



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i

Committee: Senate Committee on Judiciary
Bill Number: HB 412, HD1 SD1
Hearing Date/Time: March 25, 2025, 10:01 a.m.
Re: Testimony of the Hawai‘i State Ethics Commission in **SUPPORT** of
HB 412, HD1 SD1 Relating to Lobbying

The Hawai‘i State Ethics Commission (“Commission”) strongly supports HB 412 HD1 SD1, which makes essential updates to Hawai‘i’s lobbyist law to enhance transparency and accountability in state government.

Hawai‘i’s current definition of “lobbying” is outdated and does not reflect modern standards—particularly in the area of procurement lobbying. A growing number of jurisdictions—including Alabama, Arizona, Arkansas, California, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, and Virginia—already regulate procurement-related lobbying. At the federal level, the Lobbying Disclosure Act also includes procurement-related activities.

This bill carefully fills a gap in Hawai‘i law by expanding the definition of lobbying to include certain limited communications in the procurement context. Specifically, it targets “pre-procurement” lobbying—efforts to influence the shape or direction of procurement decisions before a solicitation is issued. **Importantly, the bill does not apply to routine communications between contractors and government employees once a contract is in place or during the procurement process.** Nor does it sweep in the actions of lower-level staff or frontline employees.

Instead, the bill is narrowly tailored to cover only communications directed at high-level decision-makers—such as the Governor, Lieutenant Governor, department directors, and deputy directors and members of key boards and commissions. These individuals have the authority to set procurement priorities or influence agency direction before procurement officially begins. By focusing on this limited set of interactions, the bill enhances transparency without placing unnecessary burdens on the broader contracting community.

Additionally, HB 412 HD1 SD1 introduces a rebuttable presumption to improve oversight: when a registered lobbyist submits testimony on a matter directly tied to their employer or owned business, that testimony is presumed to be made on behalf of that entity. This presumption is not absolute; it can be rebutted by showing, for example, that the testimony was

given in a personal capacity during unpaid leave. This clarification addresses occasional ambiguity while preserving fairness for all parties.

HB 412 HD1 SD1 represents a measured and thoughtful improvement to Hawai‘i’s lobbying framework. By enhancing transparency and accountability in pre-procurement communications, this bill curbs undue influence and supports fairer, more competitive contracting practices—ultimately benefiting taxpayers and strengthening public trust.

Mahalo for the opportunity to testify in strong support of HB 412 HD1 SD1.

Very truly yours,

/S/ Robert D. Harris
Robert D. Harris
Executive Director and General Counsel



**Testimony to the Senate Committee on Judiciary
Tuesday, March 25, 2025; 10:01 a.m.
State Capitol, Conference Room 016
Via Videoconference**

RE: HOUSE BILL NO. 0412, HOUSE DRAFT 1, SENATE DRAFT 1, RELATING TO LOBBYING.

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA respectfully **OPPOSES** House Bill No. 0412, House Draft 1, Senate Draft 1, RELATING TO LOBBYING.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

This measure, as received by your Committee, would:

- (1) Establish certain presumptions regarding lobbying on behalf of private clients;
- (2) Make certain contracts voidable when entered into in violation of the State Lobbying Law; and
- (3) Expand the definition of "lobbying" to include certain communications with high-level government officials regarding procurement decisions.

This measure would take effect on January 1, 2027.

Testimony on House Bill No. 0412, House Draft 1, Senate Draft 1
Tuesday, March 25, 2025; 10:01 a.m.
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As presently drafted, this measure will fundamentally change the way social service nonprofit organizations operate. For organizations that rely on contracts with the State, or by extension the federal government via state-administered contracts, any communication by a "paid employee, officer or director" of the organization with a legislator or employee of a governmental agency could be construed by the Ethics Commission as lobbying. Unless that paid employee, officer, or director is registered as a lobbyist on behalf of the organization, the organization could be found in violation of the Ethics Law. Such a violation could result in the voiding of all the organization's government contracts.

Nonprofits, including FQHCs provide essential health care and social services to many communities throughout the State by managing contracts for services with the federal government, which are managed by the State Departments of Human Services and Health, respectively. These contracts include Medicaid reimbursement and payments for healthcare services to the uninsured and underinsured. Government partnerships with nonprofits play a critical role in assuring that essential services are accessible to Hawaii's rural and isolated communities.

This measure, should it be enacted, would unduly increase the administrative burden that is already taxing our FQHCs and nonprofits. For example, the HPCA would potentially need to have every employee, officer, and board member register as a lobbyist on behalf of our organization. We would also need to advise our member FQHCs to do the same for their employees, officers and board members. In the situation of HPCA's board members, who are also the Chief Executive Officers of their respective FQHCs, they would have to register not only as a lobbyist for the HPCA, but also for their FQHC.

Also, because many of our board members serve on the boards of directors of other organizations, should this bill be enacted, board members of all organizations will likely need to follow suit. Conceivably, you could have as many as five or more organizations listing the same person as a lobbyist. And any action taken by that person on behalf of a single organization could be construed a "lobbying" on behalf of other organizations if the Ethics Commission determines that another organization "directly benefits" from that action, as specified by the presumption that this bill would establish.

This situation further raises logistical concerns. Is the Ethics Commission prepared for the potential exponential increase in the number of registered lobbyists and the multiple registrations individuals will be assigned?

From a labor perspective, it is unclear whether an employer can prohibit an employee, officer, or director from participating in the legislative process when such activities are conducted on their own personal time. Yet, if this bill was enacted, even if the employee, officer, or director takes personal leave and discloses that he or she is communicating with the legislator solely in a personal capacity, the employer could still be subject to penalty under this bill if the organization is deemed by the Ethics Commission to be "directly benefiting" from the activity. This is because this bill would establish a presumption that the employee, officer, or director was compensated by the organization for their lobbying effort.

Earlier this year, the HPCA intended to conduct an informational day at the Hawaii State Capitol to educate lawmakers and the general public of the important roles that FQHCs play in providing essential health care to our citizens. Before doing so, we consulted with the Ethics Commission to determine whether such actions would be construed as "lobbying" and whether employees of the HPCA who were not registered as lobbyists would be in violation of the Ethics Law by participating in this proposed informational event.

While the Ethics Commission stated they did not believe actions by non-registered employees to educate "lawmakers" would fall within the parameters of necessitating registration, the Ethics Commission cautioned that such interactions would fall under "goodwill lobbying" necessitating the time allotted for each staff person to be accounted for and reported in the organizational expenditure report for the event. Thus, while not saying that participation would likely result in a violation of the Ethics Law, they strongly discouraged our organization from conducting the event.

Accordingly, the HPCA cancelled this event.

The Ethics Commission cited a memorandum issued by Daniel J. Mollway, Executive Director and General Counsel to all Lobbyists, and Clients or Employers of Lobbyists, dated December 6, 2007, **attached**.

Specifically, the Ethics Commission opined:

"... When trade associations and others meet with lobbyists for the purpose of 'getting to know' legislators or to develop rapport, this is considered 'goodwill lobbying', and would constitute lobbying under HRS section 97-1, since there is communication for the purpose of lobbying. The fact that specific legislative matters are not discussed does not mean that the meetings are not considered lobbying. If the purpose of the meeting is to develop a relationship with legislators, getting to know legislators, or establishing rapport with legislators, and the trade association, etc., will be

lobbying, then such meetings with legislators constitute lobbying in accordance with chapter 97 and must be reported on the appropriate expenditure report for the appropriate lobbying period. . ." [Emphasis added.]

This bill would establish a presumption that an employee, officer, or board member who actively participates in lobbying activities that directly benefit the organization received compensation from the organization for their lobbying effort. That employee, officer, or board member would need to be registered as a lobbyist for the organization if the employee, officer, or board member for pay or other consideration, on behalf of another person:

- (1) Engages in lobbying in excess of five hours in any month of any reporting period. . .;
- (2) Engages in lobbying in excess of ten hours during any calendar year; or
- (3) Makes expenditures of \$1,000 or more of the person's or any other person's money lobbying during any reporting period described in section 97-3. . . [See, Section 97-1, Hawaii Revised Statutes, definition of "lobbying".]

Because the definition of "lobbying" does not specify that the time periods spent "lobbying" be for a particular organization, arguably, if an employee, officer, or board member acts on behalf of another organization or volunteers his or her personal time for another interest or cause, the time spent "lobbying" would apparently accrue to the employing organization for purposes of determining whether that employee, officer, or director would need to be registered as the organization's lobbyist.

While activities by the employee, officer, or director in their official capacity with our organization can be documented and quantified, the HPCA would not be able to do the same for any other activity that the employee, officer, or director does on behalf of another organization or in their personal capacity. Because of this, and in recognition that the existing Ethics Law is a registration statute, the HPCA would advise its members that should this bill be enacted into law, they should register all employees, officers, and directors as their lobbyists.

And because enforcement of this new law would be based on the Ethics Commission's determination of whether a particular organization "directly benefitted" from the lobbying activity, even in situations where the organization may not have intended to or actually participated in, the organization could be subject to having their government contracts voided.

And as was the case with the informational day that the HPCA wanted to convene, enforcement of the Ethics Law will have an even greater "chilling effect" on organizations wishing to exercise their rights to participate in government processes if this bill was enacted into law.

As written to Robert Harris, Executive Director of the Ethics Commission, in communications concerning this measure last week:

" . . . I want to be clear. The HPCA and our member FQHCs are not looking for any kind of special break to game the system. Our job of providing essential health care to the most vulnerable in our community is already increasingly difficult and demanding. We want to do everything that we need to do to follow the law. Regarding this bill, it greatly scares us because it is not clear whether we would be able to follow the law. . . "

Many of our Board members were very apprehensive at allowing the HPCA take a position on this measure. We surmise that many other similarly-situated organizations would have the same misgivings. Yet, as an organization, our members all agreed that if this bill were to become law, it would make an already vague and broadly-interpreted law even worse to the point where it would be questionable whether such a law could withstand challenge for being overly vague. If enacted, it would be impossible to determine with certainty whether organizations like ours had complied. It would seemingly make enforcement entirely arbitrary.

The HPCA is not looking to make enemies of the Ethics Commission. The HPCA just wants to continue to advocate on behalf of residents who live in rural, isolated areas, the economically disadvantaged, the sick, and the handicapped, and support our FQHCs to the best of our ability. We want to follow the law and do what is necessary as a part of the community.

In that spirit, the HPCA respectfully asks that this measure be filed.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.

attachment



HAWAII STATE ETHICS COMMISSION

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

MEMORANDUM

TO: Lobbyists, and Clients or Employers of Lobbyists

FROM: Daniel J. Mollway
Executive Director and General Counsel

DATE: December 6, 2007

SUBJECT: "Goodwill" Lobbying as Lobbying Expenditure

Our office has received a number of concerns that organizations, lobbyists, and employers of lobbyists are not reporting as a lobbying expenditure certain meetings with legislators. These meetings often occur at the end of the year or in January, before the upcoming legislative session. It seems that a number of trade associations, non-profits, lobbyists, and other organizations that employ lobbyists believe that these meetings with legislators need not be reported as lobbying expenditures because no lobbying is taking place. These meetings are usually breakfasts, lunches, dinners, or receptions.

The Lobbyists Law is set forth in chapter 97 of the Hawaii Revised Statutes ("HRS"). HRS section 97-1(7) defines the term "lobbying" as follows:

"Lobbying" means communicating directly or through an agent, or soliciting others to communicate, with any official in the legislative or executive branch, for the purpose of attempting to influence legislative or administrative action or a ballot issue.

When trade associations and others meet with lobbyists for the purpose of "getting to know" legislators or to develop rapport, this is considered "goodwill lobbying," and would constitute lobbying under HRS section 97-1, since there is communication for the purpose of lobbying. The fact that specific legislative measures are not discussed does not mean that the meetings are not considered lobbying. If the purpose of the meeting is to develop a relationship with legislators, getting to know legislators, or establishing rapport with legislators, and the trade association, etc., will be lobbying, then such meetings with legislators constitute lobbying in accordance with chapter 97 and must be reported on the appropriate expenditures report for the appropriate lobbying reporting period.

There may be instances where there are meetings with legislators for other purposes. However, if the organization or trade association hosting the meeting lobbies, and the reason for hosting the meeting includes building relationships with legislators, establishing rapport with legislators, or "getting to know" legislators, then the meeting is reportable lobbying expenditures. Further, if the meeting results in a legislator receiving meals, beverages, and so forth, that exceed \$25 or more per day or \$150 or more during a reporting period, the expenditures must be reported on the expenditures statement for the appropriate lobbying reporting period, along with the name of the legislator.

If there are any questions regarding the above, please contact our office at 587-0460.

c: Legislators

HB-412-SD-1

Submitted on: 3/23/2025 10:44:27 AM

Testimony for JDC on 3/25/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Master Shelby Pikachu Billionaire	Testifying for Ohana Unity Party & Kingdom of The Hawaiian Islands	Support	Written Testimony Only

Comments:

Support House Bill 412 (H.B. No. 412) and this bill means to the average citizen in Hawaii, translated into plain Pidgin English. This bill is all about shining a light on lobbying—those behind-the-scenes chats that can sway government decisions—and making sure they don’t mess with fairness, especially when it comes to how the state spends its money.

What This Bill Means to You, the Everyday Hawaiian

Imagine you’re at a neighborhood potluck, and someone’s whispering to the host about who gets the biggest slice of laulau. Now picture that with state contracts—big money deals for roads, schools, or supplies—and you’ve got lobbying. H.B. 412 is like putting a megaphone on those whispers so everyone knows what’s up, especially when it involves your tax dollars. Here’s how it breaks down for you:

- **More Transparency in Government Deals:**
 - Right now, “lobbying” only covers formal rule-making stuff—like when the state writes new regulations. This bill says, “Nah, it’s more than that.” It includes talks with top officials about procurement—aka who gets state contracts to build stuff or sell things to the government.
 - For You: You’ll get a clearer picture of who’s trying to snag those deals and whether they’re playing fair. No more secret handshakes deciding where your money goes.
- **Cracking Down on Sneaky Lobbyists:**
 - If someone owns a chunk of a company or works for one and is pushing hard for it to win a state contract, the law will assume they’re getting paid to lobby—even if they say, “I’m just helping out!”
 - For You: This stops people from pretending they’re not influencers when they’re really cashing in. It’s like calling out that guy at the potluck who says he’s “just chatting” but keeps grabbing extra katsu.
- **Canceling Shady Contracts:**
 - If a contract gets signed because someone broke lobbying rules—like not reporting their influence—it can be canceled (or “voided”) within 60 days, as long

as it doesn't totally screw over innocent folks caught in the mess. The Attorney General gets to swing the hammer on this.

- For You: Your tax money won't be locked into deals cooked up in the dark. If someone cheats to win, the state can hit rewind.
 - What's Not Lobbying:
 - If a state worker or lawmaker starts the convo about a contract, it's not lobbying. Same goes for nonprofits applying for grants to do good work.
 - For You: This keeps legit community efforts—like a nonprofit fixing up a park—from getting tangled in red tape.
-

Why It Matters to You

- Your Wallet: Hawaii spends big on contracts—think \$2.5 billion yearly on procurement (Hawaii Dept. of Accounting, 2023). This bill makes sure that money isn't handed out based on who's got the slickest lobbyist.
 - Your Trust: Only 36% of Americans trust government to do what's right (Pew, 2023). Here in Hawaii, where aloha means fairness, shady lobbying erodes that. H.B. 412 fights back with sunlight.
 - Your Community: Nationally, lobbying's a \$4.1 billion game (OpenSecrets, 2022). If big players can secretly tilt the scales for state deals, local businesses—like that small construction crew or supplier—get shut out. This levels the field.
-

The Bigger Picture (With a Dash of Magic)

Think of this bill as a superhero swooping in to guard your tax dollars from the shadowy villains of influence peddling. It's not just about rules—it's about keeping Hawaii's government honest. Procurement isn't sexy, but it's how roads get paved, schools get built, and emergency gear gets bought. If lobbyists can sweet-talk their way into those decisions without you knowing, it's like letting a fox guard the henhouse. H.B. 412 locks the door and hands you the key by making it all public.

For the average citizen, this means less waste, more fairness, and a government that's got to answer to you—not just the guy with the deepest pockets. It's effective January 1, 2027, so the change is coming—just in time to keep the system straight.

Mahalo for Caring,

Master Shelby "Pikachu" Billionaire, HRM

Ohana Unity Party, Chairman

www.Ohanaunityparty.com

Kingdom of The Hawaiian Islands, H.I.

HB-412-SD-1

Submitted on: 3/21/2025 2:15:56 PM

Testimony for JDC on 3/25/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
Frank Schultz	Individual	Support	Written Testimony Only

Comments:

I support this initiative.

HB-412-SD-1

Submitted on: 3/21/2025 2:45:36 PM

Testimony for JDC on 3/25/2025 10:01:00 AM

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this important bill. Mahalo.