deliver to addressee only. If
13 after due diligence service cannot be effected successfully in
14 accordance with the above, service may be made by publication if
15 so ordered by the circuit court of the circuit wherein the
16 alleged violator last resided. The commission shall submit to
17 the circuit court for its consideration in issuing its order to
18 allow service by publication an affidavit setting forth facts
19 based upon the personal knowledge of the affiant concerning the
20 methods, means, and attempts made to locate and effect service
21 by personal service or by registered or certified mail in



1 accordance with the above. Service by publication when ordered
2 by the court shall be made by publication once a week for four
3 successive weeks of a notice in a newspaper of general
4 circulation in the circuit of the alleged violator's last known
5 state address. The alleged violator shall have twenty days
6 after service thereof to respond in writing to the charge and
7 statement."

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.



Report Title:

State Ethics Commission Package; Code of Ethics; Lobbyists;
Advice; Investigations

Description:

Clarifies and modernizes the way the State Ethics Commission
provides advice and conducts investigations. (CD1)

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

