



HAWAII STATE ETHICS COMMISSION

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

HOUSE COMMITTEE ON JUDICIARY
The Honorable Karl Rhoads, Chair
The Honorable Joy A. San Buenaventura, Vice Chair

H.B. No. 182, Relating to Violations of the Lobbyists Law

Hearing: Thursday, January 21, 2016, 2:00 p.m.

The Hawaii State Ethics Commission **strongly supports** H.B. No. 182, Relating to Violations of the Lobbyists Law, which amends the penalties section of the Lobbyist Law, HRS sections 97-7(a)(1) and (a)(2), by removing the word “wilfully.”

In its current form, the statute requires the Commission to establish that lobbyists or organizations involved in lobbying acted “**wilfully**” to assess an administrative fine against them for: (1) failing to file a required lobbying statement or report; or (2) filing a statement or report containing false information or a material omission of any fact.

The requirement that a lobbyist’s or organization’s conduct be “wilful” is a relic of an older version of the Lobbyists Law. As originally enacted, the Lobbyists Law imposed criminal sanctions for violations, i.e., a violation of chapter 97 was a criminal misdemeanor. As with all criminal sanctions, the statute required proof that the act for which the person was charged was committed with a certain state of mind or mens rea. In this case, the term “wilful” refers to the requisite state of mind that was required to be proven before the criminal penalty could be imposed for violation of the Lobbyist Law.

In 2001, the Lobbyists Law was decriminalized; however, in what appears to have been a simple oversight, the word “wilfully” was not removed from the law.

In its current form, a person is subject only to an administrative fine for violation of the Lobbyists Law. Accordingly, the Commission suggests that it is unnecessary and inconsistent with the statute’s purpose to limit the penalty provisions, HRS sections 97-7(a)(1) and (a)(2), to only those situations where a person acts “wilfully.”

To illustrate the absurdity of the state of mind requirement: a person could spend thousands of dollars on lobbying activities, all of which must be reported, not file any expenditure or other lobbyist report, and possibly avoid an administrative penalty simply because the person professed ignorance of his legal reporting requirements. And, that same person could continue not reporting the thousands of dollars spent on lobbying activities each year as long as he maintained his ignorance of the Lobbyists Law. That situation is inconsistent with the statutory purpose and renders the Commission virtually

toothless to enforce the reporting requirements of the Lobbyists Law.

The Commission strongly urges the Committee to amend the statute to be consistent with its current administrative enforcement structure by removing the word “wilfully” from HRS sections 97-7(a)(1) and (a)(2).

Thank you for considering of the Commission’s testimony.