



# HAWAII STATE ETHICS COMMISSION

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

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## MEMORANDUM

TO: Lobbyists, Lobbyists' Clients, Employers of Lobbyists, and Legislators

FROM: Daniel J. Mollway  
Executive Director and General Counsel

DATE: April 24, 2009

SUBJECT: (1) Accrued or Incurred Lobbying Expenditures; and  
(2) Company Employee Lobbying Expenditures

The Hawaii State Ethics Commission has asked me to send this memorandum as a reminder on two important issues regarding compliance with the State's Lobbyists Law, Chapter 97, Hawaii Revised Statutes ("HRS"). This memorandum will cover accrued or incurred lobbying expenditures and lobbying expenditures made by company employees.

### Accrued or Incurred Lobbying Expenditures

Any lobbying expenditure that is accrued or incurred during a lobbying reporting period must be reported on the lobbying expenditures report for that period. For example, if a lobbyist does ten (10) hours of work during a reporting period, the cost for that ten (10) hours of work must be reported on the lobbying expenditures report for that period, regardless when a bill or invoice is received by the client from the lobbyist for the services rendered. Please note that the definition of the term "expenditure" is set forth in HRS 97-1(4) and reads, in relevant part, as follows:

"Expenditure" includes a payment, distribution, forgiveness of a loan, advance, deposit, or gift of money, or anything of value and includes a contract, promise, or agreement, whether or not enforceable, to make an expenditure. "Expenditure" also includes compensation or other consideration paid to a lobbyist for the performance of lobbying services.  
. . . . [Emphasis added.]

Because the term "expenditure" is defined in the Lobbyists Law as a contract, promise, or agreement, whether or not enforceable, thus any expenditure incurred or that accrues during a lobbying reporting period must be reported on the lobbying expenditures report for that period, regardless of when a bill or invoice for services rendered is received, or even if the bill or invoice for services is not received. The fact of the matter is that lobbying has been performed, and thus the amount of money for that lobbying must be reported on the expenditures report for that period, and not on a later expenditures report when a bill or invoice for services may be received. Note that the "client" of the lobbyist is the company that contracts for the services of the lobbyist, or is the employer of an in-house lobbyist.

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### Company Employee Lobbying Expenditures

An employee or officer of a company who meets the definition for registering as a lobbyist must register as a lobbyist and the company must report lobbying expenditures accrued or incurred by any in-house company lobbyist. In some situations, employees of companies may do lobbying work, but may not need to register as lobbyists because these employees do not meet the criteria of the definition of the term "lobbyist." Nevertheless, any lobbying expenditures made by a company employee must be reported as a lobbying expenditure. For example, if an employee is paid \$30 per hour by his or her company, and lobbies two (2) hours during a reporting period, then the lobbying expenditures report for that lobbying period must report \$60 (2 x \$30) as a lobbying expenditure. Again, this is for company employees who lobby on company time, but do not otherwise meet the requirements of a lobbyist under the Lobbyists Law.

The Lobbyists Law defines a "lobbyist" as "any individual who for pay or other consideration engages in lobbying in excess of five hours in any month of any reporting period described in section 97-3 or spends more than \$750 lobbying during any reporting period described in section 97-3." [Emphasis added.]

A company employee who meets either the time threshold of five hours in any month or the expenditure threshold of \$750 during a reporting period must register as a lobbyist, and the expenditures the lobbyist makes as a company lobbyist must be reported. However, it must also be kept in mind that company employees who perform lobbying duties while being paid to do so for their company must have these expenditures included in the lobbying expenditures report for the relevant lobbying period.

If there are any questions regarding these matters, please do not hesitate to contact the Hawaii State Ethics Commission at 808-587-0460. Thank you for your attention to these matters.

DJM/af