

JAN 22 2008

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# A BILL FOR AN ACT

RELATING TO LOBBYISTS.

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

1           SECTION 1. The legislature funds that public trust in  
2 government is essential for our democracy to function  
3 effectively. One area of concern has been public perception of  
4 undue influence by lobbyist on legislative decisions. The  
5 current approach for addressing this concern has been to require  
6 registration of lobbyists and public disclosure of their  
7 expenditures and activities. However, Hawaii's lobbyist  
8 disclosure law appears to contain numerous loopholes that allow  
9 lobbyists to evade disclosure of their expenditures and  
10 activities. For example, a review of all lobbyist reports shows  
11 only eight disclosures of expenditures involving legislators.

12           Lobbyists are able to influence public decisions not only  
13 through their lobbying business, but also through contributions  
14 to political campaigns and gifts to public office. Even a  
15 series of gifts of small value can help build influential  
16 relationships with public officials. To ensure lobbyist



1 disclosures are accurate, the Hawaii ethics commission needs the  
2 authority and staffing to conduct spot audits.

3 While lobbying often occurs at the legislature, officials  
4 in the executive branch also make public decisions that involve  
5 lobbying, such as whether to veto a bill, release a project's  
6 funding, select a contractor, or approve permits. These  
7 lobbying activities should be included in the state law  
8 regulating lobbyists.

9 The purpose of this Act is to provide a more comprehensive  
10 law to govern lobbyists in the State.

11 SECTION 2. Chapter 97, Hawaii Revised Statutes, is amended  
12 by adding two new sections to be appropriately designated and to  
13 read as follows:

14 "§97- Persons or entities that hire lobbyist;  
15 registration. (a) Each person or entity that employs or  
16 contracts for the services of one or more lobbyists, whether  
17 independently or jointly with other persons, shall file a  
18 registration form with the state ethics commission within five  
19 days of hiring a lobbyist.

20 (b) Each person or entity shall provide and certify the  
21 following information:



1        (1) The name, mailing address, and business telephone  
2        number of the person or entity;

3        (2) The name and principal place of business of the person  
4        or entity; and

5        (3) The subject areas on which the lobbyist has been  
6        employed or contracted to lobby.

7        (c) A registered person or entity shall report any change  
8        in any of the information contained in the registration  
9        statement within ten days after the change has occurred.

10       (d) Any person or entity that is required to register  
11       under this section shall file a notice of termination within ten  
12       days after the lobbyist ceases the activity for which the  
13       lobbyist was hired. The person or entity shall remain subject,  
14       however, to the requirements of chapter 97 for the period during  
15       which the registration was effective.

16       §97- Retention of records. Each lobbyist shall retain  
17       all records, including financial documents, receipts, computer  
18       records, or other records necessary to substantiate  
19       compensation, for a period of four years."

20       SECTION 3. Section 97-1, Hawaii Revised Statutes, is  
21       amended to read as follows:

22       "§97-1 Definitions. When used in this chapter:



1        [~~1~~] "Administrative action" means the proposal,  
2        drafting, consideration, amendment, enactment, or defeat by any  
3        administrative agency of any rule, regulation, or other action  
4        governed by section 91-3[-], and includes any actions taken by  
5        the governor, lieutenant governor, executive department  
6        directors, administrative boards, and public employees,  
7        excluding employees of the judiciary.

8        [~~2~~] "Administrative agency" means a commission, board,  
9        agency, or other body, or official in the state government that  
10       is not a part of the legislative or judicial branch.

11       [~~3~~] "Contribution" includes a gift, subscription,  
12       forgiveness of a loan, advance, or deposit of money, or anything  
13       of value and includes a contract, promise, or agreement, whether  
14       or not enforceable, to make a contribution.

15       [~~4~~] "Expenditure" includes a payment, distribution,  
16       forgiveness of a loan, advance, deposit, or gift of money, or  
17       anything of value and includes a contract, promise, or  
18       agreement, whether or not enforceable, to make an expenditure.  
19       "Expenditure" also includes compensation or other consideration  
20       paid to a lobbyist for the performance of lobbying services.  
21       "Expenditure" excludes the expenses of preparing written



1 testimony and exhibits for a hearing before the legislature or  
2 an administrative agency.

3       ~~(5)~~ "Legislative action" means the sponsorship,  
4 drafting, introduction, consideration, modification, enactment,  
5 or defeat of any bill, resolution, amendment, report,  
6 nomination, appointment, or any other matter pending or proposed  
7 in the legislature.

8       ~~(6)~~ "Lobbyist" means any individual who for pay or other  
9 consideration engages in lobbying in excess of five hours in any  
10 month of any reporting period described in section 97-3 or  
11 spends more than \$750 lobbying during any reporting period  
12 described in section 97-3.

13       ~~(7)~~ "Lobbying" means communicating directly or through  
14 an agent, or soliciting others to communicate, with any official  
15 in the legislative or executive branch, for the purpose of  
16 attempting to influence legislative or administrative action or  
17 a ballot issue.

18       ~~(8)~~ "Person" means a corporation, individual, union,  
19 association, firm, sole proprietorship, partnership, committee,  
20 club, or any other organization or a representative of a group  
21 of persons acting in concert."



1 SECTION 4. Section 97-2, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) Each lobbyist shall provide and certify the following  
4 [information]:

5 (1) The name, mailing address, and business telephone  
6 number of the lobbyist[-];

7 (2) The name and principal place of business of each  
8 person by whom the lobbyist is retained or employed or  
9 on whose behalf the lobbyist appears or works and a  
10 written authorization to act as a lobbyist from each  
11 person by whom the lobbyist is employed or with whom  
12 the lobbyist contracts[-];

13 (3) The subject areas on which the lobbyist expects to  
14 lobby[-];

15 (4) A photograph of the lobbyist; and

16 (5) A \$50 registration fee; provided that this fee shall  
17 not apply to non-profit organizations that have been  
18 determined and designated to be a non-profit  
19 organization by the Internal Revenue Service, with  
20 gross revenues of less than \$50,000 per year."

21 SECTION 5. Section 97-2.5, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "§97-2.5 Renewal of registration. (a) Each registered  
2 lobbyist shall renew the lobbyist's registration [~~biennially~~]  
3 annually by filing a registration and authorization form with  
4 the state ethics commission within ten days of the opening of  
5 [~~the 1983~~] each regular session of the legislature [~~and on every~~  
6 ~~odd-numbered year's session thereafter~~]."

7           SECTION 6. Section 97-3, Hawaii Revised Statutes, is  
8 amended as follows:

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

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

13           (1) Each lobbyist [~~-~~];

14           (2) Each person who spends \$750 or more of the person's or  
15 any other person's money in any six-month period for  
16 the purpose of attempting to influence legislative or  
17 administrative action or a ballot issue by  
18 communicating or urging others to communicate with  
19 public officials; provided that any amounts expended  
20 for travel costs, including incidental meals and  
21 lodging, shall not be included in the tallying of the  
22 \$750 [~~-~~]; and



1           (3) Each person who employs or contracts for the services  
2           of one or more lobbyists, whether independently or  
3           jointly with other persons. If the person is an  
4           industry, trade, or professional association, only the  
5           association is the employer of the lobbyist."

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

7           "(c) The statement shall contain the following  
8 information:

9           (1) ~~[The name and address of each person with respect to  
10 whom expenditures for the purpose of lobbying in the  
11 total sum of \$25 or more per day was made by the  
12 person filing the statement during the statement  
13 period and the amount or value of such expenditure;~~

14 ~~-(2) The name and address of each person with respect to  
15 whom expenditures for the purpose of lobbying in the  
16 aggregate of \$150 or more was made by the person  
17 filing the statement during the statement period and  
18 the amount or value of such expenditures;~~

19 ~~-(3)]~~ The total sum or value of all expenditures for the  
20 purpose of lobbying made by the person filing the  
21 statement during the statement period in excess of  
22 \$750 during the statement period;





- 1       (2) Information on meetings or events, including dinners,  
2       receptions and parties, sponsored in whole or in part  
3       by the lobbyist, to which public officials and their  
4       staff are invited, including the event purpose, date,  
5       names of attending public officials and staff, total  
6       amount paid for the event, and estimated value  
7       provided;
- 8       (3) Any campaign donations made or gifts given to public  
9       officials and staff, including the date of the  
10       donation or gift, the dollar amount of the  
11       contribution or value of the gift, and the name of the  
12       public official or staff that accepted or received the  
13       donation or gift;
- 14       (4) The name and address of each person making  
15       contributions to the person filing the statement for  
16       the purpose of lobbying in the total sum of \$25 or  
17       more during the statement period and the amount or  
18       value of such contributions; and
- 19       (5) The subject area of the legislative and administrative  
20       action which was supported or opposed by the person  
21       filing the statement during the statement period[-];



1           including any bill number or rule number, if  
2           applicable."

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

5           "**§97-6 Administration.** (a) The state ethics commission  
6 shall administer and implement this chapter, and shall have the  
7 following powers and duties:

8           (1) Initiate, receive, and consider charges concerning  
9           alleged violations of this chapter, and investigate or  
10           cause to be investigated on a confidential basis, the  
11           activities of any person to determine whether the  
12           person is in compliance with this chapter;

13           (2) Prescribe forms for the statements and reports  
14           required by sections 97-2 and 97-3 and establish  
15           orderly procedures for implementing the requirements  
16           of those provisions;

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



1 not constitute a violation of this chapter. The  
2 opinion rendered or deemed rendered, until amended or  
3 revoked, shall be binding on the commission in any  
4 subsequent charges concerning the person subject to  
5 this chapter who sought the opinion and acted in  
6 reliance on it in good faith, unless material facts  
7 were omitted or misstated by the person in the request  
8 for an advisory opinion;

9 (4) Issue subpoenas, administer oaths, and exercise those  
10 powers conferred upon the commission by section 92-16;

11 (5) Adopt rules, not inconsistent with this chapter, as in  
12 the judgment of the commission seem appropriate for  
13 the carrying out of this chapter and for the efficient  
14 administration of this chapter, including every matter  
15 or thing required to be done or which may be done with  
16 the approval or consent or by order or under the  
17 direction or supervision of, or as prescribed by, the  
18 commission. The rules, when adopted as provided in  
19 chapter 91, shall have the force and effect of law;

20 [and]

21 (6) Have jurisdiction for purposes of investigation and  
22 taking appropriate action on alleged violations of



1           this chapter in all proceedings commenced within three  
2           years of an alleged violation of this chapter. A  
3           proceeding shall be deemed commenced by the filing of  
4           a charge with the commission or by the signing of a  
5           charge by three or more members of the commission.

6           Nothing shall bar proceedings against a person who by  
7           fraud or other device prevents discovery of a  
8           violation of this chapter[-];

9           (7) Require that lobbyists attend training sessions on the  
10           requirements of this chapter; and

11           (8) Conduct audits, as may be necessary, to ensure the  
12           accuracy of all reports and information submitted  
13           pursuant to this chapter.

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



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



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

10 (c) If after twenty days following service of the charge  
11 and further statement of alleged violation in accordance with  
12 this section, a majority of the members of the commission  
13 conclude that there is probable cause to believe that a  
14 violation of this chapter has been committed, then the  
15 commission shall set a time and place for a hearing, giving  
16 notice to the complainant and the alleged violator in the same  
17 manner as provided in subsection (b). Upon the commission's  
18 issuance of a notice of hearing, the charge and further  
19 statement of alleged violation and the alleged violator's  
20 written response thereto shall become public records. The  
21 hearing shall be held within ninety days of the commission's  
22 issuance of a notice of hearing. If the hearing is not held



1 within that ninety-day period, the charge and further statement  
2 of alleged violation shall be dismissed; provided that any delay  
3 that is at the request of, or caused by, the alleged violator  
4 shall not be counted against the ninety-day period.

5 All parties shall have an opportunity to:

- 6 (1) Be heard;
- 7 (2) Subpoena witnesses and require the production of any  
8 books or papers relative to the proceedings;
- 9 (3) Be represented by counsel; and
- 10 (4) Have the right of cross-examination.

11 All hearings shall be in accordance with chapter 91. All  
12 witnesses shall testify under oath and the hearings shall be  
13 open to the public. The commission shall not be bound by the  
14 strict rules of evidence but the commission's findings shall be  
15 based on competent and substantial evidence.

16 All testimony and other evidence taken at the hearing shall  
17 be recorded. Copies of transcripts of the record shall be  
18 available only to the complainant and the alleged violator at  
19 their own expense. All fees collected under this chapter shall  
20 be deposited into the general fund.

21 (d) A decision of the commission pertaining to the conduct  
22 of any person subject to this chapter shall be in writing and



1 signed by three or more of the members of the commission. A  
2 decision of the commission rendered after a hearing together  
3 with findings and the record of the proceeding shall be a public  
4 record.

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

20 (f) The commission shall cause to be published yearly  
21 summaries of decisions, advisory opinions, and informal advisory  
22 opinions. The commission shall make sufficient deletions in the





1 summaries to prevent disclosing the identity of persons involved  
2 in the decisions or opinions where the identity of such persons  
3 is not otherwise a matter of public record under this chapter.

4 (g) The commission shall conduct random or spot audits of  
5 lobbyists, as may be necessary, to ensure compliance with this  
6 chapter."

7 SECTION 8. Section 97-7, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) Any person who:

- 10 (1) Wilfully fails to file any statement or report
- 11 required by this chapter;
- 12 (2) Wilfully files a statement or report containing false
- 13 information or material omission of any fact;
- 14 (3) Engages in activities prohibited by section 97-5; or
- 15 (4) Fails to provide information required by section 97-2
- 16 or 97-3;

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

21 SECTION 9. There is appropriated out of the general  
22 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2008-2009 for  
2 the state ethics commission to conduct random audits as may be  
3 necessary to ensure compliance with chapter 97, Hawaii Revised  
4 Statutes.

5 The sum appropriated shall be expended by the state ethics  
6 commission for the purposes of this Act.

7 SECTION 10. This Act does not affect rights and duties  
8 that matured, penalties that were incurred, and proceedings that  
9 were begun, before its effective date.

10 SECTION 11. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 12. This Act shall take effect upon its approval;  
13 provided that section 9 shall take effect on July 1, 2008.

14

INTRODUCED BY:

*[Handwritten signature]*

*Gordon T. ...*  
*Shirley ...*

*David ...*  
*Clarence ...*

*Jim*  
*Robert ...*

*Will ...*  
*S.S.T.*

*Arzanne ...*

*Ron ...*  
*Guy L. ...*



**Report Title:**

Lobbyists; Appropriation

**Description:**

Requires persons who hire lobbyist to register. Requires lobbyists to retain records for four years. Adds additional requirements for lobbyists with regard to registration and reporting. Increases the fine for violations of chapter 97, Hawaii Revised Statutes, relating to lobbyists. Adds additional powers and duties of the state ethics commission. Requires the state ethics commission to conduct random audits. Appropriates funds.

