

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 3,
KAUA'I COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW
ARTICLE 6, RELATING TO THE REGISTRATION OF LOBBYISTS**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Kaua'i County Council finds that County decision makers and the general public have the right to know upon whose behalf an individual is presenting testimony, and are also entitled to know the amount, the source and the purpose of funds that may be utilized to influence government decision making. Article 14 of the State Constitution requires each county to include in its ethics code provisions for "lobbyist registration and restriction." The purpose of this bill is to comply with this constitutional requirement by creating a transparent process that requires lobbyists to register with the County of Kaua'i, disclose the amount of money used by lobbyists to influence government decision making, and identify themselves as lobbyists prior to testifying before the County Council or County agencies.

SECTION 2. Chapter 3 of the Kaua'i County Code 1987, as amended, is hereby amended by adding a new Article 6 to read as follows:

"Article 6. Registration and Regulation of Lobbyists

Sec.3-6.1. Declaration of Intent. The County Council hereby declares that in order for democratic government to operate responsibly, citizens must be afforded the fullest opportunity to petition their government and to express freely their opinions on legislation and government operations; that to maintain the integrity of the county's decision-making process, it is necessary to identify persons and organizations retained and employed to influence the passage or defeat of any legislation by the council or to influence action by the executive branch, and that their expenditures and activities be publicly and regularly disclosed.

Sec. 3-6.2. Definitions. When used in this Article, the following words or phrases shall have the meaning given in this section unless it shall be apparent from the context that another meaning is intended.

"Administrative action" means the proposal, drafting, consideration, amendment, enactment, or defeat by any administrative agency of any rule, ordinance, or regulation, or other action governed by Hawai'i Revised Statutes (HRS) Section 91-3.

"Administrative agency" means a commission, board, agency, or other body, or official in the County government that is not a part of the legislative branch.

"Board of Ethics" means that board established by Section 20.05 of the Charter of the County of Kaua'i.

“Contested case” shall have the meaning defined in HRS Section 91-1.

“Contribution” includes 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.

“Expenditure” includes 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 County Council or an administrative agency.

“Legislative action” means the sponsorship, drafting, introduction, consideration, modification, enactment, or defeat of any bill, resolution, ordinance, amendment, report, nomination, appointment, or any other matter pending or proposed in the County Council, including the approval or veto of such.

“Lobbyist” means any individual, who for pay engages, or is engaged, in lobbying or lobbying activities except such persons as specifically excluded by subsection (d) from the application of this Article. A person who accepts membership dues or contributions made, or a fee or salary paid, with the understanding that the person accepting the same intends to devote a portion of the funds contributed or the time for which the salary is paid to lobbying activities shall be deemed to be “engaged” to conduct such activities.

The term “lobbying” or “lobbying activities” shall mean preparing to communicate or communicating, directly or through an agent, or preparing to solicit or soliciting others to communicate, with a County officer or employee for the purpose of attempting to influence any Legislative action or Administrative action.

“Person” means a corporation, individual, union, association, firm, sole proprietorship, partnership, committee, club, Limited Liability Company or any other organization or a representative of a group of persons acting in concert.

“Natural person” means a human being, as distinguished from an artificial person created by law.

Sec. 3-6.3. Registration of lobbyists, requirements.

(a) Every lobbyist shall file a registration statement with the Office of the County Clerk within five (5) days of becoming a lobbyist.

(b) The registration statement shall require the lobbyist or appropriate officer of lobbyist if a corporation or appropriate manager or member if the lobbyist is a limited liability company, to provide and certify under oath before a notary public as true and correct the following information:

(1) The name, business mailing address, and business telephone number of the lobbyist.

(2) The name and principal place of business of each person by whom the lobbyist is retained or employed or on whose behalf the lobbyist appears or works and a written authorization to act as a lobbyist from each person by whom the lobbyist is employed or with whom the lobbyist contracts.

(3) The subject areas on which the lobbyist expects to lobby.

(c) A lobbyist shall file a new registration statement annually or within ten (10) business days for any change made to (1), (2), or (3) of Subsection (b).

(d) Prior to appearing before the County Council or administrative agency, a lobbyist shall orally disclose his or her status as a lobbyist and the person on whose behalf the lobbyist is appearing.

Sec. 3-6.4. This Article shall not apply to:

(a) Any individual who represents oneself and not any other person before the County Council or administrative agency; provided that such individual must nonetheless file a statement of expenditures if the individual meets any of the provisions of Section 3-6.5 (a);

(b) Any federal, state, or county official or employee acting in the official's or employee's official capacity;

(c) Any news or advertising media including newspaper or periodical or online media or radio or television station (including any individual who owns, publishes, or is employed by a newspaper or periodical or radio or television station) while publishing in the regular course of business news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislative or administrative action;

(d) Any person who possesses special skills and knowledge relevant to certain areas of legislation, whose skills and knowledge may be helpful to the County Council, administrative agency and executive branch of County government, and who makes an occasional appearance at the express request of the County Council or an administrative agency as a resource person, whether or not they receive reimbursement or other payment from the County Council or administrative agency for the appearance.

Sec. 3-6.5. Contributions and expenditures; statement.

(a) The following persons shall maintain and keep current a record of expenditures, and shall file a statement of expenditures with the Office of the County Clerk on or before January 31st of each year, all of which shall be considered a public record:

(1) Each lobbyist.

(2) Each person who spends seven hundred fifty dollars (\$750) or more of the person's or any other person's money, including, but not limited to, amounts spent on print, electronic, broadcast or other media during the reporting 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.

(3) Each person who employs or contracts for the services of one (1) 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.

(b) The January 31st report shall cover the period from January 1st through December 31st of the previous year.

(c) The statement shall contain the following information:

(1) The name and address of any person receiving lobbying expenditures from the person filing the statement, the amount and date of expenditure, and a general description of all such expenditures (e.g., gift, meal, travel, materials);

(2) The name and address of each person who, during the statement period and for the purpose of lobbying, contributed twenty-five dollars (\$25) or more to the person filing the statement; and

(3) The subject area of the legislative and administrative action and the title or titles of the bills, resolutions, or actions which was supported or opposed by the person filing the statement during the statement period.

(4) A description of the permit, procurement, or contract management which was supported or opposed by the person filing the statement during the statement period.

(5) The receipt or expenditure of any money for the purpose of influencing the election or defeat of any candidate for an elective office or for the passage or defeat of any proposed measure at any special or general election.

(6) The legal name and address of the person financially responsible for placing any paid advertisements which directly or indirectly urge the passage or defeat of legislative or administrative action, including the name and contact information for at least one (1) natural person.

Sec. 3-6.6. Manner of filing; public records. All statements required by this Article to be filed with the Office of the County Clerk:

(a) Shall be deemed properly filed when hand delivered, transmitted via fax or email or mailed within the prescribed time, duly

stamped, registered, or certified, and directed to the Office of the County Clerk.

(b) Shall be preserved by the Office of the County Clerk for a minimum period of seven (7) years from the date of filing; and shall constitute part of the public records of the Office of the County Clerk.

(c) Shall be posted on a website maintained by the Office of the County Clerk within ten (10) business days of receipt by the Office of the County Clerk.

(d) Until such time as prescribed forms are available, all statements shall be filed in a format that contains all information required in this article, as determined by the County Clerk.

(e) The County Clerk shall make available all statements required by this article upon request of the Board of Ethics.

Sec.3-6.7. Restricted activities.

(a) No lobbyist shall accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.

(b) No lobbyist shall serve on the Board of Ethics or the Charter Review Commission.

(c) No lobbyist shall serve on any other County advisory committee or task force that advises or makes recommendations on subject matter areas that the lobbyist has specified in Section 3-6.3 (b). However, a lobbyist may occasionally appear as a resource person with specialized knowledge before the County advisory committee or task force.

(d) No lobbyist shall provide any elected official, official of an administrative agency, or member of such official's immediate family with any gift, whether in the form of money, favors or services, rewards, promises or negotiations of future employment, loans, travel, entertainment, hospitality, special discounts, event seat or ticket, thing or promise or in any other form.

Sec. 3-6.8. Administration.

(a) The Office of the County Clerk shall administer and implement this Article, and shall have the following powers and duties:

(1) Prescribe forms for the statements and reports required by Section 3-6.3 and Section 3-6.5, and establish orderly procedures for implementing the requirements of those provisions.

(2) Adopt rules, not inconsistent with this Article, as in the judgment of the Office of the County Clerk seem appropriate for the carrying out of this Article and for the efficient administration of this Article. The rules, when adopted as

provided in Hawai'i Revised Statutes, Chapter 91, shall have the force and effect of law.

(3) Report alleged violations of this Article to the Board of Ethics.

(4) Request from the Board of Ethics an advisory opinion subject to this Article. If no advisory opinion is rendered within thirty (30) days after the request is filed with the board, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of this Article. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the board in any subsequent charges concerning the person subject to this Article who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for an advisory opinion.

duties: (b) The Board of Ethics shall have the following powers and

(1) Investigate and take appropriate action on alleged violations of this Article in all proceedings commenced within three (3) years of an alleged violation of this Article. A proceeding shall be deemed commenced by the filing of a charge with the Board of Ethics or by the signing of a charge by the chairperson of the Board of Ethics. Nothing shall bar proceedings against a person who by fraud or other device prevents discovery of a violation of this Article.

(2) Notify in writing every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the Article.

(3) Initiate, receive, hear and investigate complaints pursuant to Section 20.05 of the Charter of the County of Kaua'i. A decision of the Board of Ethics pertaining to the conduct of any person subject to this Article shall be in writing and signed by the chairperson. A decision of the Board of Ethics rendered after a hearing together with findings and the record of the proceeding shall be a public record.

Sec. 3-6.9. Penalties; administrative fines.

(a) Any person who:

(1) Willfully fails to file any statement or report required by this Article;

(2) Willfully files a statement or report containing false information or material omission of any fact; or

(3) Engages in activities prohibited by Section 3-6.7; shall be subject to an administrative fine imposed by the Board of Ethics that shall not exceed one thousand dollars (\$1,000) for each violation of this Article. All fines collected under this

section shall be deposited into the general fund. The Board of Ethics may suspend or revoke the certificate of registration of a lobbyist who has been found to have violated any provision of this Article. The suspension or revocation shall not exceed two (2) years from the date of the sanctions imposition.

(b) No fine, suspension or revocation shall be assessed unless:

(1) The Board of Ethics convenes a hearing in accordance with Section 3-6.8(b)(3) and Chapter 91, HRS; and

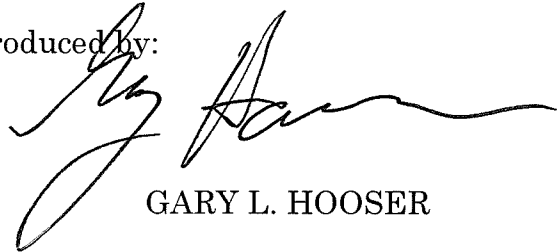
(2) A decision has been rendered by the Board of Ethics.

SECTION 3. Severability Clause. If any provision of this Article or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of this Article and the application of such provisions to other persons or circumstances shall not be affected thereby.

SECTION 4. New material is underscored. In printing this ordinance, the brackets, bracketed material, and underscoring need not be included.

SECTION 5. This ordinance shall take effect one hundred twenty (120) days after its approval.

Introduced by:



GARY L. HOOSER

DATE OF INTRODUCTION:

January 13, 2016

Līhu'e, Kaua'i, Hawai'i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2614, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on January 13, 2016, by the following vote:

FOR PASSAGE:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Yukimura	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i
January 14, 2016



Jade W. Fountain-Tanigawa
County Clerk, County of Kaua'i