



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 443, RELATING TO CAMPAIGN CONTRIBUTIONS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 7, 2013

TIME: 2:02 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Robyn Chun, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Attorney General has concerns about this bill.

If the intent of this bill is to regulate campaign contributions, campaign contributions are generally regulated by the Campaign Spending Commission and the amendment should be made to part XIII of chapter 11, Hawaii Revised Statutes (HRS), which pertains to campaign finance and enforced by the Campaign Spending Commission, rather than chapter 97, HRS, which is entitled "Lobbyists" and is administered by the State Ethics Commission.

Courts have generally held that state laws that regulate campaign contributions are constitutional; however, because they act to marginally restrain political expression, they raise potential First Amendment issues. See Buckley v. Valeo, 424 U.S. 1 (1976). As a result, the purpose section of this bill needs to be revised to reflect the Legislature's desire to address not only conflicts of interest (as is presently stated), but also corruption and the appearance of corruption, because these are the only government interests that courts currently find sufficient to withstand constitutional challenge. See Thalheimer v. City of San Diego, 645 F.3d 1109, 1118 (9th Cir. 2011) ("The Supreme Court has concluded that 'preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances'"). To defend this bill against a possible constitutional challenge, the legislative intent expressed in the purpose section of this bill should detail why corruption and/or the appearance of corruption are a concern and are addressed by this bill.

Further, the following revisions should be made for consistency:

- The term “political action committee” and its definition on page 2, lines 4 and 16-18, should be replaced with the term “noncandidate committee” as defined in section 11-302, HRS. The term “political action committee” is not used in Hawaii’s campaign finance laws.
- The phrase “on which the lobbyist sits” on page 2, lines 4-5, is vague. The bill should be amended to clarify whether this refers to the board of directors of the noncandidate committee or the noncandidate committee itself.
- The prohibition on contributions to the governor, the Lieutenant Governor, or a member of the Legislature should be broadened to include their candidate committees as defined in section 11-302, HRS.
- The term “contribution” as defined in this bill differs from the definition of “contribution” in section 11-302, HRS, and would allow lobbyists to give legislators things of value that the campaign spending definition would not. It is unclear whether this is an intended result.

Thank you for the opportunity to testify about our concerns.



HAWAII STATE ETHICS COMMISSION

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

February 7, 2013

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
House Committee on Judiciary
Hawaii State Capitol, Room 438
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on House Bill No. 443, Relating to Campaign Contributions**

Hearing: Thursday, February 7, 2013, 2:02 p.m.
State Capitol, Conference Room 325

Testimony From: Hawaii State Ethics Commission

The Honorable Karl Rhoads, Chair; The Honorable Sharon E. Har, Vice Chair; and
Honorable Members of the House Committee on Judiciary:

The Hawaii State Ethics Commission (“Commission”) supports the intent of House Bill No. 443, which will prohibit lobbyists and certain organizations from making campaign contributions to the Governor, the Lieutenant Governor, and legislators when the legislature is in session. In the Commission’s opinion, prohibiting lobbyists from donating to political campaigns during the legislative session fosters public confidence in state government, specifically, in the legislative process.

The bill will amend the Lobbyist Law, chapter 97, Hawaii Revised Statutes, to prohibit the campaign contributions. However, the Lobbyists Law, which is administered by the Commission, is primarily a reporting statute that requires lobbyists to register with the Commission and to file expenditure reports. The Lobbyists Law does not require lobbyists to report campaign contributions made to legislators or others.¹

¹ Similarly, the State Ethics Code, chapter 84, Hawaii Revised Statutes, does not apply to political campaign contributions. The State Ethics Commission, generally, does not construe the gifts law to apply to political campaign contributions. Haw. Rev. Stat. § 84-11. The gifts reporting provision also exempts political campaign contributions that comply with state law from the reporting requirements. Haw. Rev. Stat. § 84-11.5.

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
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The Commission is ill-suited to oversee and enforce a provision involving political campaign contributions. The Commission simply lacks the expertise to effectively administer such a provision. It would create a substantial burden on the Commission to be tasked with administering a law that restricts campaign contributions, and likely would require additional resources.

For that reason, the Commission strongly recommends that the prohibition on campaign contributions set forth in House Bill No. 443 be included in the campaign finance law, chapter 11, Hawaii Revised Statutes, rather than in the Lobbyists Law, chapter 97, Hawaii Revised Statutes.

Thank you for considering the Commission's testimony.

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 8:11 PM
To: JUDtestimony
Cc: jeannine@hawaii.rr.com
Subject: Submitted testimony for HB443 on Feb 7, 2013 14:02PM

HB443

Submitted on: 2/5/2013

Testimony for JUD on Feb 7, 2013 14:02PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jeannine Johnson	Individual	Support	No

Comments: I strongly support HB 443 which prohibits a lobbyist; principal, client, or agent of lobbyist; and a political action committee on which the lobbyist sits, that lobbies the legislature from making a contribution to a member of the legislature, the governor, and lieutenant governor while the legislature is in session. In a disheartening example of how intense lobbying and financial contributions can distort the legislative process in Washington, the "fiscal cliff" bill approved by Congress contained \$100 million over the next seven years in tax benefits for NASCAR racetrack owners, \$222 million to Puerto Rico and the U.S. Virgin Islands' rum distilleries, and \$430 million worth of tax write-offs for film and television production. Amgen, the world's largest biotechnology company, was able to make a backroom deal in secrecy at a cost of half a billion dollars to the American taxpayers. With its 74 lobbyists in Washington, substantial contributions from Amgen's employees and its political action committee since 2007 in the hundreds of thousands, given to key senators that have political and financial ties to Amgen, Amgen's strong influence prevailed even though it had recently pleaded guilty to fraud and agreed to pay criminal and civil penalties of \$762 million, a record settlement for a biotechnology company. This means that Amgen will getting two-thirds (2/3) of the criminal and civil penalties for its wrong-doing back from American taxpayers. This dreadful episode is a classic example of the power of special interests to shape legislation at enormous expense to taxpayers which causes Americans to lose trust in the institution of Congress. While Hawai'i's lobbyists aren't quite so savvy as those on the Hill, their influence is indeed being felt even at this moment. Truth be told that even if HB 443 is passed, lobbyists will find a way around it. But a step in the right direction is still following a good path and I support that move. Mahalo!

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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