



HAWAI'I STATE ETHICS COMMISSION

State of Hawai'i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai'i

Committee: Senate Committee on Judiciary
Bill Number: SB 2219
Hearing Date/Time: January 26, 2024, 9:30 a.m.
Re: Testimony of the Hawai'i State Ethics Commission in **SUPPORT** of SB 2217, Relating to Lobbying, **WITH PROPOSED AMENDMENTS**

Aloha Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The Hawai'i State Ethics Commission (“Commission”) **supports** SB 2219, which makes pivotal updates to Hawai'i’s lobbying law. The Commission proposes amendments limiting the expanded definition of lobbying solely to procurement matters (see attached, revisions in red).

This bill proposal is the Commission’s response to earlier bills considered by the Senate, SB 805 and SB1453. In past hearings, the Commission committed to presenting a revised draft with the intent of minimizing any unintended consequences of expanding the definition of lobbying.

This bill can be broken into four parts. First, it creates two new presumptions to simplify regulatory oversight. It presumes that a lobbyist submitting testimony relevant to an employer is doing so on behalf of an employer, versus submitting that testimony in an unemployed or personal capacity. This addresses situations where an employee claims they are not paid to lobby but are transparently advocating in their employer’s interests. In addition, this measure creates a new standard where if a person is paid to submit testimony ten or more times during a calendar year, they trigger the definition of a lobbyist. This establishes an objective standard that can be used to identify lobbyists who likely exceeded the payment thresholds, without needing cumbersome investigations into funding sources and amounts.

Second, the bill expands the definition of lobbying to include procurement matters outside of those communications already allowed for under Haw. Rev. Stat. chapters 103D or 103F. This proposal is informed by other jurisdictions and is principally focused on “pre-procurement” communications where someone is actively communicating with high-level government officials to induce or shape the procurement process. The Commission supports this proposal and proposes to amend the measure to exempt communications initiated by a state employee or public official.

Third, the bill expands the definition of lobbying to communications with high-level government officials to influence (1) quasi-judicial, (2) staffing or appointment decisions, and (3) an agency’s written report or statement of policy. At this time, the Commission proposes removing this portion of the bill. While we believe further development of the lobbying law is

prudent, the Commission would like further time to work with agencies to minimize any unintended consequences.

Fourth, this measure expands the duty to cooperate for legislators and state employees to include an obligation to report situations where they know, or should know of, ethical violations. This is intended to address situations where a state employee fails to report matters because they do not want to “make waves.” This proposed revision recognizes that most procurement communications are outside the public eye and enforcement will be difficult unless those lobbying efforts are reported by a government employee. It allows the Commission an opportunity to reach out to the individual contacting state employees and encourage them, as appropriate, to register as a lobbyist.

This measure reflects a thoughtful and iterative approach to expanding Hawaii’s lobbying law that ensures greater transparency, accountability, and fair competition in government contracts. This proposal strengthens the regulatory framework, preventing undue influence and promoting a level playing field that benefits both taxpayers and businesses alike.

Mahalo for the opportunity to submit testimony on SB 2219.

Very truly yours,

/S/ Robert D. Harris
Robert D. Harris
Executive Director and General Counsel

RELATING TO LOBBYING.

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

SECTION 1. The legislature finds that transparent disclosure of lobbying activities [~~it~~] is in the public interest [~~to have transparent disclosure of lobbying activities~~]. Under the lobbying law, chapter 97, Hawaii Revised Statutes, "lobbying" an administrative agency only regards formal rulemaking or other actions governed by section 91-3, Hawaii Revised Statutes. [~~Because the vast majority of an administrative agency's operations are conducted outside of formal rulemaking, t~~] The purpose of this Act is to expand the definition of "lobbying" in section 97-1, Hawaii Revised Statutes, to include certain communications regarding procurement decisions with high-level government officials. [~~staffing or appointment decisions, the development of an administrative agency's written report or statement of policy, and ex parte communications regarding contested case hearings~~]. Including procurement discussions [~~these matters~~] in the definition of "lobbying" promotes government transparency by providing the public with additional information regarding lobbying at the administrative agency level and promotes a level playing field for all businesses.

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

"§97- Presumption of lobbying on behalf of private clients. Unless the testimony pertains to a subject not relevant to the paying person, an individual submitting testimony or engaging in lobbying activities is presumed to act on behalf of a paying person rather than in an individual capacity.

§97- Contracts voidable. In addition to any other penalty provided by law, any contract or other action entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The attorney general shall have the authority to enforce this section."

SECTION 3. Section 84-36, Hawaii Revised Statutes, is amended to read as follows:

"§84-36 Cooperation. The ethics commission may request and shall receive from every department, division, board, bureau, commission, or other agency of the State cooperation and assistance in the performance of its duties. Legislators and state employees shall report to the ethics commission potential ethics violations that they know of, or reasonably should know of, including any instance of actual or attempted contact or solicitation by an unregistered lobbyist in violation of chapter 97."

SECTION 4. Section 97-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of "lobbying" and "lobbyist" to read:

"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 attempting to influence legislative or administrative action or a ballot issue. Lobbying also includes communicating with any person identified in Section 84-17(d) concerning the solicitation or award of a contract or proposal before an administrative agency, or a potential future vendor relationship with an administrative agency, if any of the communications are not governed by sections 103D or 103F. Communications about a request for proposals, contract, or vendor relationship, are not considered lobbying if they are initiated by a legislator or state employee.

"Lobbying" shall not include the preparation and submission of a grant application pursuant to chapter 42F by a representative of a nonprofit organization.

"Lobbyist" means any individual who:

(1) Receives or expects to receive, either by employment or contract, \$1,000 or more in monetary or in-kind compensation in any calendar year for engaging in lobbying, either personally or through the lobbyist's agents; or

(2) For pay or other consideration, on behalf of another person:

- (A) Engages in lobbying in excess of five hours in any month of any reporting period described in section 97-3;
- (B) Engages in lobbying in excess of ten hours during any calendar year; [~~or~~]
- (C) Submits testimony ten or more times during any calendar year;
- ~~[(C)]~~ (D) Makes expenditures of \$1,000 or more of the person's or any other person's money lobbying during any reporting period described in section 97-3;

provided that an employee of a nonprofit organization who spends fewer than ten hours in any month lobbying on a grant application submitted pursuant to chapter 42F is not a lobbyist if the employee does not engage in lobbying on matters that are unrelated to the grant application."

~~[2. By repealing the definition of "administrative action".]~~

"Administrative action" means the proposal, drafting, consideration, amendment, enactment, or defeat by any administrative agency of any rule or other action governed by section 91-3.

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

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance, is held

invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and [~~to this end~~] the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 2027.

INTRODUCED BY: _____
By Request



**Testimony to the Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair
Friday, January 26, 2024 at 9:30 a.m.
Conference Room 016 & Videoconference
SB 2219 Relating to Lobbying**

Dear Chair Rhoads, Vice Chair Gabbard and members of the Judiciary Committee:

On behalf of the Hawai'i Alliance of Nonprofit Organizations, I would like to offer our comments in opposition to **SB 2219** which amends the definition of "lobbying" to include certain communications with administrative departments, among other changes.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

HANO is concerned about the potential negative impacts of this bill on the collaboration and communication between the nonprofit sector and executive departments in addressing our common goals of strengthening communities across the state. Oftentimes, such collaboration will result in a written report or statement of policy. As an example, nonprofits will participate in task forces or strategic planning conducted by the Department of Health or Human Services, or the University of Hawaii, that result in a report.

Nonprofits strive to work together with the departments to identify community needs and the strategies and resources required to address these needs. While some nonprofits will focus solely on advocacy, other nonprofits will provide direct services to the populations in need, whether through State contracts or through private donations and grants. Nonprofit organizations are unlike for-profit corporations in that much of our communication focuses not on securing funding for our own organizations, but rather on addressing the social condition the nonprofit is working to improve.

HANO is concerned that this bill may serve to squelch legitimate communications that facilitate collaboration between the departments and the nonprofit sector, that are unrelated to benefiting a specific nonprofit.

Thank you for the opportunity to submit this written testimony.

Lisa Maruyama
President and CEO

Jan. 26, 2024

9:30 a.m.

Hawaii State Capitol

Conference Room 016 & Videoconference

To: Senate Committee on Judiciary

Sen. Karl Rhoads, Chair

Sen. Mike Gabbard, Vice-Chair

From: Ted Kefalas, Director of Strategic Campaigns

Grassroot Institute of Hawaii

RE: SB2219 — RELATING TO LOBBYING

Comments only

Aloha Chair Rhoads, Vice-Chair Gabbard and other members of the Committee,

The Grassroot Institute of Hawaii would like to offer its comments on [SB2219](#), which would amend the current definition of lobbyist to include an individual who, “for pay or other consideration, on behalf of another person ... submits testimony ten or more times during any calendar year.”

We applaud the bill’s aim of cleaning up government and stopping corruption, but we are concerned that the current wording of this provision might unintentionally sweep civically active citizens into the lobbying category.

Because the term “consideration” can be interpreted as any benefit — financial or otherwise — and the term “person” includes organizations and businesses, it could be broadly applied to people who would not generally be considered lobbyists.

For example, this phrasing could arguably apply to a business owner testifying about the impact of proposed tax increases on his business, a translator submitting comments for a marginalized group, or the head of a parents organization testifying about changes to schools.

Under the current law, the time commitment involved in the lobbyist definition is five hours in one reporting period or 10 hours in a calendar year. This is a relatively small amount of time, but because it is focused on activities that are defined by communications with specific public officials, it is clearly intended to exclude those who are simply deeply involved in a specific issue. However, by expanding the law to make a lobbyist out of a mere 10 testimonies, the bill significantly expands the definition of lobbying.

Consider that a single bill in the state Legislature may occasion six separate opportunities for testimony. If there is a companion bill, an individual may exceed the 10-testimonies limit without ever speaking on more than one proposal.

Broadening the definition of lobbyist in this way could discourage citizen participation in the legislative process.

It also could increase the administrative burden on the departments that oversee lobbyist registration and run lobbyist training.

The time-based measures focused on communications rather than testimonies that can be found in the current law make a simpler distinction between professional lobbyists and active citizens. However, if the Committee wishes to address the issue of lobbyists who evade registration requirements but are highly active in submitting testimony, we suggest a substantial increase in the testimony count, or adjusting the language to reflect a testimony threshold based on the number of different proposals — such as bills or resolutions — testified on.

Otherwise, given that testimony is a direct expression of free speech in its purest form, using testimony limits to define lobbying appears unnecessary and undemocratic.

Thank you for the opportunity to submit our comments.

Sincerely,

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



Committee on Judiciary
Chair Karl Rhoads, Vice Chair Mike Gabbard

Friday, January 26, 2024 CR016
SB2219 – Relating to Lobbying

TESTIMONY

Judith Mills Wong, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii supports SB2219

Although lobbying is an important source of information for lawmakers and other state officials, it can and has been abused. The League supports the changes proposed in this bill which would expand the definition of lobbying to include communications affecting procurement decisions, staffing and appointment decisions and other critical actions. Thus, the public can be more confident that these decisions are being made without bias.

The bill would also establish the presumption that a paid lobbyist is expected to act on behalf of the paying agent. This is a reasonable assumption.

The bill also provides a remedy of voiding contracts when those contracts are entered into in violation of the lobbying law. This is important to providing substance to the lobbying laws.

Therefore, the League of Women Voters of Hawaii supports SB2219

Thank you for the opportunity to submit testimony.