



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

MEMORANDUM

To: Hawai‘i State Ethics Commission

From: Daniel M. Gluck, Executive Director and General Counsel

Re: Proposed administrative rules: response to late testimony

Date: June 1, 2020

Dear Chair Grauly, Vice Chair Tschumy, and Commissioners DeGuzman, Wood, and Fong,

My colleagues and I have had an opportunity to review the testimony submitted by Mr. Bob Toyofuku, Esq., regarding the proposed administrative rules on lobbying. I also had an opportunity to discuss the proposed rules with Mr. Toyofuku; Mr. Toyofuku had several questions as to how the rules would apply to different hypothetical scenarios, and I pointed Mr. Toyofuku to the relevant proposed rules that addressed his questions.

In response to Mr. Toyofuku’s written testimony, staff recommends two edits to the proposed rules.¹ Staff believes that neither edit changes the overall purpose or substance of the rule being edited. Instead, these suggested edits provide some additional clarity as to the Commission’s intent in promulgating rules regarding the Lobbyists Law:

1. **Proposed Edit:** In the definition of “Direct lobbying” in proposed Hawai‘i Administrative Rules (“HAR”) § 21-10-1, we recommend deleting the second sentence (“Direct lobbying includes but is not limited to drafting or submitting testimony; discussing existing or potential legislation or administrative rules; and advocating for the passage or defeat of any legislation or administrative rule.”).

Rationale: HAR § 21-10-1 contains definitions of “Direct lobbying” and “Grassroots lobbying” to show that lobbying can be both direct and indirect, consistent with the definition of lobbying in Hawai‘i Revised Statutes (“HRS”) § 97-1. However, the second sentence of the definition of “Direct lobbying” is unnecessary: detailed explanations of which activities count towards the registration threshold, and which expenditures must be reported on periodic expenditure reports, appear in proposed HAR §§ 21-10-2 and 21-10-8. The second sentence of “Direct lobbying” was intended to be illustrative (rather than exhaustive), but Mr. Toyofuku’s testimony suggests that it adds more confusion than

¹ In reviewing the rules, staff discovered a typographical error: in proposed Hawai‘i Administrative Rules § 21-10-9(c), the word “purposes” should be “purpose.”

clarity. As such, staff recommends that this sentence be deleted for clarity; staff does not believe that the deletion will result in a substantive change to the proposed rule.

2. **Proposed Edit:** In proposed HAR § 21-10-7(b)(1)(C), we recommend adding the word “Total” before the word “Compensation.”

Rationale: Addition of the word “total” will clarify that all expenditures to lobbyists for the purpose of lobbying must be reported; non-lobbying activities still do not need to be reported, as discussed in proposed HAR § 21-10-9(c). Staff believes that the rules are already clear that “total” compensation must be reported, *see, e.g.*, proposed HAR § 21-10-8(a) (“Expenditures made ‘for the purpose of lobbying’ means *all those expenditures in support of and in preparation for* direct lobbying or grassroots lobbying.” (emphasis added)); however, addition of the word “total” in HAR § 21-10-7 may help to clarify this requirement for lobbyists.

The remainder of Mr. Toyofuku’s comments are generally answered through application of the proposed rules. For example, the question regarding a research project that *might* be used for lobbying is dealt with by proposed HAR §§ 21-10-2(b)(2) and 21-10-8(b)(2). The question regarding flat-fee payment arrangements (page 3) is addressed by proposed HAR § 21-10-9. The question regarding background strategy discussions is addressed by applying HAR § 21-10-8(a)(3) and (b)(2). Mr. Toyofuku and I discussed that the proposed rules *will* change the ways that some lobbyists report clients’ expenditures, and I assured Mr. Toyofuku that the Commission staff intends to spend significant effort to educate lobbyists regarding these new requirements upon enactment of any proposed rules.

Mr. Toyofuku’s comment on page 3 of his memorandum, regarding the five-day period to register, is set by HRS § 97-2 (and, therefore, cannot be altered by these rules).

Staff respectfully recommends that the Commission incorporate the proposed edits set forth herein, approve the draft rules (as amended), and move forward with the rule-making process.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel