

**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**

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BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA‘I, 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 or attorney’s fees paid where such fee information is protected by the attorney-client privilege pursuant to the Hawai’i Rules of Professional Conduct Rule 1.6.

“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 or other consideration engages in lobbying on behalf of another person in excess of five (5) hours in any month of any reporting period described in Sec. 3-6.5(b) or spends more than \$750 lobbying during any reporting period described in Sec. 3-6.5(b).

The term “lobbying” shall mean communicating, directly or through an agent, or soliciting others to communicate, with a State or 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 disclose for whom they are lobbying at the time they engage in lobbying a Kaua’i County legislative or administrative officer and shall file a registration statement with the Office of the County Clerk as early as possible, but no later than five (5) days within engaging in lobbying.

(b) The registration statement shall require the lobbyist or appropriate officer of a corporation, appropriate manager, or member if the lobbyist is a limited liability company, to provide and certify 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 report any change in any of the information contained in the registration statement within ten (10) days after the change has occurred.

(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.

(e) A lobbyist shall file a notice of termination within ten (10) days after the lobbyist ceases the activity which required the lobbyist's registration. The lobbyist and the employer of the lobbyist shall remain subject, however, to the requirements of this Section for the period during which the registration was effective.

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.

(e) Any elected public official acting in the public official's official capacity, unless the public official contracts for the services of a lobbyist.

(f) Any attorney who advises the attorney's clients on the construction or effect of proposed legislative or administrative action; provided that such attorney must nonetheless register if the attorney meets any of the provisions of Sec. 3-6.5.

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

(a) The following persons shall maintain and keep current a record of expenditures. If any expenditure is made during the reporting period, the following persons shall file a statement of expenditures with the Office of the County Clerk on or before January 31<sup>st</sup> of each year, all of which shall be considered a public record:

(1) Each registered lobbyist pursuant to Sec. 3-6.3.

(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 Kaua'i County public officials; provided that any amounts expended for travel costs, including incidental meals and lodging, shall not be included in the tallying of the \$750.

(3) Each person who employs or contracts for the services of one (1) or more registered lobbyists pursuant to Sec. 3-6.3, 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 31<sup>st</sup> report shall cover the period from January 1<sup>st</sup> through December 31<sup>st</sup> of the previous year.

(c) The statement shall contain the following information:

(1) The name and address of any person receiving lobbying expenditures in the total sum of twenty-five dollars (\$25) or more per day from the person filing the statement, the amount and date of expenditure, and a general description of all such expenditures;

(2) The name and address of any person receiving lobbying expenditures in the aggregate amount of one hundred fifty dollars (\$150) or more during the statement period from the person filing the statement, the amount and date of expenditures, and a general description of all such expenditures;

(3) 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

(4) 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.

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

(6) 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 is excluded from the reporting requirement of this section.

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.

(c) No elected official or official of an administrative agency shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise or in any other form, under circumstances in which it can be reasonably be inferred that the gift is intended to influence the elected official or official of an administrative agency in the performance of the elected official's or official of an administrative agency's official duties or is intended as a reward for any official action on the elected official's or official of an administrative agency's part.

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 forty-five (45) 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.

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

(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 imposition of said sanctions.

(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: /s/ GARY L. HOOSER

DATE OF INTRODUCTION:

**January 13, 2016**

Lihu'e, Kaua'i, Hawai'i

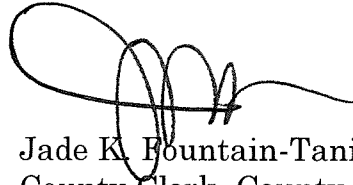
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2614, Draft 3, which was adopted on second and final reading by the Council of the County of Kaua'i at its meeting held on March 23, 2016 by the following vote:


FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Lihu'e, Hawai'i  
March 24, 2016



Jade K. Bountain-Tanigawa  
County Clerk, County of Kaua'i

ATTEST:

  
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Mel Rapozo  
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

March 24, 2016

Approved this 30<sup>th</sup> day of

March, 2016.



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Bernard P. Carvalho, Jr.,  
Mayor  
County of Kaua'i