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To: Commission Members, Hawaii State Ethics Commission  
1001 Bishop Street, Suite 970  
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Attn: Daniel Glick, Esq., Executive Director

From: Bob Toyofuku, President BT Consulting, Inc.

Date: May 20, 2020

Re: Comments on Proposed Rules on Lobbying and Lobbyists

I am submitting my comments for the members of the Ethics Commission to consider at its meeting on Thursday, May 21, 2020. It has been about four (4) months since I appeared before you in January 2020 and want to, first of all, extend my thanks to the commission members for allowing me to make some comments and answer some questions at that time.

I have been lobbying at the Hawaii state legislature since 1984 and my comments and some suggestions are included below and relate specifically to Section 21-10 on Lobbying.

I. Section 21-10-1

I acknowledge and agree with the definition of “Direct Lobbying” in the context of when an individual is deemed to be actually lobbying which comports with HRS 97-1 and the definition of lobbying. However, what may need to be clarified is the second sentence where it states that direct lobbying includes “discussing existing or potential legislation or administrative rules,” It is unclear to me whether this only applies when you are discussing potential legislation or rules with a legislator, employee, etc. of the legislature or an agency. What confused me is

that this segment of the sentence follows “drafting or submitting testimony” which is not usually discussed with members of the legislature and discussed and done primarily internally with persons in your organization. When members of a lobbying organization or firm meet, formally or informally, to discuss legislation or rules, among themselves, including strategy to pass or defeat legislation, I am assuming it was not your intent to consider this as Direct Lobbying. On the other hand, if the lobbyist or members of the firm are meeting with a client to discuss the legislation and strategy, was it the commission’s intent to include this as direct lobbying even where there is no contact with any members of the legislature or agency? I am interpreting the words “Direct Lobbying” literally and happens when you are communication with a legislator or agency director or staff.

I raise this here because it affects how to report the compensation that a firm receives because close to 75-100% of the compensation may be attributable to lobbying depending upon what the intent is. If so this would be misleading to the public if the primary definition of “lobbying” is communication with a legislator to influence legislation and discussing matters internally should not be considered direct lobbying.

One example that was provided previously was when an organization research and write a paper on a proposal from another state and then decides, internally, to promote legislation based on that paper, this work is considered lobbying. I took issue with this example when no communication was made with any legislator or staff, etc. It was all internal within the organization or firm. *See Example 5 to 21-10-1.*

Because “lobbying” in Section 21-2 includes the definition in HRS 97-1 AND includes direct lobbying it is crucial that the direct lobbying definition be as clear and specific as possible. I would be concerned if the intent is to include all internal discussions as direct lobbying.

## II, Section 21-10-2 and Section 21-10-4 - Registration

Oftentimes a third party is paid to do research or assist in drafting legislation. I wanted to be certain that although Section 21-10-2 (b) (1) refers to “drafting and providing testimony” which may require registration, Section 21-10-4 seems to create the exception for a person who is hired to assist in drafting testimony and doing research on an issue provided that that third party does not meet or communicate with any official in the legislative or executive branch.

Also, the five day time frame may be too short. The lobbyist needs to have the client sign the form and oftentimes the lobbyist does not get the form back within 5 days.

## III Section 21-10-7 and Section 21-10-8 - Reporting of Expenditures & Expenditures

Lobbyists and firms report compensation received on the basis of direct lobbying when the lobbyist is communicating with someone in the legislature or an agency to influence legislation. If a firm receives \$2000 per month and only spend one hour communicating with a legislators(s), neither the lobbyist nor the client reports \$2000 received, but rather a percentage of that total. I am assuming that this fits within the proposed rules. However, I do recognize that Section 21-10-8 refers to “discussing legislative strategy” and “monitoring the status of proposed legislation ...” It is unclear that when this strategy discussion or monitoring is done internally by the firm’s staff and not with any legislator, whether it is considered an expenditure. Every firm needs to monitor legislation for the client to advise them on hearings, etc. This is all done electronically. Does the staff person’s (receptionist/secretary) salary need to be reported as an expenditure?

Thank you for allowing me to submit these comments and questions. I am available to answer any questions if needed. My cell number is (808) 554-0852 and I will make myself available when you have your meeting tomorrow. I plan to listen to the meeting tomorrow morning.