



HAWAII STATE ETHICS COMMISSION

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

SENATE COMMITTEE ON JUDICIARY AND LABOR
The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

S.B. No. 653, Relating to Lobbyists

Hearing: Thursday, February 25, 2016, 9:00 a.m.

The Hawaii State Ethics Commission (“Commission”) has **no position on the intent** of S.B. No. 653, which expands the definition of “administrative action” in the State Lobbyists Law, chapter 97, HRS, to include: (1) the granting or denying by an administrative agency of an application for a business or development-related permit, license or approval as required by state law; and (2) the procurement of goods and services through contracts covered by the Hawaii Public Procurement Code, and also amends the definition of “administrative agency” in the State Lobbyists Law to expressly state that the definition includes the executive branch. **The Commission, however, has concerns about the bill’s language** for the reasons stated below.

S.B. No. 653 amends HRS section 97-1(1) by expanding the definition of “administrative action” to include, “[t]he granting or denying by an administrative agency of an application for a business or development-related permit, license, or approval as required by state law.” The Commission believes that the proposed language is very broad and would greatly expand the scope of the types of actions that would constitute “lobbying”¹ under the State Lobbyists Law. For example, there are numerous State agencies that grant or deny applications for business or development-related “permits,” such as:

- The Office of Conservation and Coastal Lands of the Department of Land and Natural Resources (“DLNR”) reviews Conservation District Use Applications for DLNR permits and Board of Land and Natural Resources permits;
- The Department of Health reviews applications for various types of permits and variances, including but not limited to food establishments, noise, and asbestos-related activities;
- The Department of Transportation reviews applications for permits for a variety of functions involving lands under its jurisdiction; and
- The Public Utilities Commission reviews applications for various types of permits, including but not limited to permits for transporting passengers for

¹ HRS section 97-1(7) defines “lobbying” as “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.”

compensation, by motor vehicle, over any public highway of the State.

There are also numerous State agencies that grant or deny applications for business or development-related “licenses,” such as:

- The Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs (“DCCA”) licenses 49 different professions and vocations; and
- The Department of Agriculture reviews applications for various types of licenses such as licenses for dealers who sell or handle Hawaii-grown agricultural products obtained or purchased directly from a farmer or producer.

There are also numerous State agencies that grant or deny applications for other types of business or development-related “approvals,” such as:

- The Business Registration Division of the DCCA reviews business registration, amendment, correction and reservation forms; and
- The Department of Taxation reviews applications for exemptions from general excise taxes.

S.B. No. 653 also amends HRS section 97-1(1) by expanding the definition of “administrative action” to include, “[t]he procurement of goods and services through contracts covered by the Hawaii public procurement code.” The Commission believes that the proposed language is very broad and would greatly expand the scope of the types of actions that would constitute “lobbying” under the State Lobbyists Law. For example, the proposed language is not limited to the procurement of goods and services in excess of a certain value.

Currently, all registration statements and expenditure reports filed pursuant to the State Lobbyists Law are public records.² Moreover, all of the registration statements and expenditure reports are posted on the Commission’s website as soon as practicable and, generally, within 5 working days of receipt.

The Commission receives approximately 300 registration statements from lobbyists and approximately 1,700 expenditure reports annually. Lobbyists and organizations involved in lobbying activities must file expenditure reports on March 31, May 31, January 31, and if there is a special legislative session, 30 days after the special session is adjourned.³

The Commission notes that in order for expenditure reports that may be filed pursuant to the proposed amendments to the definition of “administrative action” to be

² HRS section 97-4(2).

³ HRS section 97-3(a).

meaningful, the lobbying reporting periods set forth in HRS section 97-3 may need to be amended.

The Commission also notes that processing a significant number of additional registration statements from lobbyists and expenditure reports from lobbyists and organizations would create a substantial administrative burden on the Commission's staff, and there is currently no appropriation in this bill to cover such costs.

We appreciate the opportunity to testify on S.B. No. 653, Relating to Lobbyists. We would like to thank this Committee for its consideration of our testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB653 on Feb 25, 2016 09:00AM*
Date: Wednesday, February 24, 2016 12:24:45 PM

SB653

Submitted on: 2/24/2016

Testimony for JDL on Feb 25, 2016 09:00AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Goeggel	Animal Rights Hawai'i	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB653 on Feb 25, 2016 09:00AM*
Date: Saturday, February 20, 2016 8:41:38 PM

SB653

Submitted on: 2/20/2016

Testimony for JDL on Feb 25, 2016 09:00AM in Conference Room CR016

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

Senate Judiciary and Labor Committee

Thursday, February 25, 2016, 9:00 a.m., Conference Room 016
SB653 Lobbyists
Piilani Kaopuiki, Legislative Committee, League of Women Voters of Hawaii

TESTIMONY

Chair Keith-Agaran, Vice-Chair Shimabukuro and Committee Members:

The League of Women Voters of Hawaii supports SB653 which clarifies that lobbying laws apply to the executive branch and refer to transactions related to a business or development-related permit, a license or approval as required by state law, and the procurement of goods and services under the Hawaii public procurement code. This is a long list of executive functions but we think they are all important because they're "pressure points" where undue outside influence could be used unfairly. In recent years bills to extend the lobbyist law to cover executive branch lobbying have gone nowhere; so the amendments to Section 97-1, Hawaii Revised Statutes as proposed in this bill are long overdue.

Legislators are not the only public servants vulnerable to inappropriate political influence. Any government official with authority and power is exposed to unfair political strategies to influence them; yet it goes without saying that decisions and behaviors by our executive branch can have major impact. We support extending lobbying laws to make sure current lobbying laws and regulations include the governor, his staff, and executive departments.

Lobby the Legislature, and there's now a healthy degree of transparency. Lobby the governor, or department directors or their deputies, and these activities never see the light of day. Taking action to protect public confidence in the face of inappropriate behavior on the part of outside lobbyists intending to influence this branch of government for their private purposes is laudable. The public expects tools such as registration and public disclosure to protect our state operations from lobbyist behavior that could harm correct execution of our laws and regulations. Improving the lobbying process to close this gap matches today's reality.

We urge you to pass this bill. Thank you for the opportunity to submit testimony.

Post Office Box 1115 Aiea, Hawaii 96701-3434
Phone: 808 488-8766
Email: jasduncan26@hawaii.rr.com
February 23, 2016

Senator Gilbert S.C. Keith Agaran – Chair
Committee on Judiciary and Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: Clarification of SB 653 Lobbyist

My name is James Duncan. I'm President of Duncan Inc. and have proposed to operate and build an International Gaming Resort at Kalaeloa or Kapolei with environmental issues aside. Duncan Inc. and our partners are seeking Gaming Licenses in the State of Hawaii. In the past we have always considered ourselves as Developers and not a hired Lobbyist or are we exempt from the Lobbyist Law by bringing special skills and knowledge that may be helpful to Legislators? The clarification on your Bill SB 653 Lobbyist would be appreciated.

The data presented to Governor Ige and the State Legislators has proven that building an International Gaming Resort is workable. The result would mean Hawaii would have a viable economy with Billions of dollars invested and the creation of thousands of jobs. Hawaii's economic growth is critical and not allowing us to build an International Gaming Resort will put Hawaii at risk.

Expediting Gaming Licenses would start the process of preparing Hawaii for the millions of Tourist coming from China. Presently, we are working with a Travel company from China who has started the traveling Chinese to come to Hawaii. They have confirmed "If Hawaii can't meet their needs for Accommodations, Entertainment, Gambling and Shopping, they will go elsewhere."

I will be in attendance for the clarification of Bill SB 653 on February 25, 2016 at 0900 at Conference Room 016.

Aloha



James Duncan
Duncan Inc.

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, February 25, 2016

9 a.m.

Conference Room 016

Submitted by Ian Lind in support of SB653 “Relating to Lobbyists”

Thank you for this opportunity to strongly support SB 653, which would extend to the executive branch the same lobbying registration and disclosure requirements that already apply to lobbying here at the Legislature.

I am a former executive director of Common Cause in Hawaii, later worked as an investigative reporter for one of Honolulu’s daily newspapers, and continue as an observer of and public analyst of our ethics and lobbying laws in practice.

The definitions in the current lobbyist law give the impression that it covers executive branch lobbying, but the fine print restricts its application to formal rule making proceedings under Chapter 91.

The bill does not impose any additional restrictions or burdens beyond those in the existing lobbying law, but simply recognizes that the public has a real and legitimate interest in knowing who is spending time and money to influence the decisions of the state administration and its executive departments and agencies.

In a column published in Civil Beat in September 2015, I described what is really a case study in why the lobbying law needs to apply to the executive as well as legislative branches of government.

The column focused on the lawsuit filed by the state against Ciber Inc., a large information technology firm, accusing the company of misrepresenting its capabilities when competing for a contract to design and implement a new accounting system for the Department of Transportation, and then fraudulently billing the state even as the new system failed test after test, and fell farther and farther behind schedule.

The lawsuit alleged that the company hired the state's largest lobbying firm as part of a strategy of "using inappropriate political influence to muzzle its critics at DOT and pressure DOT into paying still more fees for a worthless system."

Here's the point:

What did Ciber spend lobbying the governor's chief of staff? We don't know, because that lobbying wasn't subject to public disclosure.

Neither registration nor public disclosure are required of lobbyists influencing decisions by the governor or executive departments. We don't know what lobbyists are paid, or what is spent on their efforts.

And while state law prohibits hiring and paying lobbyists contingent on a successful outcome to their lobbying, that doesn't apply to executive branch lobbying because, in the eyes of the law, it isn't really lobbying.

I have attached a copy of the full Civil Beat column.

SB653 will not add to the administrative burden of departments and agencies, and does not represent a new types of regulation beyond those that lobbyists are already accustomed to dealing with.

But this bill would create a huge new window for the public into the workings of the executive branch, dramatically increase the ability to understand how policy decisions are being made, and serve as a deterrent against the exercise of undue or improper influence.

I urge you to extend the reach of the current lobbyist law by passing SB653.

###

Ian Lind: Lawsuit Exposes Blind Spot in Hawaii Lobbyist Law

The kind of lobbying alleged in the lawsuit isn't regulated because it was aimed at influencing the governor's office, not the Legislature.

SEPTEMBER 9, 2015 · By Ian Lind

A week ago, the State of Hawaii filed suit against Ciber Inc., a large information technology firm, accusing the company of misrepresenting its capabilities when competing for a contract to design and implement a new accounting system for the Department of Transportation, and then fraudulently billing the state even as the new system failed test after test, and fell farther and farther behind schedule.

The company was paid over \$8 million in fees before finally pulling its staff out of Hawaii in 2014 without ever getting a system up and running. The state is seeking to recover those costs, plus millions more in damages.

Ciber is a publicly traded company headquartered in Colorado but with national and global operations. It reports having 6,500 full-time employees and over \$864 million in revenue in its last fiscal year.

The state alleges Ciber engaged in a classic "bait and switch," initially winning the contract with representations that it had the experience, and the personnel, to create a new DOT accounting system to replace

and upgrade the department's aging financial software. But the lawsuit alleges Ciber instead brought in unqualified consultants to staff the project, quickly fell behind in reaching contract milestones, understaffed the project to boost company profits, and submitted false bills for work that hadn't actually been done.

The state says that although Ciber failed to produce a working accounting system, it hired the state's largest lobbying firm as part of a strategy of "using inappropriate political influence to muzzle its critics at DOT and pressure DOT into paying still more fees for a worthless system."

Lobbyist to the Rescue

Facing increased pressure from DOT to comply with the terms of their original contract, as well as threats to terminate the contract if the company couldn't resolve its problems, the lawsuit alleges the company hired Capital Consultants and one of its principals, John Radcliffe, to lobby within the Abercrombie administration. He is considered by many to be one of the state's top lobbyists.

The lawsuit alleges that Ciber's lobbying succeeded in getting the governor's office to intervene and insulate the company from DOT's increasing demands.

In early August 2013, according to the lawsuit, DOT Deputy Director Jade Butay warned the company that if its new software was unable to pass its next test, the state would consider terminating the contract. When the test was done, the system again failed, and Butay then wrote to the company, demanding a detailed work plan be submitted within 10 days.

But instead of producing the plan, the company turned to Radcliffe, who used his ties to the Abercrombie administration and the governor's chief of staff, Bruce Coppa, to his advantage.

Soon after John Radcliffe began lobbying the governor's staff on Ciber's behalf, Butay was transferred to the Labor Department. He was replaced with another political appointee, Audrey Hidano, who had no experience in information technology and "little if any experience transportation financial management, budgeting, or account," the lawsuit alleges.

In Hawaii, lobbying isn't legally considered "lobbying" if it aims to influence the governor, his staff, or the executive departments.

Hidano allegedly repeatedly told DOT staff and the department's other consultants that the Governor's Office supported keeping Ciber on the job despite its failures to produce a working system.

Several months later, when the director of transportation again pressed for specifics from Ciber, the company responded that the director "may be unaware of how this project is currently being run," and suggested he contract Coppa for updated instructions.

Just months later, Capital Consultants named Coppa executive vice president and partner.

The implication, although not supported with details, is that with prodding from Radcliffe, the governor's office simply took over administration of the contract and took DOT administrators out of the loop.

And then, in February 2014, Gov. Neil Abercrombie requested an additional \$3.3 million in special funds for the project without consulting with DOT administrators, and Ciber quickly sought to tap into the new funding.

The lawsuit alleges “inappropriate political influence” was involved, but the complaint provides no details of what might be considered inappropriate, the extent of the lobbying effort, or what the company spent on it.

The Limits of Transparency

Looking for additional information, I turned to the reports that lobbyists, and their clients, are required to file with the Hawaii State Ethics Commission.

According to the commission’s records, Radcliffe and George “Red” Morris, partners in Capital Consultants, were first registered as lobbyists for Ciber on February 3, 2014.

By the end of the 2014 legislative session, Ciber had paid each lobbyist a total of \$5,864, including \$2,094.24 prior to the end of 2013, before they were technically authorized to represent the company.

That’s not as much as one would expect, given the amount of money at stake for Ciber, and the allegations of undue political influence now being made by the state.

But here’s the catch.

Hawaii’s lobbyist law doesn’t regulate the kind of lobbying alleged in the lawsuit, because it was aimed at influencing the governor’s office and the state administration rather than members of the Legislature or their staff.

That’s right. In Hawaii, lobbying isn’t legally considered “lobbying” if it aims to influence the governor, his staff, or the executive departments. So although this level of lobbying can have major impacts, as is alleged in this case, it isn’t regulated in the same manner as legislative lobbying.

Bills in recent years to extend the lobbyist law to cover executive branch lobbying have gone nowhere.

Lobby the Legislature, and there's a healthy degree of transparency. Lobby the governor, or department directors or their deputies, and the activities never see the light of day.

What did Ciber spend lobbying the governor's chief of staff? We don't know, because that lobbying wasn't subject to public disclosure. Neither registration nor public disclosure are required of lobbyists influencing decisions by the governor or executive departments. We don't know what lobbyists are paid, or what is spent on their efforts. And while state law prohibits hiring and paying lobbyists contingent on a successful outcome to their lobbying, that doesn't apply to executive branch lobbying because, in the eyes of the law, it isn't really lobbying. Unfortunately, the Ethics Commission has in the past been less than enthusiastic about extending its jurisdiction to include executive branch lobbying. Its concern is that given its limited funding and its already heavy workload, there would be practical problems with extending its jurisdiction.

There have been a number of bills in recent years to extend the lobbyist law to cover executive branch lobbying, but they went nowhere. Most died without a public hearing.

But now that the Ige administration's lawsuit against Ciber has identified executive branch lobbying as a problem, and potentially a very expensive problem at that, the administration should be pressed to add its weight to calls for reform.