



HAWAII STATE ETHICS COMMISSION

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

State Ethics Commission Staff Recommendation **Regarding Registration And Reporting Requirements** **For Lobbyists And Organizations That Engage In Lobbying Activities**

December 11, 2014

I. Introduction

The Lobbyists Law, Hawaii Revised Statutes (“HRS”) chapter 97, requires (1) the registration of individual lobbyists; and (2) the reporting of lobbying expenditures and contributions by lobbyists, persons¹ who employ lobbyists, and persons who spend \$750 or more in a six-month period lobbying. The Hawaii State Ethics Commission (“Commission”) administers and enforces the Lobbyists Law.

The following discussion addresses a number of issues that have been raised with respect to the registration and reporting requirements of the Lobbyists Law. These issues merit discussion and consideration by the Commission in order to clarify the Commission’s interpretation of the law and to promote increased awareness and understanding of the law by lobbyists and organizations that engage in lobbying activities. In its discussion of these issues, the Commission should be mindful that the purpose of the Lobbyists Law is to provide the public with information (1) to identify those individuals who are seeking to influence legislative action as paid lobbyists on behalf of businesses, organizations, associations, and other persons; and (2) to provide greater transparency with respect to the sources and amounts of funds disbursed by lobbyists, organizations that employ or contract for the services of lobbyists, and other persons for their lobbying activities.

II. Registration and Reporting Requirements of the Lobbyists Law

1. Registration of Lobbyists

The Lobbyists Law defines “lobbying” as:

- communicating directly or through an agent, or soliciting others to communicate

¹ Under the Lobbyists Law, a “person” means “a corporation, individual, union, association, firm, sole proprietorship, partnership, committee, club, or any other organization or a representative of a group of persons acting in concert.” HRS section 97-1(8).

- with an official in the legislative or executive branch
- for the purpose of attempting to influence legislative or administrative action or a ballot issue.²

A “lobbyist” is defined as:

- any individual who for pay or other consideration
- engages in lobbying in excess of five hours in any month or spends more than \$750 lobbying during any reporting period.³

Individual lobbyists must register with the Commission by filing a registration form within five days of becoming a lobbyist.⁴ Lobbyists must renew their registrations biennially by filing a registration form within ten days of the opening of every odd-numbered year’s legislative session.⁵

2. Reporting of Lobbying Expenditures and Contributions

Lobbying expenditures and contributions reports (“lobbying reports”) must be filed with the Commission by:

- lobbyists;
- persons who spend \$750 or more in a six-month period for the purpose of lobbying; and

² HRS section 97-1(7) states:

“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.

The Lobbyists Law applies to lobbying on (1) bills, resolutions, and other matters before the state legislature; (2) rules under consideration by executive branch administrative agencies; and (3) ballot issues. This discussion will focus on lobbying issues concerning matters before the legislature.

³ HRS section 97-1(6) states:

“Lobbyist” means 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.

⁴ HRS section 97-2(a).

⁵ HRS section 97-2.5.

- persons who employ or contract for the services of a lobbyist.⁶

Lobbying reports must include information about: expenditures made for the purpose of lobbying; sources and amounts of contributions received for the purpose of lobbying; and subject areas of lobbying.⁷

All lobbyist registration forms and lobbying reports that are filed with the Commission are public records.⁸

III. Issues Concerning Registration and Reporting Requirements of the Lobbyists Law

1. Application of the Lobbyists Law to the employees of an organization who lobby as part of their job duties. The Lobbyists Law defines a “lobbyist” as someone who is paid or otherwise compensated to lobby and who either spends more than five hours lobbying in any month or spends more than \$750 lobbying during any reporting period. The Commission recently addressed the question as to whether the Lobbyists Law applies to an individual who lobbies on behalf of his or her private employer, and who is not a “professional lobbyist.” The Commission determined that the registration and reporting requirements of the Lobbyists Law apply to any individual who meets the definition of a “lobbyist,” even where the “lobbyist” is an employee of an organization rather than a hired professional lobbyist. Employees who lobby on behalf of their companies, businesses, or organizations as part of their job duties are paid or compensated by their employers to lobby. If these paid employees also spend more than five hours lobbying in any month, or more than \$750 lobbying during any reporting period, they meet the legal

⁶ HRS section 97-3(a) states:

(a) The following persons shall file a statement of expenditures with the state ethics commission on March 31, May 31, and January 31 of each year and within thirty days after adjournment sine die of any special session of the legislature:

- (1) Each lobbyist.
- (2) Each person who spends \$750 or more of the person's or any other person's money in any six-month period for the purpose of attempting to influence legislative or administrative action or a ballot issue by communicating or urging others to communicate with public officials; provided that any amounts expended for travel costs, including incidental meals and lodging, shall not be included in the tallying of the \$750.
- (3) Each person who employs or contracts for the services of one or more lobbyists, whether independently or jointly with other persons. If the person is an industry, trade, or professional association, only the association is the employer of the lobbyist.

⁷ HRS section 97-3(c).

⁸ HRS section 97-4(2).

definition of a lobbyist and must comply with the registration and reporting requirements of the Lobbyists Law.

2. Application of the Lobbyists Law to grassroots lobbying. Individuals or organizations involved in grassroots lobbying sometimes are unaware of the Lobbyists Law and its requirements. The Lobbyists Law defines “lobbying” as, “communicating directly or through an agent, or soliciting others to communicate” with legislators for the purpose of attempting to influence legislative action. Thus, “lobbying” includes both direct lobbying (communicating directly with legislators about legislation) and grassroots lobbying (urging members of the public to communicate with legislators about legislation).
 - a. Unpaid volunteers who lobby on behalf of a grassroots organization. For purposes of the Lobbyists Law, a “lobbyist” is someone who is paid or otherwise compensated to lobby. An individual who is not paid or otherwise compensated to lobby does not meet the definition of a “lobbyist” and is not required to register as a lobbyist. Example: An unpaid volunteer engages in grassroots lobbying on behalf of an organization. Because the volunteer is not paid to lobby, the volunteer is not required to register as a lobbyist. This, however, does not necessarily mean that the grassroots organization is also exempt from the reporting requirements of the Lobbyists Law, as discussed below.
 - b. Lobbying expenditures and contributions reports by grassroots organizations. If an organization engages in grassroots lobbying and employs or contracts for the services of a lobbyist or spends \$750 or more in any six-month period for the purpose of lobbying, the organization must file a lobbying report. Example: A grassroots organization does not employ a lobbyist, but the organization spends \$1,000 for newspaper and television ads urging the public to contact their legislators about a bill. The organization pays for the ads using contributions received from its members for its lobbying activities. The organization must file a lobbying report. The report must include the organization’s advertising expenditures and contributions received by the organization for the purpose of lobbying.
3. Lobbyists Law exemption for individuals who represent themselves before the legislature. Certain individuals are exempt from the registration and/or reporting requirements of the Lobbyists Law, including “any individual who represents oneself and not any other person” before the legislature.⁹ Staff

⁹ HRS section 97-2(e)(1) states:

- (e) This chapter shall not apply to:
 - (1) Any individual who represents oneself and not any other person before the legislature or administrative agency; provided that such individual must nonetheless file a statement of expenditures if the individual meets any of the provisions of section 97-3(a).

recommends the Commission clarify that this exemption applies only to individuals (natural persons) who represent themselves and does not apply to individuals who represent other persons or a separate legal entity such as a partnership, corporation, limited liability company, etc., before the legislature.

Example: The CEO of a corporation lobbies the legislature on behalf of the corporation, but believes that he and the corporation are exempt from the Lobbyists Law because the corporation is representing itself and not any other person before the legislature. This is incorrect. In this situation, the CEO is representing the corporation and both the CEO and the corporation must comply with the requirements of the Lobbyists Law.

4. Lobbyists Law exemption for persons with special expertise. The Lobbyists Law also exempts from its application “any person who possesses special skills and knowledge” that may be helpful to the legislature and who makes an occasional appearance at the request of the legislature or a lobbyist.¹⁰ Recently, the Commission has addressed cases in which lobbyists have asserted that due to their specialized knowledge or expertise about the subject of legislation, their lobbying activities were exempt from the Lobbyists Law even though the lobbyists were clearly attempting to influence legislative action. The Commission has determined that it construes this exemption narrowly and believes that it applies to persons who provide expert information to the legislature, but does not apply to lobbyists or other persons who attempt to advocate for a position, encourage a particular result, or otherwise influence legislative action. Persons who provide information to the legislature or attempt to “educate” the legislature for the purpose of advocating for a position are not exempt from the requirements of the Lobbyists Law.

Example: An organization hires a lobbyist. The lobbyist testifies in support of legislation that will benefit the organization and uses his expertise about the subject to educate the legislature about the organization’s position. Although the lobbyist may be using his expertise to help the legislature better understand the subject of the legislation, the lobbyist is attempting to influence legislative action by advocating for a particular result and is not exempt from the registration and reporting requirements of the Lobbyists Law.

¹⁰ HRS section 97-2(e)(6) states:

- (e) This chapter shall not apply to:
- (6) Any person who possesses special skills and knowledge relevant to certain areas of legislation, whose skills and knowledge may be helpful to the legislative and executive branches of state government, and who makes an occasional appearance at the request of the legislature or an administrative agency, or the lobbyist even though receiving reimbursement or other payment from the legislature or administrative agency or the lobbyist for the appearance.

5. Reporting expenses of preparing written testimony and exhibits for a hearing.
The Lobbyists Law defines an “expenditure” as:

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. “Expenditure” excludes the expenses of preparing written testimony and exhibits for a hearing before the legislature or an administrative agency.¹¹

Because the law excludes from the definition of an expenditure, “the expenses of preparing written testimony and exhibits for a hearing,” it appears that some lobbyists or organizations that employ lobbyists do not report lobbying expenses relating to the research, drafting, and submission of written testimony and exhibits for a hearing. While the statutory language may be subject to interpretation, staff recommends that it be construed narrowly to avoid the underreporting of expenditures for what is clearly a lobbying activity. The exclusion for the expenses of “preparing written testimony and exhibits” should be applied only to administrative expenses incurred to prepare and submit written testimony. For example, if a legislative committee requires that five copies of any written testimony be submitted, then the expenses of copying or printing the testimony are excluded from the definition of “expenditure.”

The law expressly states that an “expenditure” includes compensation paid to a lobbyist for the performance of lobbying services. Testifying on a matter, both orally and in writing, is lobbying. Thus, staff recommends the Commission determine that compensation paid to a lobbyist for researching or drafting testimony or exhibits for a hearing must be reported as a lobbying expenditure. This interpretation of the statute promotes the purpose of the Lobbyists Law to provide the public with information about monies paid to lobbyists and expended by persons for their lobbying activities. Example: An organization hires a lobbyist. The lobbyist spends three hours researching and drafting written testimony and an exhibit for a hearing. The lobbyist’s secretary formats and photocopies the testimony and exhibit to submit to the legislature. The organization compensates the lobbyist for his lobbying services, which includes his time spent researching and drafting the written testimony and exhibit. In this situation, compensation paid by the organization for the lobbyist’s services, including researching and drafting testimony, must be reported as a lobbying expenditure by the organization. Expenses for clerical services to prepare the written testimony and photocopying charges need not be reported as lobbying expenditures.

¹¹ HRS section 97-1(4) (emphasis added).

6. Lobbying reports relating to special sessions of the legislature. Lobbying reports must be filed with the Commission by lobbyists, persons who spend \$750 or more in a six-month period lobbying, and persons who employ or hire lobbyists. Until this year, there were three lobbying reporting periods: (1) January 1 through the last day of February (report due March 31); (2) March 1 through April 30 (report due May 31); and (3) May 1 through December 31 (report due January 31 of the following year).¹² This year, Act 224¹³ added an additional reporting requirement for lobbying activities relating to special sessions of the legislature. Act 224 added a fourth report to be filed within 30 days after adjournment of any special session as follows:

The report to be filed within thirty days after adjournment sine die of a special session of the legislature shall cover the period from May 1 through adjournment sine die of that special session and shall apply to and include only those expenditures and contributions that relate to legislative action considered during that special session.¹⁴

Act 224 became law on July 7, 2014. Since then, questions have been raised as to whether Act 224 requires lobbyists and organizations to file lobbying reports following a special session even if they did not lobby on any matters considered during the special session. It does not appear that Act 224 was intended to require this. Staff believes Act 224 was only intended to require lobbyists and organizations that actually lobbied on matters considered during a special session to file reports for their lobbying activities during this period. Staff recommends the Commission introduce legislation in the next legislative session to amend the law and clarify this issue.

7. In-kind contributions received for the purpose of lobbying. The Lobbyists Law requires lobbying expenditures and contributions reports to include:

The name and address of each person making contributions to the person filing the statement for the purpose of lobbying in the total sum of \$25 or more during the statement period and the amount or value of such contributions. . . .¹⁵

¹² HRS section 97-3.

¹³ 2014 Hawaii Session Laws Act 224.

¹⁴ HRS section 97-3(b) (as amended by Act 224).

¹⁵ HRS section 97-3(c)(4).

A “contribution” is defined as:

a gift, subscription, forgiveness of a loan, advance, or deposit of money, or anything of value and includes a contract, promise, or agreement, whether or not enforceable to make a contribution.¹⁶

Because a “contribution” includes anything of value, in-kind contributions of goods or services received for the purpose of lobbying must be included on a filer’s lobbying expenditures and contributions report. The filer must report the fair market value of such in-kind contributions. It appears that some organizations may not be reporting in-kind contributions.

Example: A grassroots organization organizes its members to rally the public to urge legislators to vote against a bill. One of the members owns a sign company and donates 50 signs for members to use at the rally. The signs are considered a contribution and the organization must report the name of the person who contributed the signs and the fair market value of the signs on the organization’s lobbying report.

8. Reporting of expenditures by the lobbyist and by the organization that employs or contracts for the lobbyist’s services. The Lobbyists Law requires lobbyists and organizations that employ or contract for the services of lobbyists to report expenditures made for the purpose of lobbying. The law requires the total sum or value of all expenditures to be reported and an itemized breakdown of expenditures by categories.¹⁷ Lobbyists often file “zero” expenditures reports reflecting that they made no expenditures for lobbying because all lobbying expenses were paid by the organizations they represent. In some cases, however, lobbyists are failing to report expenditures that are attributable to them rather than the organizations. Lobbyists must report all of their lobbying expenditures for which they are not reimbursed. If organizations reimburse lobbyists for certain expenditures, the organizations must report the reimbursements as lobbying expenditures on the organizations’ lobbying reports. Organizations must also report all lobbying expenditures paid for directly by the organizations. The following examples illustrate this:

¹⁶ HRS section 97-1(3) (emphasis added).

¹⁷ The law requires expenditures to be itemized in the following categories: (A) Preparation and distribution of lobbying materials; (B) Media advertising; (C) Compensation paid to lobbyists; (D) Fees paid to consultants for services; (E) Entertainment and events; (F) Receptions, meals, food, and beverages; (G) Gifts; (H) Loans; and (I) Other disbursements. HRS section 97-3(c)(3).

Example A: A lobbyist is hired to lobby on behalf of an organization. The lobbyist takes several legislators out to lunch to discuss legislation and spends \$100. The lobbyist does not bill the organization for the lunch and is not reimbursed for the lunch. In this situation, the lobbyist must report the cost of the lunch as a lobbying expenditure on the lobbyist's report.

Example B: A lobbyist is hired to lobby on behalf of an organization. The lobbyist takes several legislators out to lunch to discuss legislation and spends \$100. The lobbyist bills the organization for the lunch and is later reimbursed by the organization. In this situation, the organization must report the cost of the lunch as a lobbying expenditure on the organization's report.

Example C: A lobbyist is hired to lobby on behalf of an organization. The lobbyist organizes a "meet-and-greet" breakfast for legislators at the beginning of the legislative session and the bill for the event is paid directly by the organization. In this situation, the organization must report the cost of the event as a lobbying expenditure on the organization's report.

In some cases, organizations provide lump sum payments to lobbyists to cover the lobbyists' fees and all lobbying expenses. The lobbyist uses some of this amount to pay for lobbying expenses and retain the rest as fees for their lobbying services. Where these payments are not itemized or attributed as payments by the organizations for specific expenses, staff believes the lobbyists must report the lobbying expenses on their individual lobbying reports. Staff recommends the Commission adopt this interpretation of the Lobbyists Law's reporting requirement.

Example D: An organization hires a lobbyist to lobby on behalf of the organization and gives the lobbyist a lump sum payment to cover the lobbyist's fees and lobbying expenses for the legislative session. The lobbyist uses the payment in part to pay for small gift baskets delivered to all legislators on opening day of the legislature and lunches with several legislators during session. The lobbyist retains the balance of the lump sum payment as compensation for his lobbying services. In this situation, the organization should report the entire lump sum payment to the lobbyist as a lobbying expenditure. The lobbyist should report any lobbying expenditures made by him from this lump sum payment, in this case the cost of the gifts and lunches.

9. Travel costs incurred for the purpose of lobbying. The Lobbyists Law requires lobbying reports to be filed by persons who spend \$750 or more in a six-month period for the purpose of lobbying. The law states that "any amounts expended for travel costs, including incidental meals and lodging, shall not be

included in the tallying of the \$750.”¹⁸ The following example illustrates this exemption for travel costs.

Example A: A grassroots organization pays for a group of its volunteer members to travel from a neighbor island to Oahu to testify on a bill. The only amount spent by the organization is \$800 for travel costs for the group. In this situation, the organization would not be required to file a lobbying report even though the organization’s travel costs exceeded \$750. The travel costs paid by the organization would not be counted for purposes of determining whether the organization met the \$750 threshold for the reporting of lobbying expenditures.

In the above example, staff notes that if, excluding travel costs, the organization spent more than \$750 for its lobbying activities, the organization would then be required to file a lobbying report and would be required to report all expenditures made for the purpose of lobbying, including expenditures for travel. This is illustrated in the following example.

Example B: A grassroots organization pays for a group of its volunteer members to travel from a neighbor island to Oahu to testify on a bill. The organization spends \$800 for travel costs for the group and \$1,000 for newspaper and television ads urging members of the public to contact their legislators about a bill. Excluding travel costs, the organization spent more than \$750 for the purpose of lobbying and so met the threshold for the reporting of lobbying expenditures. Therefore, the organization must file a lobbying report and must report all of its lobbying expenditures, including the \$800 spent for travel and the \$1,000 spent for newspaper and television ads.

Lobbyists and organizations that employ lobbyists are also required to file lobbying reports whether or not their lobbying expenses exceed \$750. The exemption for travel costs does not apply to those who are required to file lobbying reports because of their status as a lobbyist or as an employer of a lobbyist. The following example illustrates this.

Example C: A mainland lobbyist is hired to lobby on behalf of an organization on bills affecting a particular industry in Hawaii. The organization pays for the lobbyist’s travel costs, including airfare and hotel. The lobbyist is required to file a lobbying report because of his status as a lobbyist. The organization is required to file a lobbying report because of its status as an employer of a lobbyist. The exemption for travel costs does not apply. The organization must report its payment of the lobbyist’s travel costs as an expenditure on the organization’s lobbying report.

¹⁸ HRS section 97-3(a)(2).

Staff recommends that the Commission adopt staff's interpretation of the law with respect to the reporting requirement for travel costs.

IV. Conclusion

Staff recommends the Commission approve and adopt the interpretation and application of the Lobbyists Law as discussed above. In January 2015, staff plans to conduct a training session on the Lobbyists Law at the Hawaii Convention Center for lobbyists, organizations that lobby, and other interested persons. During this training session, staff plans to discuss all of these issues to explain and clarify the Commission's interpretation of the Lobbyists Law.