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## A BILL FOR AN ACT

RELATING TO ETHICS ADMINISTRATIVE FINES.

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

SECTION 1. The legislature finds that it is in the public interest to have an efficient and timely resolution of ethics and lobbying cases. Timely resolution of matters before the ethics commission promotes the fair adjudication of rights and public transparency. This Act aims to provide greater uniformity, flexibility, and efficiency in assessing administrative fines related to violations of the state ethics code and lobbyist law.

SECTION 2. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

~~"(1) If notice and order of an administrative fine has been issued pursuant to this section, the order shall become final on the twentieth day after it is served upon the alleged violator, unless the alleged violator submits a written request for a hearing before the state ethics commission on or before the twentieth day. After conducting a hearing pursuant to chapter 91, the state ethics commission may affirm, modify, or rescind the order as appropriate. The state ethics commission~~



~~may file with the circuit court of the first circuit any order  
the commission has issued pursuant to this section for the  
purpose of confirming the order as a final judgment that shall  
have the same force and effect and shall be enforceable and  
collectable as other judgments issued by the circuit courts;  
provided that there shall be no appeal from the judgment.]~~

Administrative fines assessed pursuant to this section may be  
enforced using the procedure provided in section 84-31(g)."

SECTION 3. Section 84-31, Hawaii Revised Statutes, is  
amended to read as follows:

**"§84-31 Duties of commission; complaint, hearing,  
determination.** (a) The ethics commission shall have the  
following powers and duties:

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

(2) It shall provide advice upon the request of any person  
as to whether the facts and circumstances of a



1 particular situation constitute or will constitute a  
2 violation of the code of ethics or other laws or rules  
3 administered and enforced by the commission, and  
4 discuss ways to avoid an appearance of impropriety. A  
5 person receiving advice from the commission may  
6 request a written summary of that advice. The  
7 commission shall treat all advice requests, responses,  
8 and related materials as confidential. Written  
9 summaries shall be confidential unless the recipient  
10 waives confidentiality;

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



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

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



1 other information or indications, or as the commission  
2 determines is in the public interest;

3 (5) It shall initiate, receive, and consider charges and  
4 other information, on a confidential basis, concerning  
5 alleged, possible, or potential violations of this  
6 chapter and other laws or rules administered and  
7 enforced by the commission, initiate or make  
8 investigation, and hold hearings;

9 (6) Upon adoption of a resolution defining the scope and  
10 nature of the inquiry, supported by a vote of three or  
11 more members of the commission, it may subpoena  
12 witnesses, administer oaths, and take testimony  
13 relating to matters before the commission and require  
14 the production for examination of any books or papers  
15 relative to any matter under investigation or in  
16 question before the commission;

17 (7) It may, from time to time adopt, amend, and repeal any  
18 rules, not inconsistent with this chapter, that in the  
19 judgment of the commission seem appropriate for the  
20 carrying out of this chapter and for the efficient  
21 administration thereof, including every matter or



1           thing required to be done or which may be done with  
2           the approval or consent or by order or under the  
3           direction or supervision of or as prescribed by the  
4           commission. The rules, when adopted as provided in  
5           chapter 91, shall have the force and effect of law;

6           (8) It shall have jurisdiction for purposes of  
7           investigation and taking appropriate action on  
8           possible violations of this chapter in all proceedings  
9           commenced within six years of a possible violation of  
10          this chapter by a legislator or employee or former  
11          legislator or employee. A proceeding shall be deemed  
12          commenced by the filing of a charge with the  
13          commission or by the signing of a charge by three or  
14          more members of the commission. Nothing herein shall  
15          bar proceedings against a person who by fraud or other  
16          device, prevents discovery of a violation of this  
17          chapter;

18          (9) It shall distribute its publications without cost to  
19          the public and shall initiate and maintain programs  
20          with the purpose of educating the citizenry and all  
21          legislators, employees, and delegates to the



1 constitutional convention on matters of ethics in  
2 government employment; and

3 (10) It shall administer any code of ethics adopted by a  
4 state constitutional convention, subject to the  
5 procedural requirements of this part and any rules  
6 adopted thereunder.

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



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





1 weeks of a notice in a newspaper of general circulation in the  
2 circuit of the alleged violator's last known state address. The  
3 alleged violator shall have twenty days after service thereof to  
4 respond in writing to the charge and statement.

5 (c) If after twenty days following service of the charge  
6 and further statement of alleged violation in accordance with  
7 this section, a majority of the members of the commission  
8 conclude that there is probable cause to believe that a  
9 violation of this chapter or of the code of ethics adopted by  
10 the constitutional convention has been committed, then the  
11 commission shall set a time and place for a hearing, giving  
12 notice to the complainant and the alleged violator. Upon the  
13 commission's issuance of a notice of hearing, the charge and  
14 further statement of alleged violation and the alleged  
15 violator's written response thereto shall become public records.  
16 The hearing shall be held within ninety days of the commission's  
17 issuance of a notice of hearing. If the hearing is not held  
18 within that ninety-day period, the charge and further statement  
19 of alleged violation shall be dismissed; provided that any delay  
20 that is at the request of, or caused by, the alleged violator



1 shall not be counted against the ninety-day period. All parties  
2 shall have an opportunity to:

3 (1) Be heard;

4 (2) Subpoena witnesses and require the production of any  
5 books or papers relative to the proceedings;

6 (3) Be represented by counsel; and

7 (4) Have the right of cross-examination.

8 All hearings shall be in accordance with chapter 91. All  
9 witnesses shall testify under oath and the hearings shall be  
10 open to the public. The commission shall not be bound by the  
11 strict rules of evidence but the commission's findings must be  
12 based upon competent and substantial evidence. All testimony  
13 and other evidence taken at the hearing shall be recorded.

14 (d) A decision of the commission pertaining to the conduct  
15 of any legislator, delegate to the constitutional convention, or  
16 employee or person formerly holding such office or employment  
17 shall be in writing and signed by three or more of the members  
18 of the commission. A decision of the commission rendered after  
19 a hearing together with findings and the record of the  
20 proceeding shall be a public record.



1           (e) A person who files a frivolous charge with the  
2 commission against any person covered by this chapter shall be  
3 civilly liable to the person charged for all costs incurred in  
4 defending the charge, including but not limited to costs and  
5 attorneys' fees. In any case where the commission decides not  
6 to issue a complaint in response to a charge, the commission  
7 shall upon the written request of the person charged make a  
8 finding as to whether or not the charge was frivolous. The  
9 person charged may initiate an action in the circuit court for  
10 recovery of fees and costs incurred in commission proceedings  
11 within one year after the commission renders a decision. The  
12 commission's decision shall be binding upon the court for  
13 purposes of a finding pursuant to section 607-14.5.

14           (f) The commission shall cause to be published yearly  
15 summaries of decisions, advisory opinions, and informal advisory  
16 opinions. The commission shall make sufficient deletions in the  
17 summaries to prevent disclosing the identity of persons involved  
18 in the decisions or opinions where the identity of such persons  
19 is not otherwise a matter of public record under this chapter.

20           (g) Notwithstanding the above procedures, for any  
21 violation of this chapter with a proposed administrative penalty



1 of less than \$1,000, the state ethics commission may issue a  
2 notice and order of administrative fine describing the violation  
3 and assessing an administrative fine. The order shall become  
4 final on the twentieth day after it is served upon the alleged  
5 violator, unless the alleged violator submits a written request  
6 for a hearing before the state ethics commission on or before  
7 the twentieth day. After conducting a hearing pursuant to  
8 chapter 91, the state ethics commission may affirm, modify, or  
9 rescind the order as appropriate. The state ethics commission  
10 may file with the circuit court of the first circuit any order  
11 the commission has issued pursuant to this section for the  
12 purpose of confirming the order as a final judgment that shall  
13 have the same force and effect and shall be enforceable and  
14 collectable as other judgments issued by the circuit courts;  
15 provided that there shall be no appeal from the judgment."

16 SECTION 4. Section 84-39, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

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

19 (1) The state ethics commission convenes a hearing in  
20 accordance with section 84-31(c) and chapter 91 and a  
21 decision has been rendered by the commission; [✗]



(2) The state ethics commission and respondent agree to resolve any charge of an alleged violation prior to completion of the contested case process and the resolution includes payment of an administrative fine or restitution, or both[-]; or

(3) The state ethics commission issues a notice and order of administrative fine pursuant to section 84-31(g)."

SECTION 5. Section 97-6, Hawaii Revised Statutes, is amended to read as follows:

**"§97-6 Administration.** (a) The state ethics commission shall administer and implement this chapter, and shall have the following powers and duties:

(1) Initiate, receive, and consider charges and other information, on a confidential basis, concerning alleged, possible, or potential violations of this chapter and other laws or rules administered and enforced by the commission, and investigate or cause to be investigated; on a confidential basis, the activities of any person to determine whether the person is in compliance with this chapter;



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

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

17 (4) Render advisory opinions upon the request of any  
18 person subject to this chapter. If no advisory  
19 opinion is rendered within ninety days after the  
20 request is filed with the commission, it shall be  
21 deemed that an advisory opinion was rendered and that



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

15 (5) Issue subpoenas, administer oaths, require the  
16 production for examination of any records or papers  
17 relative to any matter under investigation or in  
18 question before the commission, and exercise those  
19 powers conferred upon the commission by section 92-16;

20 (6) Adopt, amend, and repeal rules, not inconsistent with  
21 this chapter, that in the judgment of the commission



1           seem appropriate for the carrying out of this chapter  
2           and for the efficient administration of this chapter,  
3           including every matter or thing required to be done or  
4           that may be done with the approval or consent or by  
5           order or under the direction or supervision of, or as  
6           prescribed by, the commission. The rules, when  
7           adopted as provided in chapter 91, shall have the  
8           force and effect of law;

9           (7) Have jurisdiction for purposes of investigation and  
10          taking appropriate action on possible violations of  
11          this chapter in all proceedings commenced within six  
12          years of a possible violation of this chapter. A  
13          proceeding shall be deemed commenced by the filing of  
14          a charge with the commission or by the signing of a  
15          charge by three or more members of the commission.  
16          Nothing shall bar proceedings against a person who by  
17          fraud or other device prevents discovery of a  
18          violation of this chapter; and

19          (8) Distribute educational and advisory publications and  
20          initiate, administer, and maintain training programs  
21          for the purpose of training lobbyists on compliance





1 with state lobbying laws and applicable parts of the  
2 code of ethics.

3 (b) Charges concerning the violation of this chapter shall  
4 be in writing, signed by the person making the charge under  
5 oath; provided that any charge initiated by the commission shall  
6 be signed by three or more members of the commission. The  
7 commission shall issue written notice to every person against  
8 whom a charge is received and afford the person an opportunity  
9 to explain the conduct alleged to be in violation of the  
10 chapter. The commission may investigate, after compliance with  
11 this section, the charges and render an informal advisory  
12 opinion to the alleged violator. The commission shall  
13 investigate all charges on a confidential basis, having  
14 available all the powers herein provided, and proceedings at  
15 this stage shall not be public. If the informal advisory  
16 opinion indicates a probable violation, the person charged shall  
17 request a formal opinion or within a reasonable time comply with  
18 the informal advisory opinion. If the person charged fails to  
19 comply with the informal advisory opinion or if a majority of  
20 the members of the commission determine that there is probable  
21 cause for belief that a violation of this chapter might have



1 occurred, a copy of the charge and a further statement of the  
2 alleged violation shall be personally served upon the alleged  
3 violator. Service shall be made by personal service upon the  
4 alleged violator wherever found or by registered or certified  
5 mail with request for a return receipt and marked deliver to  
6 addressee only. If after due diligence service cannot be  
7 effected successfully in accordance with the above, service may  
8 be made by publication if so ordered by the circuit court of the  
9 circuit wherein the alleged violator last resided. The  
10 commission shall submit to the circuit court for its  
11 consideration in issuing its order to allow service by  
12 publication an affidavit setting forth facts based upon the  
13 personal knowledge of the affiant concerning the methods, means,  
14 and attempts made to locate and effect service by personal  
15 service or by registered or certified mail in accordance with  
16 the above. Service by publication when ordered by the court  
17 shall be made by publication once a week for four successive  
18 weeks of a notice in a newspaper of general circulation in the  
19 circuit of the alleged violator's last known state address. The  
20 alleged violator shall have twenty days after service thereof to  
21 respond in writing to the charge and statement.



1 (c) If after twenty days following service of the charge  
2 and further statement of alleged violation in accordance with  
3 this section, a majority of the members of the commission  
4 conclude that there is probable cause to believe that a  
5 violation of this chapter has been committed, then the  
6 commission shall set a time and place for a hearing, giving  
7 notice to the complainant and the alleged violator in the same  
8 manner as provided in subsection (b). Upon the commission's  
9 issuance of a notice of hearing, the charge and further  
10 statement of alleged violation and the alleged violator's  
11 written response thereto shall become public records. The  
12 hearing shall be held within ninety days of the commission's  
13 issuance of a notice of hearing. If the hearing is not held  
14 within that ninety-day period, the charge and further statement  
15 of alleged violation shall be dismissed; provided that any delay  
16 that is at the request of, or caused by, the alleged violator  
17 shall not be counted against the ninety-day period.

18 All parties shall have an opportunity to:

19 (1) Be heard;

20 (2) Subpoena witnesses and require the production of any  
21 books or papers relative to the proceedings;



1 (3) Be represented by counsel; and

2 (4) Have the right of cross-examination.

3 All hearings shall be in accordance with chapter 91. All  
4 witnesses shall testify under oath and the hearings shall be  
5 open to the public. The commission shall not be bound by the  
6 strict rules of evidence but the commission's findings shall be  
7 based on competent and substantial evidence.

8 All testimony and other evidence taken at the hearing shall  
9 be recorded. All fees collected under this chapter shall be  
10 deposited into the general fund.

11 (d) A decision of the commission pertaining to the conduct  
12 of any person subject to this chapter shall be in writing and  
13 signed by three or more of the members of the commission. A  
14 decision of the commission rendered after a hearing together  
15 with findings and the record of the proceeding shall be a public  
16 record.

17 (e) A person who files a frivolous charge with the  
18 commission against any person covered by this chapter shall be  
19 civilly liable to the person charged for all costs incurred in  
20 defending the charge, including but not limited to costs and  
21 attorneys' fees. In any case where the commission does not



1 issue a decision or final conclusion in which the commission  
2 concludes that a person has violated this chapter, the  
3 commission shall, upon the written request of the person  
4 charged, make a finding as to whether or not the charge was  
5 frivolous. The person charged may initiate an action in the  
6 circuit court for recovery of fees and costs incurred in  
7 commission proceedings within one year after the commission  
8 renders a decision that the charge was frivolous. The  
9 commission's decision shall be binding upon the court for  
10 purposes of a finding pursuant to section 607-14.5.

11 (f) The commission shall cause to be published yearly  
12 summaries of decisions, advisory opinions, and informal advisory  
13 opinions. The commission shall make sufficient deletions in the  
14 summaries to prevent disclosing the identity of persons involved  
15 in the decisions or opinions where the identity of such persons  
16 is not otherwise a matter of public record under this chapter.

17 (g) Notwithstanding the above procedures, for any  
18 violation of this chapter with a proposed administrative penalty  
19 of less than \$1,000, the state ethics commission may issue a  
20 notice and order of administrative fine describing the violation  
21 and assessing an administrative fine. The order shall become



final on the twentieth day after it is served upon the alleged violator, unless the alleged violator submits a written request for a hearing before the state ethics commission on or before the twentieth day. After conducting a hearing pursuant to chapter 91, the state ethics commission may affirm, modify, or rescind the order as appropriate. The state ethics commission may file with the circuit court of the first circuit any order the commission has issued pursuant to this section for the purpose of confirming the order as a final judgment that shall have the same force and effect and shall be enforceable and collectable as other judgments issued by the circuit courts; provided that there shall be no appeal from the judgment."

SECTION 6. Section 97-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No fine shall be assessed unless the state ethics commission:

(1) Convenes a hearing in accordance with section 97-6(c) and chapter 91 and renders a decision; [~~or~~]

(2) Together with the alleged violator, agrees to resolve any alleged violation before the completion of the contested case process; provided that the resolution



1 includes payment of an administrative fine or  
2 restitution, or both[-]; or

3 (3) Issues a notice and order of administrative fine  
4 pursuant to section 97-6(g)."

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

8 SECTION 8. If any provision of this Act, or the  
9 application thereof to any person or circumstance, is held  
10 invalid, the invalidity does not affect other provisions or  
11 applications of the Act that can be given effect without the  
12 invalid provision or application, and to this end the provisions  
13 of this Act are severable.

14 SECTION 9. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

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

17  
INTRODUCED BY:

Nadine K. Muth  
By Request

JAN 16 2025



# H.B. NO. 411

**Report Title:**

State Ethics Commission Package; State Ethics Code; Lobbyist Law; Administrative Fines

**Description:**

Establishes uniform provisions for the assessment of administrative penalties under the State Ethics Code and Lobbyist Law.

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

