

ACT 146

S.B. NO. 905

A Bill for an Act Relating to the Enforcement of the Lobbyist Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 97-6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The state ethics commission shall administer and implement this chapter, and shall have the following powers and duties:

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

~~[(2) Refer for prosecution any violation of section 97-2, 97-3, or 97-5;~~

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

- [4] (3) Render advisory opinions upon the request of any person subject to this chapter. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of this chapter. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person subject to this chapter who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for an advisory opinion;
- [5] (4) Issue subpoenas, administer oaths, and exercise those powers conferred upon the commission by section 92-16; ~~and~~
- [6] (5) Adopt ~~such~~ rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration ~~[thereof,]~~¹ of this chapter, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by, the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law[-]; and
- (6) Have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within three years of an alleged violation of this chapter. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of this chapter.”

2. By amending subsection (c) to read:

“(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter ~~[or of the code of ethics adopted by the constitutional convention]~~ has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator in the same manner as provided in subsection (b). Upon the commission’s issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator’s written response thereto shall become public records. The hearing shall be held within ninety days of the commission’s issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period.

All parties shall have an opportunity to:

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

All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission’s findings ~~must~~ shall be based ~~[upon]~~ on competent and substantial evidence.

All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of ~~such~~ the record shall be available only to the complainant

ACT 146

and the alleged violator at their own expense~~[, and the]~~. All fees ~~[therefor]~~ collected under this chapter shall be deposited ~~[in]~~ into the general fund.”

SECTION 2. Section 97-7, Hawaii Revised Statutes, is amended to read as follows:

“**§97-7 Penalties; administrative fines.** (a) Any person who:

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

shall be ~~[guilty of a petty misdemeanor.~~

~~(b) After holding a contested case hearing under section 97-6.5, the state ethics commission may assess an administrative fine that shall not exceed \$500.] subject to an administrative fine imposed by the commission that shall not exceed \$500 for each violation of this chapter. All fines collected under this section shall be deposited into the general fund.~~

(b) No fine shall be assessed unless:

- (1) The commission convenes a hearing in accordance with section 97-6(c) and chapter 91; and
- (2) A decision has been rendered by the commission.”

SECTION 3. Section 97-6.5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.