

ACT 220

H.B. NO. 111

A Bill for an Act Relating to Lobbying.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 97, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§97- **Contested case hearings.** (a) Whenever the state ethics commission preliminarily concludes that a person has violated a provision of this chapter, it may refer the person to the attorney general or the prosecuting attorney for prosecution, or assess an administrative fine pursuant to section 97-7(b). The commission may assess an administrative fine against a person previously referred to the attorney general or prosecuting attorney only if, after the commission refers the matter for

prosecution, the attorney general or prosecuting attorney informs the commission that prosecution will not be initiated.

(b) Before any administrative fine is assessed against a person, the state ethics commission shall offer the person a contested case hearing in accordance with chapter 91. A statement describing the alleged violation and specifying the amount of any administrative fine that the commission believes should be assessed, and a notice informing the person of the person's right to request a contested case hearing shall be served upon the person by:

- (1) Delivering the statement to the person; or
- (2) Sending the statement by registered or certified mail, with request for return receipt and marked deliver to addressee only.

If the person does not request a contested case hearing within twenty days after service has been effected, the preliminary conclusion of the commission shall be final, and shall become a matter of public record, and the specified administrative fine shall be deemed due and owing. Any decision by the commission, including any findings of fact and conclusions of law, shall be a matter of public record. Any administrative fines assessed by the commission in accordance with this chapter shall be a matter of public record."

SECTION 2. Section 84-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(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 the statements and reports required by sections 97-2 and 97-3] and shall establish orderly procedures for implementing the requirements of those provisions[.];
 - (2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. [It shall also render advisory opinions to persons subject to chapter 97.] If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, [or person subject to chapter 97] who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion[.];
 - (3) It shall initiate, receive, and consider charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings[.];
 - (4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized [herein] in this section with respect to any investigation or hearings it shall by formal resolu-

- tion, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry[.];
- (5) It may, from time to time [make,] adopt, amend, and repeal [such] any rules, not inconsistent with this chapter [as], that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law[.];
 - (6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within three years of an alleged violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter[.];
 - (7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, delegates to the constitutional convention, and employees on matters of ethics in government employment[.]; and
 - (8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.
 - (9) It shall perform the duties and fulfill the functions assigned to it by chapter 97, relating to registration of lobbyists.]”

SECTION 3. Section 84-31, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A decision of the commission pertaining to the conduct of any legislator, delegate to the constitutional convention, or employee or person formerly holding such office or employment[, or person subject to chapter 97] shall be in writing and signed by three or more of the members of the commission.”

SECTION 4. Section 84-32, Hawaii Revised Statutes, is amended to read as follows:

“**§84-32 Procedure.** (a) With respect to legislators and employees removable only by impeachment: when the ethics commission after due hearings pursuant to section 84-31(d) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint [must] shall contain a statement of the facts alleged to constitute the violation. If within thirty days after the referral, the legislature has not disposed of the complaint, the commission shall make the charges public. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission after due hearing determines pursuant to section 84-31(d) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeach-

ment, it shall refer the decision to the governor who shall take appropriate action within sixty days and shall notify the commission of the action taken.

If it is found that a violation has occurred, the governor or the ethics commission by a vote of four members may make the findings and the record of the proceeding public, taking into account the seriousness of the violation.

This subsection shall not prevent the commission from reporting decisions in the yearly summaries required by section 84-31(f).

(c) With respect to former employees: the commission may with the consent of four commissioners issue a public statement of its findings and conclusions, and the attorney general may exercise whatever legal or equitable remedies which may be available to the State.

(d) With respect to delegates to the constitutional convention removable only by impeachment: when the ethics commission after due hearing pursuant to section 84-31(d) determines that there is sufficient cause to file a complaint against a delegate to the constitutional convention, it shall issue a complaint and refer the matter to the appropriate body of the constitutional convention.

[(e) With respect to persons subject to chapter 97: when the ethics commission after due hearing pursuant to section 84-31(d) determines that a violation of chapter 97 has occurred, it shall refer the matter to the office of the attorney general or the prosecuting attorney for the city and county of Honolulu each of which shall have concurrent jurisdiction. The fact of such referral for prosecution shall be made public by the ethics commission.]”

SECTION 5. Section 97-1, Hawaii Revised Statutes, is amended by amending the definitions of “lobbyist” and “lobbying” to read as follows:

- “(6) “Lobbyist” means any individual [engaged] who for pay or other consideration [who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action or a ballot issue by communicating or urging others to communicate with public officials.] engages in lobbying in excess of five hours in any month of any reporting period described in section 97-3 or spends more than \$750 lobbying during any reporting period described in section 97-3.
- (7) “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 [influencing any] attempting to influence legislative or administrative action[.] or a ballot issue.”

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

“(a) The following persons shall file a statement of expenditures with the state ethics commission on March 31,¹ May 31, and January 31 of each year:

- (1) Each lobbyist.
- (2) Each person who spends [~~\$275~~] \$750 or more of the person’s or any other person’s money in any six-month period for the purpose of attempting to influence legislative or administrative action or a ballot issue by communicating or urging others to communicate with public officials[.]; provided that any amounts expended for travel costs, including incidental meals and lodging, shall not be included in the tallying of the \$750.
- (3) Each person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons. If the

person is an industry, trade, or professional association, only the association is the employer of the lobbyist.

(b) The March 31 report shall cover the period from January 1 through the last day of February. The May 31 report shall cover the period from March 1 through April 30. The January 31 report shall cover the period from [March 1] May 1 through December 31 of the [same] previous year.

(c) The statement shall contain the following information:

- (1) The name and address of each person with respect to whom expenditures for the purpose of lobbying in the total sum of \$25 or more per day was made by the person filing the statement during the statement period and the amount or value of such expenditure;
- (2) The name and address of each person with respect to whom expenditures for the purpose of lobbying in the aggregate of \$150 or more was made by the person filing the statement during the statement period and the amount or value of such expenditures;
- (3) The total sum or value of all expenditures for the purpose of lobbying made by the person filing the statement during the statement period in excess of [\$275] \$750 during the statement period;
- (4) The name and address of each person making contributions to the person filing the statement for the purpose of lobbying in the total sum of \$25 or more during the statement period and the amount or value of such contributions; and
- (5) The subject area of the legislative and administrative action which was supported or opposed by the person filing the statement during the statement period.”

SECTION 7. Section 97-6, Hawaii Revised Statutes, is amended to read as follows:

“§97-6 Administration. [It shall be the duty and responsibility of the state ethics commission:] The state ethics commission shall administer and implement this chapter, and shall have the following powers and duties:

- (1) On the verified complaint of any person, to 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; [and]
- (2) [To refer] Refer for prosecution any violation of section 97-2, 97-3, or 97-5[.];
- (3) Prescribe forms for the statements and reports required by sections 97-2 and 97-3 and establish orderly procedures for implementing the requirements of those provisions;
- (4) Render advisory opinions upon the request of any person subject to this chapter. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of this chapter. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person subject to this chapter who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such person in the request for an advisory opinion;
- (5) Issue subpoenas, administer oaths, and exercise those powers conferred upon the commission by section 92-16; and
- (6) From time to time, adopt, amend, and repeal such rules, not inconsistent with this chapter as in the judgment of the commission seem

appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law.”

SECTION 8. Section 97-7, Hawaii Revised Statutes, is amended to read as follows:

“§97-7 Penalties[.]; administrative fines. (a) Any person who [wilfully];

(1) Wilfully fails to file any statement or report required by this chapter [or who wilfully];

(2) Wilfully files a statement or report containing false information or material omission of any fact[, who engages];

(3) Engages in activities prohibited by section 97-5[.]; or [who fails]

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

shall be guilty of a petty misdemeanor.

(b) After holding a contested case hearing under section 97- , the state ethics commission may assess an administrative fine that shall not exceed \$500.”

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 10. This Act shall take effect on July 1, 1995.

(Approved June 29, 1995.)

Notes

1. Comma should be underscored.

2. Edited pursuant to HRS §23G-16.5.