



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 25, 2008

TO: The Honorable Rosalyn H. Baker
The Honorable Shan S. Tsutsui
Members of the Senate Committee on Ways and Means

FROM: Barbara U. Wong, Executive Director *B. Wong*
Campaign Spending Commission

SUBJECT: Testimony on S.B. No. 2579, S.D. 1 Relating to Campaign Spending

Monday, February 25, 2008
10:30 a.m. in Conference Room 211

Chair Baker, Vice-Chair Tsutsui, and Members of the Senate Committee on Ways and Means, thank you for the opportunity to testify on this bill.

This bill proposes to:

- Increase late filing penalties; and
- Deposit fines paid for campaign law violations into the general fund.

This bill would take effect on approval.

Support increase in late filing penalties (Section 1)

Under the current law (Section 2), a \$50 fine is imposed if a committee's report is filed late. If the Commission publishes notice in the newspaper and on its website, a committee is also subject to a fine of \$50 for each day that a report remains overdue or uncorrected. While most committees file reports on a timely basis, there are committees that do not file timely reports; this defeats the law's disclosure requirements which are at the heart of the campaign spending law. In order to ensure that all committees file timely reports, section 1 of this bill proposes to increase the fines.¹

- The penalty for not filing a report by the due date would increase to \$50 per day for the first seven days beginning with the date after the due date of the report and, thereafter, \$200 per day, not to exceed 25 percent of the total contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty for a report filed more than four days after the due date shall be \$200. However, if a committee does not file the reports due within ten

¹ The Commission proposed this amendment in S.B. No. 2203; this amendment was inserted in S.B. No. 2579 by the Senate Committee on Judiciary and Labor.

days of an election (the second preliminary primary report or the preliminary general report in the case of a candidate committee; or the preliminary primary report or the preliminary general report in the case of a noncandidate committee) by the due date, the fine shall be \$300 per day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty shall be \$300.

- The bill provides that the Commission shall provide notice of a substantially defective or deficient report. If the corrected report is not filed with the commission's electronic filing system on or before the fourteenth day after the notice of deficiency has been mailed, the penalty for a substantially defective or deficient report shall be \$50 per day for the first seven days beginning with the fifteenth day after the notice was sent and, thereafter, \$200 per day, not to exceed 25 percent of the total contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty for not filing a corrected report more than eighteen days after the notice was sent shall be \$200.

Recommend amending Section 2 of the bill

We also recommend amending Section 2 of the bill to avoid a situation in which the Commission would have to apply two different laws with different penalties to a committee.²

SECTION 2. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The duties of the commission under this subpart are:

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;

~~[(5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on~~

² The Commission also proposed this amendment in S.B. No. 2203.

~~the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;~~

~~(6)]~~ (5) To hold public hearings;

~~[(7)]~~ (6) To investigate and hold hearings for receiving evidence of any violations;

~~[(8)]~~ (7) To adopt a code of fair campaign practices as a part of its rules;

~~[(9)]~~ (8) To establish rules pursuant to chapter 91;

~~[(10)]~~ (9) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;

~~[(11)]~~ (10) To administer and monitor the distribution of public funds under this subpart;

~~[(12)]~~ (11) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;

~~[(13)]~~ (12) To employ or contract, without regard to chapters 76, 78, and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;

~~[(14)]~~ (13) To do random audits, field investigations, as necessary;

~~[(15)]~~ (14) To file for injunctive relief when indicated; and

~~[(16)]~~ (15) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, 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 the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion."

Not opposed to deposit of fines in the general fund (Section 3 and Section 4 of the bill), provided there is a regular source of revenue other than a general appropriation

Under the current law, fines collected by the Campaign Spending Commission (“Commission”) are deposited in the Hawaii election campaign fund (“Fund”). The Fund provides partial public financing to candidate and the Commission’s operating expenses.³

The Hawaii Election Campaign Fund (“Fund”) had a balance of \$5,469,345 as of December 31, 2007.

The current sources of funding are:

- The \$2 voluntary state income tax return check-off;⁴
- Fines and penalties;
- Interest; and
- Excess, surplus, and anonymous contributions.

The income tax check-off is the primary source of funding. The percentage of taxpayers that use the check-off has steadily declined since the inception of the program and currently is less than 15%. The check-off provides funding of approximately \$200,000 per year and dipped below \$200,000 in 2007 for the first time since the Fund was created in 1979.

Fines and penalties provided a greater amount of funding in past years, but this source may not be sustainable because compliance with laws should increase.

Interest income in 2007 was about \$232,000, based upon the current 3% rate and the Fund’s current balance.

We recommend a regular source of revenue to avoid the “conflict” that the Commission was previously faced with which required the Commission to request funds on an annual basis from the same persons that the Commission regulates.

³ HRS section 11-217.

⁴ HRS section 11-217



**THE LEAGUE
OF WOMEN VOTERS
OF HAWAII**

49 SOUTH HOTEL STREET, ROOM 314 HONOLULU, HAWAII 96813 PH. (808) 531-7448

FAX #: 599-5669

FAX TRANSMITTAL

FROM: Jean Aoki, League of Women Voters

DATE FEBRUARY 22, 2008

TO: Senate Sgt.-At-Arms

FAX #: 586-6659

**REMARKS: Please prepare ? copies of my testimony on SB 2579 SD1 Relating to
Campaign Spending**

written testimony to Senate Committee on Ways and Means

for decision - making

on Monday, February 25, 2008 at 10:30 a.m. in Conference Room 211

Thank you.

**We are transmitting 2 pages, including this cover sheet. If you do not receive all
pages, please call us at 531-7448 or 521-6267.**



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB 2579 SD1 RELATING TO CAMPAIGN SPENDING

Committee on Ways and Means
Senator Rosalyn H. Baker, Chair
Senator Shan S. Tsutsui, Vice Chair

Monday, February 25, 2008
10:30 a.m.
Conference Room 211

Dear Chair Baker, Vice Chair Tsutsui, members of the Committee on Ways and Means,

The League of Women Voters of Hawaii is very much opposed to the part of the bill that designates the general fund to be the depository of all penalties collected from candidates' campaign committees, and non candidate committees for failure to file reports on time or filing substantially defective or deficient reports. We feel that the proper depository is the Election Campaign Fund where fines and penalties have been deposited to date.

The Election Campaign Fund was set up for the purpose of meeting the needs of the Partial Public Funding program to help candidates who need help in funding their campaigns.

More than a decade ago, when the state was suffering from a depressed economy and seeking different sources to help fund its programs, one suggestion was that instead of the operating funds for the Campaign Spending Commission coming from the general fund, the Elections Campaign Fund be used for that purpose.

The League of Women Voters was very much opposed to this, but being told that the alternative would be a severe budget cut for the CSC, we chose what we believed to be the less undesirable course and supported the move. We did declare that we considered this a temporary concession to the demands of a financial crisis of sorts.

We realize that the chances of reverting to the past practice of the general funds being used to meet the expenses of the CSC are very slim. But we certainly do protest the diverting of money from penalties for violation of campaign spending rules from the customary depository, the Elections Campaign Fund, to the general fund.

We realize that we are experiencing a slow down in our economy and the state has to make prudent choices in spending. However, we feel that the Elections Campaign Fund is already being raided every year to meet the expenses of the CSC and should not be further eroded. We urge the deletion of this particular provision from SB 2579, SD1.

Thank you for this opportunity to comment on SB 2579, SD1.

Jean Aoki, League of Women Voters of Hawaii.

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