



HAWAII STATE ETHICS COMMISSION

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

January 28, 2013

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice Chair
Honorable Members
House Committee on Judiciary
Hawaii State Capitol, Room 438
415 South Beretania Street
Honolulu, Hawaii 96813

Re: **Testimony on HB No. 208, Relating to Lobbyists**

Hearing: Tuesday, January 29, 2013, 2:00 p.m.
State Capitol, Conference Room 325

Testimony From: Hawaii State Ethics Commission

Thank you for considering the Hawaii State Ethics Commission's testimony
in support of HB No. 208.

The bill amends Hawaii Revised Statutes ("HRS") chapter 97, the State's Lobbyists Law. Specifically, this bill amends the Penalties section of the Lobbyist Law, HRS sections 97-7(a)(1) and (a)(2), by removing the word "wilfully."

As the law currently reads, persons who either: (1) fail to file a required lobbying statement or report; or (2) file a statement or report containing false information or a material omission of any fact can be assessed an administrative fine **only where the person acted "wilfully."**

The requirement that a person'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 As originally enacted, the Lobbyists Law imposed criminal sanctions for violations, i.e., a violation of chapter 97 was a criminal misdemeanor.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.

The Honorable Karl Rhoads, Chair
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Honorable Members
House Committee on Judiciary
January 28, 2013
Page 2

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. This being the case, the State Ethics Commission believes 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 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 State Ethics Commission virtually toothless to enforce the reporting requirements of the Lobbyists Law.

The State Ethics 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).

The State Ethics Commission appreciates the Committee’s consideration of its testimony in support of HB No. 208, Relating to Lobbyists.

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 27, 2013 3:45 PM
To: JUDtestimony
Cc: barbarapolk@hawaiiintel.net
Subject: Submitted testimony for HB208 on Jan 29, 2013 14:00PM

HB208

Submitted on: 1/27/2013

Testimony for JUD on Jan 29, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara B. Polk	Americans for Democratic Action/Hawaii	Support	No

Comments: Since it is nearly impossible to determine the "willfulness" of a failure to comply with law, Americans for Democratic Action/Hawaii strongly supports this bill. It is the responsibility of the lobbyist (as it is of citizens in general) to be aware of the laws and comply with them. Failure to do so should result in a penalty.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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