

JAN 15 2025

A BILL FOR AN ACT

RELATING TO ETHICS ADMINISTRATIVE FINES.

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

1 SECTION 1. The legislature finds that it is in the public
2 interest to have an efficient and timely resolution of ethics and
3 lobbying cases. Timely resolution of matters before the ethics
4 commission promotes the fair adjudication of rights and public
5 transparency. This Act aims to provide greater uniformity,
6 flexibility, and efficiency in assessing administrative fines
7 related to violations of the state ethics code and lobbyist law.

8 SECTION 2. Section 84-17, Hawaii Revised Statutes, is
9 amended by amending subsection (1) to read as follows:

10 "~~[+] (1) [] If notice and order of an administrative fine~~
11 ~~has been issued pursuant to this section, the order shall become~~
12 ~~final on the twentieth day after it is served upon the alleged~~
13 ~~violator, unless the alleged violator submits a written request~~
14 ~~for a hearing before the state ethics commission on or before~~
15 ~~the twentieth day. After conducting a hearing pursuant to~~
16 ~~chapter 91, the state ethics commission may affirm, modify, or~~
17 ~~rescind the order as appropriate. The state ethics commission~~



1 ~~may file with the circuit court of the first circuit any order~~
2 ~~the commission has issued pursuant to this section for the~~
3 ~~purpose of confirming the order as a final judgment that shall~~
4 ~~have the same force and effect and shall be enforceable and~~
5 ~~collectable as other judgments issued by the circuit courts;~~
6 ~~provided that there shall be no appeal from the judgment.]~~
7 Administrative fines assessed pursuant to this section may be
8 enforced using the procedure provided in section 84-31(g)."

9 SECTION 3. Section 84-31, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§84-31 Duties of commission; complaint, hearing,**

12 **determination.** (a) The ethics commission shall have the
13 following powers and duties:

14 (1) It shall prescribe forms for the disclosures required
15 by article XIV of the Hawaii constitution and
16 section 84-17 and the gifts disclosure statements
17 required by section 84-11.5 and shall establish
18 orderly procedures for implementing the requirements
19 of those provisions;

20 (2) It shall provide advice upon the request of any person
21 as to whether the facts and circumstances of a



1 particular situation constitute or will constitute a
2 violation of the code of ethics or other laws or rules
3 administered and enforced by the commission, and
4 discuss ways to avoid an appearance of impropriety. A
5 person receiving advice from the commission may
6 request a written summary of that advice. The
7 commission shall treat all advice requests, responses,
8 and related materials as confidential. Written
9 summaries shall be confidential unless the recipient
10 waives confidentiality;

- 11 (3) It shall render advisory opinions upon the request of
12 any legislator, employee, or delegate to the
13 constitutional convention, or person formerly holding
14 such office or employment as to whether the facts and
15 circumstances of a particular case constitute or will
16 constitute a violation of the code of ethics. If no
17 advisory opinion is rendered within ninety days after
18 the request is filed with the commission, it shall be
19 deemed that an advisory opinion was rendered and that
20 the facts and circumstances of that particular case do
21 not constitute a violation of the code of ethics. The



1 opinion rendered or deemed rendered, until amended or
2 revoked, shall be binding on the commission in any
3 subsequent charges concerning the legislator,
4 employee, or delegate to the constitutional
5 convention, or person formerly holding such office or
6 employment, who sought the opinion and acted in
7 reliance on it in good faith, unless material facts
8 were omitted or misstated by such persons in the
9 request for an advisory opinion. The commission shall
10 also render public general advisory opinions
11 concerning proper interpretation of the code of ethics
12 and other laws or rules administered and enforced by
13 the commission, if it deems the opinion of sufficient
14 general interest and importance;

- 15 (4) It may initiate an investigation into alleged,
16 possible, or potential violations of this chapter and
17 other laws or rules administered and enforced by the
18 commission, on a confidential basis, having available
19 all of the powers herein provided, whether the
20 investigation is made based on a charge allegation,



1 other information or indications, or as the commission
2 determines is in the public interest;

3 (5) It shall initiate, receive, and consider charges and
4 other information, on a confidential basis, concerning
5 alleged, possible, or potential violations of this
6 chapter and other laws or rules administered and
7 enforced by the commission, initiate or make
8 investigation, and hold hearings;

9 (6) Upon adoption of a resolution defining the scope and
10 nature of the inquiry, supported by a vote of three or
11 more members of the commission, it may subpoena
12 witnesses, administer oaths, and take testimony
13 relating to matters before the commission and require
14 the production for examination of any books or papers
15 relative to any matter under investigation or in
16 question before the commission;

17 (7) It may, from time to time adopt, amend, and repeal any
18 rules, not inconsistent with this chapter, that in the
19 judgment of the commission seem appropriate for the
20 carrying out of this chapter and for the efficient
21 administration thereof, including every matter or



1 thing required to be done or which may be done with
2 the approval or consent or by order or under the
3 direction or supervision of or as prescribed by the
4 commission. The rules, when adopted as provided in
5 chapter 91, shall have the force and effect of law;

6 (8) It shall have jurisdiction for purposes of
7 investigation and taking appropriate action on
8 possible violations of this chapter in all proceedings
9 commenced within six years of a possible violation of
10 this chapter by a legislator or employee or former
11 legislator or employee. A proceeding shall be deemed
12 commenced by the filing of a charge with the
13 commission or by the signing of a charge by three or
14 more members of the commission. Nothing herein shall
15 bar proceedings against a person who by fraud or other
16 device, prevents discovery of a violation of this
17 chapter;

18 (9) It shall distribute its publications without cost to
19 the public and shall initiate and maintain programs
20 with the purpose of educating the citizenry and all
21 legislators, employees, and delegates to the



1 constitutional convention on matters of ethics in
2 government employment; and

3 (10) It shall administer any code of ethics adopted by a
4 state constitutional convention, subject to the
5 procedural requirements of this part and any rules
6 adopted thereunder.

7 (b) Charges concerning the violation of this chapter shall
8 be in writing, signed by the person making the charge under
9 oath; provided that any charge initiated by the commission shall
10 be signed by three or more members of the commission. The
11 commission shall issue written notice to every person against
12 whom a charge is received and afford the person an opportunity
13 to explain the conduct alleged to be in violation of the
14 chapter. The commission may investigate, after compliance with
15 this section, the charges and render an informal advisory
16 opinion to the alleged violator. The commission shall
17 investigate all charges on a confidential basis, having
18 available all the powers herein provided, and proceedings at
19 this stage shall not be public. If the informal advisory
20 opinion indicates a probable violation, the person charged shall
21 request a formal opinion or within a reasonable time comply with



1 the informal advisory opinion. If the person charged fails to
2 comply with the informal advisory opinion or if a majority of
3 the members of the commission determine that there is probable
4 cause for belief that a violation of this chapter might have
5 occurred, a copy of the charge and a further statement of the
6 alleged violation shall be personally served upon the alleged
7 violator. Service shall be made by personal service upon the
8 alleged violator wherever found or by registered or certified
9 mail with a request for a return receipt and marked deliver to
10 addressee only. If after due diligence service cannot be
11 effected successfully in accordance with the above, service may
12 be made by publication if so ordered by the circuit court of the
13 circuit wherein the alleged violator last resided. The state
14 ethics commission shall submit to the circuit court for its
15 consideration in issuing its order to allow service by
16 publication an affidavit setting forth facts based upon the
17 personal knowledge of the affiant concerning the methods, means,
18 and attempts made to locate and effect service by personal
19 service or by registered or certified mail in accordance with
20 the above. Service by publication when ordered by the court
21 shall be made by publication once a week for four successive



1 weeks of a notice in a newspaper of general circulation in the
2 circuit of the alleged violator's last known state address. The
3 alleged violator shall have twenty days after service thereof to
4 respond in writing to the charge and statement.

5 (c) If after twenty days following service of the charge
6 and further statement of alleged violation in accordance with
7 this section, a majority of the members of the commission
8 conclude that there is probable cause to believe that a
9 violation of this chapter or of the code of ethics adopted by
10 the constitutional convention has been committed, then the
11 commission shall set a time and place for a hearing, giving
12 notice to the complainant and the alleged violator. Upon the
13 commission's issuance of a notice of hearing, the charge and
14 further statement of alleged violation and the alleged
15 violator's written response thereto shall become public records.
16 The hearing shall be held within ninety days of the commission's
17 issuance of a notice of hearing. If the hearing is not held
18 within that ninety-day period, the charge and further statement
19 of alleged violation shall be dismissed; provided that any delay
20 that is at the request of, or caused by, the alleged violator



1 shall not be counted against the ninety-day period. All parties
2 shall have an opportunity to:

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

8 All hearings shall be in accordance with chapter 91. All
9 witnesses shall testify under oath and the hearings shall be
10 open to the public. The commission shall not be bound by the
11 strict rules of evidence but the commission's findings must be
12 based upon competent and substantial evidence. All testimony
13 and other evidence taken at the hearing shall be recorded.

14 (d) A decision of the commission pertaining to the conduct
15 of any legislator, delegate to the constitutional convention, or
16 employee or person formerly holding such office or employment
17 shall be in writing and signed by three or more of the members
18 of the commission. A decision of the commission rendered after
19 a hearing together with findings and the record of the
20 proceeding shall be a public record.



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

14 (f) The commission shall cause to be published yearly
15 summaries of decisions, advisory opinions, and informal advisory
16 opinions. The commission shall make sufficient deletions in the
17 summaries to prevent disclosing the identity of persons involved
18 in the decisions or opinions where the identity of such persons
19 is not otherwise a matter of public record under this chapter.

20 (g) Notwithstanding the above procedures, for any
21 violation of this chapter with a proposed administrative penalty



1 of less than \$1,000, the state ethics commission may issue a
2 notice and order of administrative fine describing the violation
3 and assessing an administrative fine. The order shall become
4 final on the twentieth day after it is served upon the alleged
5 violator, unless the alleged violator submits a written request
6 for a hearing before the state ethics commission on or before
7 the twentieth day. After conducting a hearing pursuant to
8 chapter 91, the state ethics commission may affirm, modify, or
9 rescind the order as appropriate. The state ethics commission
10 may file with the circuit court of the first circuit any order
11 the commission has issued pursuant to this section for the
12 purpose of confirming the order as a final judgment that shall
13 have the same force and effect and shall be enforceable and
14 collectable as other judgments issued by the circuit courts;
15 provided that there shall be no appeal from the judgment."

16 SECTION 4. Section 84-39, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) No fine shall be assessed under this section unless:

19 (1) The state ethics commission convenes a hearing in
20 accordance with section 84-31(c) and chapter 91 and a
21 decision has been rendered by the commission; [œ]



1 (2) The state ethics commission and respondent agree to
2 resolve any charge of an alleged violation prior to
3 completion of the contested case process and the
4 resolution includes payment of an administrative fine
5 or restitution, or both[-]; or

6 (3) The state ethics commission issues a notice and order
7 of administrative fine pursuant to section 84-31(g)."

8 SECTION 5. Section 97-6, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§97-6 Administration.** (a) The state ethics commission
11 shall administer and implement this chapter, and shall have the
12 following powers and duties:

13 (1) Initiate, receive, and consider charges and other
14 information, on a confidential basis, concerning
15 alleged, possible, or potential violations of this
16 chapter and other laws or rules administered and
17 enforced by the commission, and investigate or cause
18 to be investigated; on a confidential basis, the
19 activities of any person to determine whether the
20 person is in compliance with this chapter;



- 1 (2) Prescribe forms for the documentation, statements, and
2 reports required by sections 97-2 and 97-3 and
3 establish orderly procedures for implementing the
4 requirements of those provisions;
- 5 (3) Provide advice upon the request of any person as to
6 whether the facts and circumstances of a particular
7 situation constitute or will constitute a violation of
8 this chapter or other laws or rules administered and
9 enforced by the commission and discuss ways to avoid
10 an appearance of impropriety. A person receiving
11 advice from the commission may request a written
12 summary of that advice. The commission shall treat
13 all advice requests, responses, and related materials
14 as confidential. Written summaries shall be
15 confidential unless the recipient waives
16 confidentiality;
- 17 (4) Render advisory opinions upon the request of any
18 person subject to this chapter. If no advisory
19 opinion is rendered within ninety days after the
20 request is filed with the commission, it shall be
21 deemed that an advisory opinion was rendered and that



1 the facts and circumstances of that particular case do
2 not constitute a violation of this chapter. The
3 opinion rendered or deemed rendered, until amended or
4 revoked, shall be binding on the commission in any
5 subsequent charges concerning the person subject to
6 this chapter who sought the opinion and acted in
7 reliance on it in good faith, unless material facts
8 were omitted or misstated by the person in the request
9 for an advisory opinion. The commission shall also
10 render public general advisory opinions concerning
11 proper interpretations of the laws of this chapter and
12 other laws or rules administered and enforced by the
13 commission, if it deems the opinion of sufficient
14 general interest and importance;

- 15 (5) Issue subpoenas, administer oaths, require the
16 production for examination of any records or papers
17 relative to any matter under investigation or in
18 question before the commission, and exercise those
19 powers conferred upon the commission by section 92-16;
- 20 (6) Adopt, amend, and repeal rules, not inconsistent with
21 this chapter, that in the judgment of the commission



1 seem appropriate for the carrying out of this chapter
2 and for the efficient administration of this chapter,
3 including every matter or thing required to be done or
4 that may be done with the approval or consent or by
5 order or under the direction or supervision of, or as
6 prescribed by, the commission. The rules, when
7 adopted as provided in chapter 91, shall have the
8 force and effect of law;

9 (7) Have jurisdiction for purposes of investigation and
10 taking appropriate action on possible violations of
11 this chapter in all proceedings commenced within six
12 years of a possible violation of this chapter. A
13 proceeding shall be deemed commenced by the filing of
14 a charge with the commission or by the signing of a
15 charge by three or more members of the commission.
16 Nothing shall bar proceedings against a person who by
17 fraud or other device prevents discovery of a
18 violation of this chapter; and

19 (8) Distribute educational and advisory publications and
20 initiate, administer, and maintain training programs
21 for the purpose of training lobbyists on compliance



1 with state lobbying laws and applicable parts of the
2 code of ethics.

3 (b) Charges concerning the violation of this chapter shall
4 be in writing, signed by the person making the charge under
5 oath; provided that any charge initiated by the commission shall
6 be signed by three or more members of the commission. The
7 commission shall issue written notice to every person against
8 whom a charge is received and afford the person an opportunity
9 to explain the conduct alleged to be in violation of the
10 chapter. The commission may investigate, after compliance with
11 this section, the charges and render an informal advisory
12 opinion to the alleged violator. The commission shall
13 investigate all charges on a confidential basis, having
14 available all the powers herein provided, and proceedings at
15 this stage shall not be public. If the informal advisory
16 opinion indicates a probable violation, the person charged shall
17 request a formal opinion or within a reasonable time comply with
18 the informal advisory opinion. If the person charged fails to
19 comply with the informal advisory opinion or if a majority of
20 the members of the commission determine that there is probable
21 cause for belief that a violation of this chapter might have



1 occurred, a copy of the charge and a further statement of the
2 alleged violation shall be personally served upon the alleged
3 violator. Service shall be made by personal service upon the
4 alleged violator wherever found or by registered or certified
5 mail with request for a return receipt and marked deliver to
6 addressee only. If after due diligence service cannot be
7 effected successfully in accordance with the above, service may
8 be made by publication if so ordered by the circuit court of the
9 circuit wherein the alleged violator last resided. The
10 commission shall submit to the circuit court for its
11 consideration in issuing its order to allow service by
12 publication an affidavit setting forth facts based upon the
13 personal knowledge of the affiant concerning the methods, means,
14 and attempts made to locate and effect service by personal
15 service or by registered or certified mail in accordance with
16 the above. Service by publication when ordered by the court
17 shall be made by publication once a week for four successive
18 weeks of a notice in a newspaper of general circulation in the
19 circuit of the alleged violator's last known state address. The
20 alleged violator shall have twenty days after service thereof to
21 respond in writing to the charge and statement.



1 (c) If after twenty days following service of the charge
2 and further statement of alleged violation in accordance with
3 this section, a majority of the members of the commission
4 conclude that there is probable cause to believe that a
5 violation of this chapter has been committed, then the
6 commission shall set a time and place for a hearing, giving
7 notice to the complainant and the alleged violator in the same
8 manner as provided in subsection (b). Upon the commission's
9 issuance of a notice of hearing, the charge and further
10 statement of alleged violation and the alleged violator's
11 written response thereto shall become public records. The
12 hearing shall be held within ninety days of the commission's
13 issuance of a notice of hearing. If the hearing is not held
14 within that ninety-day period, the charge and further statement
15 of alleged violation shall be dismissed; provided that any delay
16 that is at the request of, or caused by, the alleged violator
17 shall not be counted against the ninety-day period.

18 All parties shall have an opportunity to:

19 (1) Be heard;

20 (2) Subpoena witnesses and require the production of any
21 books or papers relative to the proceedings;



1 (3) Be represented by counsel; and

2 (4) Have the right of cross-examination.

3 All hearings shall be in accordance with chapter 91. All
4 witnesses shall testify under oath and the hearings shall be
5 open to the public. The commission shall not be bound by the
6 strict rules of evidence but the commission's findings shall be
7 based on competent and substantial evidence.

8 All testimony and other evidence taken at the hearing shall
9 be recorded. All fees collected under this chapter shall be
10 deposited into the general fund.

11 (d) A decision of the commission pertaining to the conduct
12 of any person subject to this chapter shall be in writing and
13 signed by three or more of the members of the commission. A
14 decision of the commission rendered after a hearing together
15 with findings and the record of the proceeding shall be a public
16 record.

17 (e) A person who files a frivolous charge with the
18 commission against any person covered by this chapter shall be
19 civilly liable to the person charged for all costs incurred in
20 defending the charge, including but not limited to costs and
21 attorneys' fees. In any case where the commission does not



1 issue a decision or final conclusion in which the commission
2 concludes that a person has violated this chapter, the
3 commission shall, upon the written request of the person
4 charged, make a finding as to whether or not the charge was
5 frivolous. The person charged may initiate an action in the
6 circuit court for recovery of fees and costs incurred in
7 commission proceedings within one year after the commission
8 renders a decision that the charge was frivolous. The
9 commission's decision shall be binding upon the court for
10 purposes of a finding pursuant to section 607-14.5.

11 (f) The commission shall cause to be published yearly
12 summaries of decisions, advisory opinions, and informal advisory
13 opinions. The commission shall make sufficient deletions in the
14 summaries to prevent disclosing the identity of persons involved
15 in the decisions or opinions where the identity of such persons
16 is not otherwise a matter of public record under this chapter.

17 (g) Notwithstanding the above procedures, for any
18 violation of this chapter with a proposed administrative penalty
19 of less than \$1,000, the state ethics commission may issue a
20 notice and order of administrative fine describing the violation
21 and assessing an administrative fine. The order shall become



1 final on the twentieth day after it is served upon the alleged
2 violator, unless the alleged violator submits a written request
3 for a hearing before the state ethics commission on or before
4 the twentieth day. After conducting a hearing pursuant to
5 chapter 91, the state ethics commission may affirm, modify, or
6 rescind the order as appropriate. The state ethics commission
7 may file with the circuit court of the first circuit any order
8 the commission has issued pursuant to this section for the
9 purpose of confirming the order as a final judgment that shall
10 have the same force and effect and shall be enforceable and
11 collectable as other judgments issued by the circuit courts;
12 provided that there shall be no appeal from the judgment."

13 SECTION 6. Section 97-7, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) No fine shall be assessed unless the state ethics
16 commission:

17 (1) Convenes a hearing in accordance with section 97-6(c)
18 and chapter 91 and renders a decision; [~~or~~]

19 (2) Together with the alleged violator, agrees to resolve
20 any alleged violation before the completion of the
21 contested case process; provided that the resolution



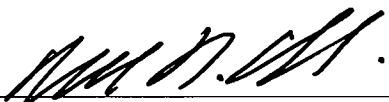
1 includes payment of an administrative fine or
 2 restitution, or both[~~-~~]; or
 3 (3) Issues a notice and order of administrative fine
 4 pursuant to section 97-6(g)."

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

8 SECTION 8. If any provision of this Act, or the
 9 application thereof to any person or circumstance, is held
 10 invalid, the invalidity does not affect other provisions or
 11 applications of the Act that can be given effect without the
 12 invalid provision or application, and to this end the provisions
 13 of this Act are severable.

14 SECTION 9. Statutory material to be repealed is bracketed
 15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect upon its approval.
 17

INTRODUCED BY: 
 By Request



S.B. NO. 289

Report Title:

State Ethics Commission Package; State Ethics Code; Lobbyist Law; Administrative Fines

Description:

Establishes uniform provisions for the assessment of administrative penalties under the State Ethics Code and Lobbyist Law.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

