



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

February 12, 2009

TO: The Honorable Jon Riki Karamatsu, Chair of the House Judiciary Committee
The Honorable Ken Ito, Vice-Chair of the House Judiciary Committee
Members of the House Judiciary Committee

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

SUBJECT: Testimony on H.B. No. 215, Relating to Campaign Financing¹

February 12, 2009
2:05 p.m. in Conference Room 325

Chair Karamatsu, Vice-Chair Ito, and Members of the House Judiciary Committee, thank you for hearing this bill and the opportunity to testify on this bill.

We strongly support H.B. No. 215, which was introduced at the Campaign Spending Commission's ("Commission") request. This bill updates, organizes, and clarifies the current campaign finance laws with minimal substantive changes. This bill has an effective date of January 1, 2010. Section 9 of this bill proposes the repeal of the current laws and that the new laws take effect on that date.

We also request that the Committee amend this bill to include the provisions of H.B. No. 216 and H.B. No. 217 or that the Committee schedule a hearing on those two bills.

I. Recodification

The campaign finance laws have their genesis in Act 185, Session Laws of Hawaii 1973. Over the past thirty-six years, numerous amendments have been made to the laws in a piecemeal fashion and, apparently, with little regard to the laws as a whole. The result is laws that are unorganized, difficult to read, and inconsistent in some areas. The current laws are in Chapter 11, Part XII, Subpart B of the Hawaii Revised Statutes ("HRS").

¹ This bill has been referred to both this committee and the House Committee on Finance.

S.B. No. 95 is the companion bill and was referred to the Senate Committee on Judiciary and Government Operations, which has not scheduled a hearing on that bill.

H.B. No. 215 organizes the campaign finance laws into a new part of HRS chapter 11, with ten subparts. Long and involved sections are divided into shorter sections with clear titles which allow a reader to quickly locate the appropriate laws. All the laws on one subject are grouped together, in contrast to the current laws that require a reader to search through the whole subpart for laws that may apply to that subject.

The table below lists the sections in the current law and H.B. No. 215. By skimming the sections in H.B. No. 215 a reader would understand the responsibilities of a committee. For example, all the laws relating to registration are contained in subpart C; all the reporting requirements are placed in subpart D. As another example, the laws regarding loans are scattered throughout the current law in HRS sections 11-191, 11-204, and 11-205.6 and hidden in subsections; H.B. No. 215 proposes to place the provisions regarding loans, with no substantive changes, into Subpart F.

Current law in HRS Chapter 11, Subpart B – table of contents	H.B. 215 – table of contents
§ 11-191 Definitions	<i>Subpart A Declaration of Policy; Definitions</i>
§ 11-192 Campaign spending commission	§11-__1 Declaration of policy
§ 11-192.5 Commissioners; political activities	§11-__2 Construction
§ 11-193 Duties of the commission	§11-__3 Definitions
§ 11-194 Registration	<i>Subpart B Campaign Spending Commission</i>
§ 11-195 Filing of reports, generally	§11-__5 Campaign spending commission established; composition
§ 11-195.5 Reporting deadline	§11-__6 Terms of office
§ 11-196 Organizational report, candidate's committee	§11-__7 No compensation
§ 11-196.5 Organizational report, noncandidate committee	§11-__8 Duties of the commission
§ 11-197 Designated central committee	§11-__9 Advisory opinions
§ 11-198 Campaign treasurer	§11-__10 Political activities prohibited
§ 11-199 Campaign contributions, generally	§11-__11 Exemptions
§ 11-200 Campaign contributions; restrictions against transfer	<i>Subpart C Registration with the Commission</i>
§ 11-201 Anonymous contributions; unlawful	§11-__15 Registration of candidate committee or noncandidate committee
§ 11-202 False name	§11-__16 Organizational report, candidate committee
§ 11-203 Fundraisers and fundraising activities	§11-__17 Organizational report, noncandidate committee
§ 11-203.5 Prohibition of fundraising on state or county property	§11-__18 Treasurer
§ 11-204 Campaign contributions; limits as to persons	§11-__19 Individual not serve as a committee officer in certain circumstances; committee prohibited from making contributions
§ 11-204.5 Limit on contributions from nonresident individuals and persons	§11-__20 Termination of committee's registration
§ 11-205 Campaign contributions; limits as to political parties	<i>Subpart D Reporting and filing with the Commission</i>
§ 11-205.5 Campaign contributions by state and county contractors	§11-__25 Filing of reports, generally
§ 11-205.6 Campaign contributions; loans	§11-__26 Candidate committee reports
§ 11-206 Campaign contributions; restrictions as to surplus	§11-__27 Time for candidate committee to file preliminary, final and supplemental reports
§ 11-207 Other contributions and expenditures	§11-__28 Noncandidate committee reports
§ 11-207.5 Late contributions; reports	§11-__29 Time for noncandidate committee to file preliminary, final and supplemental reports
§ 11-207.6 Electioneering communications	§11-__30 Reporting expenditures
§ 11-208 Voluntary campaign expenditure limitation	§11-__31 Late contributions; report
§ 11-209 Campaign expenditures; limits as to amounts	§11-__32 Final election period report for committee receiving or expending \$1,000 or less during the
§ 11-210 Study and recommendation	
§ 11-211 House bulletins	

<p>§ 11-212 Preliminary reports § 11-213 Final and supplemental reports § 11-213.5 Failure to file report; filing a substantially defective or deficient report § 11-214 Disposition of funds § 11-215 Advertising § 11-216 Complaints, investigation, and notice; determination § 11-217 Hawaii election campaign fund; creation § 11-217.5 Depletion of fund § 11-218 Candidate funding; amounts available § 11-219 Qualifying campaign contributions; amounts § 11-220 Eligibility for payments § 11-221 Entitlement to payments § 11-222 Candidate funding; application § 11-223 Candidate funding; restrictions § 11-224 Public funds; report required; return of funds § 11-225 Public funds; examination and audit; payments § 11-226 Tax deductions § 11-227 Public notices § 11-228 Administrative fines; relief § 11-229 Criminal prosecution</p>	<p>election period §11-_33 Failure to file report; filing a substantially defective or deficient report §11-_34 Electioneering communications; statement of information §11-_35 Fundraiser; notice of intent §11-_36 Reporting deadline §11-_37 Sale or use of information <i>Subpart E Contributions; prohibitions; limits</i> §11-_40 Contributions, generally §11-_41 False name contributions prohibited §11-_42 Anonymous contributions prohibited §11-_43 Fundraising on state or county property prohibited §11-_44 Contributions by state and county contractors prohibited §11-_45 Contributions by foreign national or foreign corporation prohibited §11-_46 Contributions to candidate committees; limits §11-_47 Contributions to noncandidate committees; limits §11-_48 Family contributions §11-_49 Contributions to a party §11-_50 Aggregation of contributions and expenditures §11-_51 Contributions limited from nonresident persons §11-_52 Other contributions and expenditures §11-_53 Excess contribution; return; escheat <i>Subpart F Loans</i> §11-_55 Loan to candidate committee §11-_56 Reporting loan; written loan agreement §11-_57 Noncandidate committee loans prohibited <i>Subpart G Expenditures</i> §11-_58 Campaign funds used only for certain purposes §11-_59 Prohibited uses of campaign funds §11-_60 Exceptions §11-_61 Disposition of campaign funds; termination of registration <i>Subpart H Advertisements</i> §11-_65 Advertisements §11-_66 House bulletins <i>Subpart I Enforcement</i> §11-_70 Subpoena powers §11-_71 Filing of complaint §11-_72 Notice of complaint; opportunity to explain or respond to complaint §11-_73 Initial determination by the commission §11-_74 Preliminary determination regarding probable cause §11-_75 Waiver of further proceedings §11-_76 Contested case hearing §11-_77 Dismissal §11-_78 Final determination of violation; order §11-_79 Administrative fines; relief §11-_80 Criminal referral</p>
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	§11-_81 Criminal prosecution <i>Subpart J Partial public financing</i> §11-_85 Hawaii election campaign fund; creation §11-_86 Depletion of fund §11-_87 Voluntary expenditure limits; filing affidavit §11-_88 Reduced filing fee §11-_89 Tax deduction for qualifying contributions §11-_90 Maximum amount of public funds available to candidate §11-_91 Candidate exceeds voluntary expenditure limits §11-_92 Reserving use of contributions §11-_93 Eligibility requirements for public funds §11-_94 Minimum qualifying contribution amounts; qualifying contribution statement §11-_95 Application for public funds §11-_96 Payment to candidate §11-_97 Use of public funds §11-_98 Post-election report required §11-_99 Post-election examination and audit; return of funds §11-_100 Report and recommendation
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H.B. No. 215 is drawn from a draft prepared by the Campaign Spending Commission’s Blue Ribbon Recodification Committee (“Committee”). The Committee met regularly for nine months in 2008 in order to complete the draft. The Committee was comprised of the Commission’s staff and seventeen attorneys experienced in campaign finance law who represented various interests.²

We have included with our testimony Attachment 1 (which compares the draft to the current law); and Attachment 2 (which compares the current law to the draft).

While Attachment 1 details the minimal substantive changes to the current law proposed in H.B. No. 215, in our testimony we highlight four of those changes as follows:

H.B. No. 215 section	Reference	Explanation
§11-_19 Individual not serve as a committee officer in certain circumstances; committees prohibited from acting in concert, or soliciting or making contributions	Page 27, lines 10 through 19.	HRS section 11-204 (h) currently provides as follows: No committee that supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

² James Case, Esq.; Calvert G. Chipchase IV, Esq.; Leroy Colombe, Esq.; Brian DeLima, Esq.; J. George Hetherington, Esq.; Sandra Hoshida, Esq.; William Kaneko, Esq.; Brian Kang, Esq.; Jared Kawashima, Esq.; Bert Kobayashi, Jr., Esq.; James Koshiba, Esq.; Judge Randall Lee; Matt Matsunaga, Esq.; Owen Matsunaga, Esq.; Marilyn Niwao, Esq.; Terry Thomason, Esq.; and Renee Yuen, Esq.

		<p>(Emphasis added.)</p> <p>H.B. 215 proposes to clarify the term “such” with the following language:</p> <p>(a) No committee that supports or opposes a candidate [for public office] shall have [as officers individuals] <u>an officer who serves as an officer[s] on any other committee which supports or opposes the same candidate.</u></p> <p>(b) [No such] <u>If a committee has an officer who serves as an officer on another committee which supports or opposes the same candidate, the committees shall not act in concert with, or solicit or make contributions on behalf of, any other committee.</u>³</p>
§11-44 Contributions by state and county contractors prohibited	Page 50, line 16 through page 52, line 10.	<p>Drawn from HRS section 11-205.5 with no substantive changes. Subsection (b) deletes a reference to a “separate segregated fund” and replaces it with “noncandidate committee;” and deletes a superfluous reference to “state or national bank, corporation, or labor organization.”</p> <p>The bill proposes amending subsection (b) as follows:</p> <p>(b) <u>Except as provided in subsection (a), [F]this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any [separate segregated fund by any state or national bank, corporation, or labor organization] noncandidate committee by any person for the purpose of influencing the nomination for election or the election of any person to office; provided that the commission shall by rule establish contribution limits for limited liability companies as defined in section 428-101, limited liability partnerships as defined in section 425-101, and limited liability limited partnerships as defined in section 425E-102. Sole proprietors subject to this section shall comply with applicable campaign contribution limits in section [11-204.] 11- 46(a).</u></p>
§11-58 Campaign funds used only for certain purposes	Page 62, line 7 though page 64, line 3.	<p>Under current law, three sections discuss the use of contributions, with two sections providing mostly overlapping, if not redundant terms.</p> <p>HRS §11-200 addresses how contributions may be used</p>

³ The Committee proposed that subsection (b) should read as follows:
 (b) No [~~such~~] committee that supports or opposes a candidate shall act in concert with, or solicit or make contributions on behalf of, any other committee.

Staff subsequently recognized that a candidate committee may work in concert with another candidate committee; e.g., the cost of an advertisement featuring two candidates or costs of a joint fundraiser may be split by the candidates. There does not appear to be any corruption issues when candidates split the costs pro-rata for certain expenses. Also, a noncandidate committee may work in concert with another noncandidate committee to support a candidate. These actions would have been prohibited under the language developed by the Committee.

		<p>before an election. HRS §11-206 discusses the use of “surplus funds” after an election. HRS §11-214 provides guidelines for the use of contributions when a person ceases to be a candidate.</p> <p>H.B. No. 215 proposes combining the provisions of HRS §§ 11-200 and 11-206 into a new §11-58 to provide simplification and clarity regarding the use of funds by a candidate.</p>
<p>§11-86 Depletion of fund</p>	<p>Page 78, line 6 though line 16.</p>	<p>Drawn from HRS section 11-217.5. Under current law, a candidate’s request for public funds is denied if “moneys in the fund are near depletion.” This draft replaces that with another standard - “unless there are two years of budgeted expenses in reserve.”</p> <p>This bill proposes amending the law as follows: “(a) The Hawaii election campaign fund shall be under no obligation to provide moneys to eligible candidates if, in the partial public funding program or comprehensive public funding for elections to the county of Hawaii council, <u>[moneys in that fund are near depletion.] unless there are two years of budged expenses in reserve in the Hawaii election campaign fund.</u></p> <p>(b) [For purposes of the partial funding program, if the Hawaii election campaign fund is close to depletion, as determined by the commission, the commission shall determine the amounts available to eligible candidates based on their order of eligibility in qualifying for partial public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-222; provided that the application has been accepted by the commission.</p> <p>(c) For the purposes of the comprehensive public funding for elections to the county councils, if the Hawaii election campaign fund is close to depletion, the commission shall determine whether that program shall be operative in accordance with subpart —.] <u>If the commission determines that the Hawaii election campaign fund is unable to fund all requests for public funds for the partial public funding program and comprehensive public funding program for elections to the county of Hawaii council the amounts available to candidates from the fund shall be based on the date an application for public funds filed pursuant to section 11- 95 is approved by the commission.”</u></p>

II. Retain the current definition of “electioneering communications” in §11-34 Electioneering communications; statement of information (Page 43, line 19 though 47, line 3)

As discussed in Attachments I and II, a change is proposed in §11-34 of H.B. No. 215 to the definition of “electioneering communication, as follows:

"Electioneering communication" means any advertising:

- (1) (A) Broadcast from a cable, satellite, television, or radio broadcast station;
(B) Published in any periodical or newspaper; or
(C) Sent by mail at a bulk rate;
- (2) That refers to a clearly identifiable candidate; ~~and~~
- (3) ~~[Is made,]~~ Made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election~~[-]; and~~
- (4) That is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

"Electioneering communication" shall not include communications:

- (1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by any political party, political committee, or candidate;
- (2) That constitute expenditures by the disbursing organization;
- (3) In in-house bulletins; or
- (4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

We request that the Committee not make this change, based upon a narrower reading of the United State Supreme Court’s decision in Federal Election Commission v. Wisconsin Right to Life; 551 U.S. ----, ----, 127 S.Ct. 2652, 2685, 168 L.Ed.2d 329 (2007) (WRTL).

§11-34 is drawn from HRS section 11-207.6; when this section was first enacted in Act 140, SLH 1999, its purpose was stated as follows:

Your Committee finds that informational and educational advertising has become an unregulated and virtually unlimited aspect of political campaigns. A Federal law that was proposed but not enacted, the McCain-Feingold campaign spending reform bill, contained language designed to address this very issue. The bill before your Committee is modeled on the McCain-Feingold bill in its treatment of electioneering communications.⁴

⁴ Senate Conf. Com. Rep. No. 27 (1999).

Your Committee notes that informational and educational advertising has become an unregulated and virtually unlimited aspect of political campaigns, which may be used to target not only individual candidates but also ballot issues. Your Committee agrees that allowing these types of communications to go unregulated, while requiring registered candidates and committees to submit reports is a loophole in the current law that provides an unfair advantage to those who are unregistered yet expending funds to affect a particular election.⁵

The provisions of the "McCain-Feingold" bill referred to in the Committee report were subsequently enacted in the Federal Bipartisan Campaign Reform Act of 2002 (BCRA). Prior to BCRA (and Act 140), an advertisement was subject to campaign finance regulation only if it was "express advocacy", resulting in "sham issue ads." BCRA (and Act 140) closed this loophole by banning the use of corporate and union treasury funds for electioneering communications - broadcast ads aired during the pre-election period, referring to a candidate and targeting the candidate's constituents; and requiring other persons to disclose their electioneering communications. The U.S. Supreme Court upheld the constitutionality of the BCRA electioneering communication provision in McConnell v. FEC, 540 U.S. 203 (2003).

The restrictions on electioneering communication, however, were scaled back in WRTL as the Supreme Court held that:

- BCRA's electioneering provisions could not be applied to WRTL's ads, because they were not "the functional equivalent of express advocacy" for or against a candidate.
- An ad is "the functional equivalent of express advocacy" only if it is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."
- "Where the First Amendment is implicated, the tie goes to the speaker, not the censor."
- WRTL's ads were not the "functional equivalent of express advocacy" for two reasons: "First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter."
"Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office."⁶

⁵ House Stand Comp. Rep. No. 1470 (1999).

⁶ Wisconsin Right to Life Inc. challenged the application of BCRA to three advertisements, entitled "Wedding", "Waiting", and "Loan." The script for Loan follows:

LOAN OFFICER: Welcome Mr. and Mrs. Shulman. We've reviewed your loan application, along with your credit report, the appraisal on the house, the inspections, and well . . .

COUPLE: Yes, yes . . . we're listening.

OFFICER: Well, it all reminds me of a time I went fishing with my father. We were on the Wolf River Waupaca . . .

VOICE-OVER: Sometimes it's just not fair to delay an important decision.

But in Washington, it's happening. A group of Senators is using the filibuster delay tactic to block federal judicial nominees from a simple "yes" or "no" vote. So qualified candidates aren't getting a chance to serve.

- In applying the test, courts are generally barred from considering contextual evidence and may allow only "minimal if any discovery."
- The intent of the advertiser and the effect of an ad are irrelevant to whether it is "the functional equivalent of express advocacy."

Until WRTL's impact is determined, a more measured approach would be to read WRTL narrowly and leave the definition of "electioneering communications" unchanged. The "electioneering communications" disclosure requirements would be applicable to all advertisements meeting the statutory definition.⁷

III. Include the provisions of H.B. No. 216 and H.B. No. 217 in this bill or the Committee should schedule a hearing on those two bills

The Committee should include the provisions of H.B. No. 216 and H.B. No. 217, bills submitted at the request of the Commission, in this bill or the Committee should schedule a hearing on these two bills.

H.B. No. 216⁸ proposes to:

- Reinstate language in HRS §11-209(a), that was deleted by Act 203, SLH 2005, to allow candidates for the office of prosecuting attorney to qualify for partial public financing;
- Increase the expenditure limits and amounts available to candidates who apply for partial public financing; and
- Remove the equalizing fund provisions in Act 244, SLH 2008, which established a pilot project for comprehensive public funding program for the county of Hawaii council elections beginning in 2010.

It's politics at work, causing gridlock and backing up some of our courts to a state of emergency.

Contact Senators Feingold and Kohl and tell them to oppose the filibuster.

Visit: BeFair.org

Paid for by Wisconsin Right to Life (befair.org), which is responsible for the content of this advertising and not authorized by any candidate or candidate's committee.

⁷ This is the approach of the Federal Election Commission. Electioneering communications that qualify for the WRTL exemption may be funded with corporate and/or labor organization funds, but are subject to electioneering communications reporting and disclosure requirements. The comments that the FEC received were divided as to what guidance, if any, WRTL provided with respect to the "express advocacy" definition in the FEC's rules. The FEC decided to leave open this issue and address the question at a later time. See Explanation and Justification for Regulations on Electioneering Communications, Federal Register notice: 72 FR 72899 (Effective Date: December 26, 2007).

⁸ The companion bill is S.B. No. 94, which was referred to the Senate Judiciary and Government Operations Committee and the Senate Committee on Ways and Means. A hearing on this bill has not been scheduled.

H.B. No. 217,⁹ among other things,

- Adds a grace period to the 20% cap on nonresident contributions in HRS §11-204.5;
- Requires noncandidate committees to file a report in election years on July 31, which is the same filing date as candidate committees, to provide greater transparency and align the reporting between noncandidate committees and candidate committees; and
- Repeals the law relating to the short form report for a candidate, party, or committee whose aggregate contributions and expenditures in a reporting period each total \$2,000 or less.

Attachment 1 (comparing the draft to the current law)

Attachment 2 (comparing the current law to the draft)

⁹ The companion bill is S.B. No. 93 which was referred to the Senate Judiciary and Government Operations Committee, which scheduled a hearing on this bill on February 12.

**Campaign Spending Commission
January, 2009**

TABLE OF DERIVATION: COMPARING DRAFT TO CURRENT LAW		
Draft section	Title	Current Law
Subpart A Declaration of policy; definitions		
§11-__1	Declaration of policy	New section drawn from language in committee reports for prior amendments to the campaign finance law.
§11-__2	Construction	New section which implements §11-__1. The concept is drawn from the preamble to HRS chapter 84, relating to standards of conduct; and HRS section 92-1, relating to a declaration of policy and intent regarding public meetings and records.
§11-__3	Definitions	§11-191
	Advertisement	Amended to specifically exclude from the definition of advertisement (1) a "house bulletin" (HRS section 11-211); and (2) an editorial or letter to the editor.
	Ballot issue committee	Amended to clarify that a ballot issue committee is a noncandidate committee; and add a reference to "incurring financial obligations."
	Campaign funds	NA - new definition which is intended to include all funds or anything of value received by a committee.
	Candidate	Amended by deleting the reference in paragraph (4) to certification because of the apparent overlap with paragraph (1), relating to filing of nomination papers; reordering the section by placing language regarding the termination of a candidate's registration with the Commission at the end of the definition; and removing a superfluous reference to one candidate committee currently in this definition and in HRS section 11-197 and placing that requirement in section 11-__15(f) of the draft.
	Candidate committee	Uses the term "candidate committee" rather than "candidate's committee;" clarifies that the committee receives campaign funds, makes expenditures, or "incurs financial obligations;" and includes language that is currently in the definition of "committee."
	Clearly identified	Same as the current law.
	Commission	Same as the current law.
	Commissioner	Amended by deleting reference to "campaign spending."
	Committee	Amended by specifying that a committee is either a candidate committee or noncandidate committee.
	Contribution	Amended by listing transactions that are contributions; others that are not contributions; and including references to loans.
	Earmarked funds	Amended by deleting a "party" because it is included in the definition of a committee.
	Election	Same as the current law.
	Election period	Amended by listing the elements and specifying when the period begins and ends.
	Expenditure	Amended by listing transactions that are expenditures; others that are not expenditures.
	House bulletin	Same as the current law. The Committee did discuss that the "house bulletin" exclusion currently in section 11-211 is not applicable to materials circulated beyond the target group.
	Immediate family	Same as the current law.
	Independent expenditure	Amended by changing "candidate's committee" to "candidate committee."
	Individual	Same as the current law.
	Loan	Same as the current law.
	Newspaper	Same as the current law.
	Noncandidate committee	Amended by clarifying that the committee receives campaign funds, makes expenditures, or "incurs financial obligations."
	Office	Same as the current law.
	Other receipts	NA - new definition which includes intended to include all miscellaneous sources of funds received by committee. Other receipts are included in the

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		definition of "campaign funds."
	Party	Same as the current law.
	Person	Same as the current law.
	Political committees established and maintained by a national political party	Same as the current law.
	Qualifying contribution	This definition is applicable to only candidates accepting partial public financing. The definition was amended by deleting the reference to "campaign" and listing the elements for a "qualifying contribution;" and specifying transactions that are not "qualifying contributions" including a candidate's own funds (drawn from the definition of "private funds").
	Special election	Same as the current law.
	Treasurer	Amended by deleting the reference to "campaign" (i.e., "treasurer", rather than "campaign treasurer").
Definitions deleted from section 11-191:		
	Matching payment period	Deleted and the concept is included in §11-_94(f)
	Private contributions	This definition is applicable to only candidates accepting partial public financing. The concept is deleted in section 11-191 and included in the definition of "qualifying contribution."
	Residual or surplus funds	This definition is deleted. This draft collapses sections 11-200 and 11-206 into section 11-_58. The use of contributions after an individual ceases to be a candidate is discussed in the draft in section 11-_60.
	Separate segregated fund	This definition is deleted because the term is superfluous.
	Surplus funds	This definition is deleted; see above regarding "residual or surplus funds."
	Terminate candidacy	This definition is deleted and the concept is included in §11-_20.
Subpart B Campaign Spending Commission		
These are administrative provisions which were drawn from two existing sections. The law was reorganized into six sections with more descriptive titles. There were no substantive changes.		
§11-_5	Campaign spending commission established; composition	11-192
§11-_6	Terms of office	11-192
§11-_7	No compensation	11-192
§11-_8	Duties of the commission	11-193(a)(1) to (a)(16); except that <ul style="list-style-type: none"> • Section (a)(8), relating to a code of fair campaign practices was deleted because it was struck down by the Hawaii Federal District Court; and section (a)(16), relating to advisory opinions, was placed in a separate section 11-_9. • The terms "fine" and "penalty" are used throughout the current law. These words do not appear to have a different meaning and the term "fine" has been used through the draft, including this section.
§11-_9	Advisory opinions	11-193(a)(16)
§11-_10	Political activities prohibited	11-192.5
§11-_11	Exemptions	11-193(c)
Subpart C Registration with the Commission		
A committee is required to register with the commission and file periodic disclosure reports. The existing requirements for registration and reporting are organized into two separate subparts (Subpart C and Subpart D) to differentiate these activities.		
§11-_15	Registration of candidate committee or noncandidate committee	Most of §11-_15 is drawn from HRS section 11-194, except for draft subsection (b) which codifies an existing practice to implement the requirement for electronic filing; and draft subsection (e) which is drawn from HRS section 11-191.
§11-_16	Organizational report,	This section is drawn from HRS section 11-196 with no substantive

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	candidate committee	changes.
§11-_17	Organizational report, noncandidate committee	This section is drawn from HRS section 11-196.5. Subsection (a) (10) proposes adding a requirement that the committee provide the "account number" (which will not be made available to the public). This information is required under the existing law must for a candidate committee registering with the Commission.
§11-_18	Treasurer	This section is drawn from HRS sections 11-198 and 11-199; and Hawaii Administrative Rules section 2-14.1-6. This section is intended to centralize the laws regarding responsibilities of the treasurer, including record-keeping and record retention.
§11-_19	Individual not serve as a committee officer in certain circumstances; committees prohibited from acting in concert, or soliciting or making contributions	<p>There is a substantive change to this section, which is drawn from HRS section 11-204(h). This generated substantial discussion among committee members.</p> <p>HRS section 11-204 (h) currently provides as follows:</p> <p style="padding-left: 40px;">No committee that supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee. (Emphasis added.)</p> <p>After discussion at several meetings, the Committee attempted to clarify the term "such" with the following language:</p> <p style="padding-left: 40px;">(a) No committee that supports or opposes a candidate shall have an officer who serves as an officer on any other committee which supports or opposes the same candidate.</p> <p style="padding-left: 40px;">(b) No committee that supports or opposes a candidate shall act in concert with, or solicit or make contributions on behalf of, any other committee.</p> <p>Staff subsequently recognized that is a candidate committee may work in concert with another candidate committee; e.g., the cost of an advertisement featuring two candidates or costs of a joint fundraiser may be split by the candidates. There does not appear to be any corruption issues when candidates split the costs pro-rata for certain expenses. A noncandidate committee may also work in concert with another noncandidate committee. Thus, this draft retains the first sentence of section 11-204(h) in a new subsection (a); and proposes amending the language in new subsection (b) as follows:</p> <p style="padding-left: 40px;">(b) If a committee has an officer who serves as an officer on another committee which supports or opposes the same candidate, the committees shall not act in concert with, or solicit or make contributions on behalf of, any other committee.</p>
§11-_20	Termination of committee's registration	This section is drawn from the existing definition of "terminate candidacy" in HRS section 11-191 and the provisions relating to termination of registration in HRS section 11-213(e).

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Subpart D Reporting and filing with the Commission		
<p>Various reporting requirements are spread throughout the current law. This Subpart reorganizes the law so that the names of the reports that must be filed with the Commission and the requirements for these reports can be easily determined by the title of the new section. While the language has been substantially changed, there are no substantive changes, except as noted below.</p>		
§11-25	Filing of reports, generally	Drawn from HRS section 11-195.
§11-26	Candidate committee reports	<p>Drawn from HRS sections 11-212 and 11-213. Different persons are responsible for filing different candidate committee reports under the current law:</p> <ul style="list-style-type: none"> • Section 11-212 currently states that preliminary reports shall be filed by the candidate committee. • Section 11-213(a) states that the candidate shall file the final primary report • Section 11-213(d) provides that that the final election period report shall be filed by “each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee.” • In the case of a deficit, section 11-213(f) requires that a supplemental report be filed by “the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee.” • In the case of a surplus, section 11-213(g) requires that a supplemental report be filed by the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee.” <p>The candidate and treasurer are responsible for filing the candidate committee reports in both §11-26 and §11-27 of this draft.</p>
§11-27	Time for candidate committee to file preliminary, final and supplemental reports	Drawn from HRS sections 11-212 and 11-213.
§11-28	Noncandidate committee reports	<p>Drawn from HRS sections 11-212 and 11-213.</p> <p>As to noncandidate committee reports:</p> <ul style="list-style-type: none"> • Section 11-212 specifies that the “noncandidate committee” must file the preliminary reports. • Section 11-213(b) states that the “noncandidate committee” must file the final primary report. • In the case of a deficit, section 11-213(f) requires that a supplemental report be filed by “the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee.” • In the case of a surplus, section 11-213(g) requires that a supplemental report be filed by the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee.” <p>This draft proposes that the “authorized person in the case of a party, or campaign treasurer in the case of a committee” be responsible for filing the noncandidate committee reports.</p>
§11-29	Time for noncandidate committee to file preliminary, final and supplemental reports	Drawn from HRS sections 11-212 and 11-213.
§11-30	Reporting expenditures	Drawn from HRS section 11-207(d).

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§11-_31	Late contributions; reports	Drawn from HRS section 11-207.5 with no changes.
§11-_32	Final election period report for committee receiving or expending \$1,000 or less during the election period	Drawn from HRS section 11-212(e) with no changes.
§11-_33	Failure to file report; filing a substantially defective or deficient report	Drawn from HRS section 11-213.5 with no changes.
§11-_34	Electioneering communications; statement of information	Drawn from HRS section 11-207.6. The definition of "electioneering communications" is amended to conform to the WRTL decision.
§11-_35	Fundraisers; notice of intent	Drawn from HRS section 11-203 with no changes.
§11-_36	Reporting deadline	Drawn from HRS section 11-195.5 with no changes
§11-_37	Sale or use of information	Drawn from HRS section 11-193(a) (4) with no changes.
<p>Section 11-212(d), relating to the short form report for a committee receiving or expending \$2,000 or less during a reporting period, was not included in this recodification draft because there no longer is justification for the short form report. The short form report, apparently, was intended to reduce the burden of filing a paper report and the schedules. The current electronic filing system, however, has significantly reduced such a concern.</p> <p>This change is also included in several bills that the Commission will be submitting in the 2009 session.</p>		
Subpart E Contributions; prohibitions; limits		
<p>This Subpart reorganizes various laws regarding contributions to allow readers to determine contribution prohibitions and limits by viewing the title of the sections.</p>		
§11-_40	Contributions, generally	Drawn from HRS section 11-199 with no substantive changes; the language currently in HRS section 11-199(b) was placed in section 11-_18 of the draft.
§11-_41	False name contributions prohibited	Drawn from HRS section 11-202 with no substantive changes. Subsection (a) deletes superfluous language and adds a reference to a service; i.e., a person may make a false name contribution of a service. Subsection (b) removes language regarding the "true or established name" of the owner.
§11-_42	Anonymous contributions prohibited	Drawn from HRS section 11-201 with no substantive changes. Subsection (d) adds references to the specific sections relating to reporting of the calabash bowl contribution.
§11-_43	Fundraising on state or county property prohibited	Drawn from HRS section 11-203.5 with no substantive changes.
§11-_44	Contributions by state and county contractors prohibited	Drawn from HRS section 11-205.5 with no substantive changes. Subsection (b) deletes a reference to a "separate segregated fund" and replaces it with "noncandidate committee;" and deletes a superfluous reference to "state or national bank, corporation, or labor organization."
§11-_45	Contributions by foreign national or foreign corporation prohibited	Drawn from HRS section 11-204(i) with no substantive changes.
§11-_46	Contributions to candidate committees; limits	Drawn from HRS section 11-204(a) with no substantive changes. The reference to loans in the current law was moved to section 11-_55 in the draft.
§11-_47	Contributions to noncandidate committees; limits	Drawn from HRS section 11-204(b) with no substantive changes. The sentence excluding contributions to ballot issue committees from the \$1,000 contribution limit is drawn from HRS section 11-204(k).
§11-_48	Family contributions	Drawn from HRS sections 11-204(c) and (d) with no substantive changes. The intent of this is to have one section discussing laws relating to family contributions.
§11-_49	Contributions to a political	Drawn from HRS sections 11-204(j), 1-205, and 11-200(e) with no

	party	substantive changes. The intent of this is to have one section discussing laws relating to party contributions.
§11-_50	Aggregation of contributions	Drawn from HRS sections 11-204(f), (g); 11-205; and 11-204(d) with no substantive changes. This section discusses special rules involving the aggregation and attribution of contributions that are currently spread throughout the law.
§11-_51	Contributions limited from nonresident persons	Drawn from HRS section 11-204.5 with no substantive changes.
§11-_52	Other contributions and expenditures	Drawn from HRS section 11-207 with no substantive changes. The draft clarifies that subsection (c) is applicable only to a candidate who applies for partial public funding.
§11-_53	Excess contribution; return; escheat	Drawn from HRS section 11-204(e) with no substantive changes. In subsection (b) a reference to "prosecution" is deleted and replaced with "administrative action."
Subpart F Loans		
The current law discusses loans in HRS section 11-205.6. §11-_55 in this draft summarizes the four types of loans. Subsection (b) includes the amendments regarding loans that were added in Act 244, SLH 2008. The titles of the two other sections explain their contents.		
§11-_55	Loan to candidate committee	HRS section 11-205.6
§11-_56	Reporting loan; written loan agreement	HRS section 11-205.6
§11-_57	Noncandidate committee loan prohibited	HRS section 11-205.6
Subpart G Expenditures		
Under current law, three sections discuss the use of contributions, with two sections providing mostly overlapping, if not redundant terms.		
<ul style="list-style-type: none"> • HRS §11-200 addresses how contributions may be used before an election. • HRS §11-206 discusses the use of "surplus funds" after an election. • HRS §11-214 provides guidelines for the use of contributions when a person ceases to be a candidate. 		
This draft proposes the following:		
<ul style="list-style-type: none"> • Combining the provisions of HRS §§ 11-200 and 11-206 into a new §11-_58 to provide simplification and clarity regarding the use of funds by a candidate (this is the only substantive change); • §11-_59 specifies the applicable prohibitions; • §11-_60 lists the exceptions or special situations; and • §11-_61 provides guidelines for the disposition of funds when a person is no longer a candidate. 		
The Commission submitted several bills in 2008 which included a provision to "collapse" HRS §§11-200 and 11-206, but this provision was not passed.		
§11-_58	Campaign funds used only for certain purposes	Drawn from HRS sections 11-200 and 11-206.
§11-_59	Prohibited uses of campaign funds	Drawn from HRS sections 11-200 and 11-206.
§11-_60	Exceptions	Drawn from HRS sections 11-200 (c) and (d).
§11-_61	Disposition of campaign funds; termination of registration	Drawn from HRS section 11-214.
§11-_61(a)		Drawn from HRS section 11-214(a)
§11-_61(b)		Drawn from HRS section 11-214(b)
§11-_61(c)		Drawn from HRS 11-214(c)(1)
§11-_61(d)		Drawn from HRS section 214(c)(2)

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§11- 61(e)		Drawn from HRS section 11-214(e)
§11- 61(f)		Drawn from HRS section 11-214(f)
§11- 61(g)		Drawn from HRS section 11-214(g)
Subpart H Advertisements		
This Subpart is comprised of two sections. An advertisement requires a notice; and a disclaimer if the advertisement is published without the approval of a candidate. A house bulletin is exempt from the campaign law and is not an advertisement.		
§11- 65	Advertisements	Drawn from HRS section 11-215. While the language differs from the language in HRS section 11-215, there are no substantive changes.
§11- 66	House bulletins	Drawn from HRS section 11-211 with almost no changes.
Subpart I Enforcement		
The proposed changes in this Subpart are drawn from various sections in the current law, but derived principally from HRS section 11-216.		
§11- 70	Subpoena powers	Drawn from HRS section 11-193(b). This draft permits the documents to be produced at the commission office <u>or</u> at any place in the State.
§11- 71	Filing of complaint	Drawn from HRS section 11-216(a) with no substantive changes. Committee members observed that the requirement for an affidavit differs from the Federal law; the Federal Election Commission will accept a letter as a complaint.
§11- 72	Notice of complaint; opportunity to explain or respond to complaint	Drawn from HRS section 11-216(b) with no substantive changes.
§11- 73	Initial determination by the commission	Drawn from HRS section 11-216(b) with no substantive changes. This section merely lists the alternatives available to the Commission.
§11- 74	Preliminary determination regarding probable cause	Drawn from HRS sections 11-216(c) and (d) with no substantive changes.
§11- 75	Waiver of further proceedings	Drawn from HRS section 11-216(g) with no substantive changes.
§11- 76	Contested case hearing	Drawn from HRS section 11-216(d) with no substantive changes.
§11- 77	Dismissal	Drawn from HRS section 11-216(e) with no substantive changes.
§11- 78	Final determination of violation; order	Drawn from HRS section 11-216(f) with no substantive changes.
§11- 79	Administrative fines; relief	Drawn from HRS section 11-228 with no substantive changes. Committee members noted that the current law subjects corporations to a fine at a lower rate than natural persons.
§11- 80	Criminal referral	Drawn from HRS section 11-216(c) with no substantive changes. A Committee member suggested consideration of a new law regarding a false complaint.
§11- 81	Criminal prosecution	Drawn from HRS section 11-229 with no substantive changes.
Subpart J Partial Public Financing		
This Subpart reorganizes the various requirements for partial public financing that are spread throughout the current law.		
§11- 85	Hawaii election campaign fund; creation	Drawn from HRS section 11-217 with no substantive changes.
§11- 86	Depletion of fund	Drawn from HRS section 11-217.5. Under current law, a candidate's request for funds is denied if "moneys in the fund are near depletion." The Committee developed another standard in this draft - "unless there are two years of operational expenses in reserve." The draft also adds a reference to the pilot comprehensive public funding program for elections to the county of Hawaii council

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§11-_87	Voluntary expenditure limits; filing affidavit	Drawn principally from HRS section 11-209. Subsection (a) was drawn from HRS section 11-219(a). Subsection (c) is drawn from section 11-226(b). The September election and November election are described differently in the county ordinances; these names were added in subsection (d) after consultation with the Clerks of the respective counties.
§11-_88	Reduced filing fee	This new section is added because nothing in the current campaign law discusses the reduced filing fee for a candidate who agrees to limit campaign expenditures.
§11-_89	Tax deduction for qualifying contributions	Drawn from HRS section 11-226 with no substantive changes.
§11-_90	Maximum amount of public funds available to candidate	Drawn from HRS section 11-218 with no substantive changes.
§11-_91	Candidate exceeds voluntary expenditure limit	Drawn from HRS section 11-209(b). The current law requires that all contributors be "notified" if a candidate exceeds the expenditure limit; this draft specifies that "reasonable notice" be provided to all contributors if the expenditure limit is exceeded.
§11-_92	Reserving use of contributions	Drawn from HRS section 11-206(a) with no substantive changes.
§11-_93	Eligibility requirements for public funds	Drawn from HRS section 11-220 with no substantive changes.
§11-_94	Minimum qualifying contribution amounts; qualifying contribution statement	Drawn from HRS section 11-219. Subsection (b) is drawn from section 11-221.
§11-_95	Application for public funds	Drawn from HRS section 11-222. The September election and November election are described differently in county charters and ordinances; these names were added after consultation with the Clerks of the respective counties.
§11-_96	Payment to candidate	Drawn from HRS section 11-222 with no substantive changes.
§11-_97	Use of public funds	Drawn from HRS section 11-223. In subsection (a), the reference to a "financial institution" was replaced with the term "depository institution."
§11-_98	Post-election report required	Drawn from HRS section 11-224. The September election and November election are described differently county charters and ordinances; these names were added after consultation with the Clerks of the respective counties.
§11-_99	Post-election examination and audit; return of funds	Drawn from HRS section 11-225. Subsection (c) of this draft adds a two-year limitation period for the Commission to discover the payment of excess public funds. If public funds are used for an improper purpose a candidate must pay three hundred per cent of such amount (under current law); subsection (d) of this draft specifies that other fines and penalties may be applicable.
§11-_100	Report and recommendation	Drawn from HRS section 11-210. Current law requires the submission of a "study" to the Legislature. This draft provides for the submission of proposed legislation and adds a reference in the law regarding appropriations to the comprehensive public funding program for elections to the county of Hawaii council.

**Campaign Spending Commission
January, 2009**

CURRENT CAMPAIGN FINANCE LAW COMPARED TO RECODIFICATION DRAFT		
N/A – new section	§11-__1	Declaration of policy
N/A – new section	§11-__2	Construction
11-191, Definitions	§11-__3	Definitions
Advertisement		
Ballot issue committee		
N/A - new definition		Campaign funds
Campaign treasurer		Treasurer
Candidate		
Candidate's committee		Candidate committee; also see deletion of HRS section 11-197
Clearly identified		
Commission		
Commissioner		
Committee		
Contribution		
Earmarked funds		
Election		
Election period		
Expenditure		
House bulletin		
Immediate family		
Independent expenditure		
Individual		
Loan		
Matching payment period	Deleted	Contents placed in §11-94(f)
Newspaper		
Noncandidate committee		
Office		
NA - new definition		Other receipts
Party		
Person		
Political committees established and maintained by a national political party		
Private contributions	Deleted	See qualifying contribution definition
Residual or surplus funds	Deleted	
Qualifying campaign contribution		Qualifying contribution
Separate segregated fund	Deleted	
Special election		
Surplus funds	Deleted	
Terminate candidacy	Deleted	See termination of committee's registration (§11-__20)
11-192, Campaign spending commission	§11-__5	Campaign spending commission established; composition
11-192	§11-__6	Terms of office

11-192	§11-__7	No compensation
11-192.5, Commissioners; political activities	§11-10	Political activities prohibited
11-193 Duties of the commission		
11-193(a)(1) to (15)	§11-__8	Duties of the commission
11-193(a)(4)	§11-36	Sale or use of information
11-193(b), subpoena powers	§11-70	Subpoena powers
11-193(a)(16)	§11-9	Advisory opinions
11-193(c), exemptions	§11-11	Exemptions
11-194 Registration	§11-15	Registration of candidate committee or noncandidate committee
11-194(a)	§11-15(a)	
N/A new	§11-15(b)	
11-194(b)	§11-15(c)	
11-194(c)	§11-15(d)	
11-194(d)	§11-15(f)	
11-195 Filing of reports generally	§11-25	Filing of reports, generally
11-195.5 Reporting deadline	§11-36	
11-196 Organizational report, candidate's committee	§11-16	Organizational report, candidate committee
11-196.5 Organizational report, noncandidate committee	§11-17	Organizational report, noncandidate committee
11-197 Designated central committee	Deleted	
11-198 Campaign treasurer	§11-18	Treasurer
11-199 Campaign contributions, generally	§11-40	Contributions, generally
11-199(b), re itemized record	§11-18(e)	
11-200, Campaign contributions, restrictions against transfer		
11-200(b)	§11-58	Campaign funds used only for certain purposes
11-200(a)	§11-59	Prohibited uses of campaign funds
11-200 (c (d)	§11-60	Exceptions
11-200(e)	§11-58(a)(5)	
11-201 Anonymous contributions; unlawful.	§11-42	Anonymous contributions prohibited
11-202 False name	§11-41	False name contributions prohibited
11-203 Fundraisers and fundraising activities	§11-35	Fundraisers; notice of intent
11-203.5 Prohibition of fundraising on state or county property	§11-43	Fundraising on state or county property prohibited
11-204 Campaign contributions; limits as to persons		
11-204(a)	§11-46	Contributions to candidate committees; limits
11-204(b)	§11-47	Contributions to noncandidate committees; limits
11-204(c); (d)	§11-48	Family contributions
11-204(e)	§11-53	Excess contribution; return; escheat

11-204(f), (g)	§11-_50	Aggregation of contributions
11-204(h)	§11-_19	Individual not serve as a committee officer in certain circumstances; committee prohibited from making contributions
11-204(i)	§11-_45	Contributions by foreign national or foreign corporation prohibited
11-204(j)	§11-_49	Contributions to a political party
11-204(k)	§11-_47	Contributions to noncandidate committees; limits
11-204.5 Limit on contributions from nonresident individuals and persons	§11-_51	Contributions limited from nonresident persons
11-205 Campaign contributions; limits as to political parties	§11-_49	Contributions to a political party
11-205.5 Campaign contributions by state and county contractors	§11-_44	Contributions by state and county contractors prohibited
11-205.6 Campaign contributions; loans	§11-_55	Loan to candidate committee
	§11-_56	Reporting loan; written loan agreement
	§11-_57	Noncandidate committee loan prohibited
11-206 Campaign contributions; restrictions as to surplus		
11-206(a)	11-_92	Reserving use of contributions
11-206(b)	§11-_58	Prohibited uses of campaign funds
11-206(c)	§11-_59	Campaign funds used only for certain purposes
11-207 Other contributions and expenditures (a) to (c)	§11-_52	Other contributions and expenditures
11-207(d)	§11-_30	Reporting expenditures
11-207.5 Late contributions; reports	§11-_31	Late contributions; reports
11-207.6 Electioneering communications	§11-_34	Electioneering communications; statement of information
11-208 Voluntary campaign expenditure limits	§11-_87	Voluntary expenditure limits; filing affidavit
11-209 Campaign expenditures; limits as to amounts	§11-_87	Voluntary expenditure limits; filing affidavit
11-209(b)	§11-_91	Candidate exceeds voluntary expenditure limit
11-210 Study and recommendation	§11-_100	Report and recommendation
11-211 House bulletins	§11-_66	House bulletins
11-212 Preliminary reports; 11-213 Final and supplemental reports	§11-_26	Candidate committee reports
11-212, 11-213	§11-_27	Time for candidate committee to file preliminary, final and supplemental reports
11-212, 11-213	§11-_28	Noncandidate committee report
11-212, 11-213	§11-_29	Time for filing noncandidate committee to file preliminary, final and supplemental reports

11-212(d) Short form report for committee receiving or expending \$2,000 or less		Deleted
11-212(e)	§11-_32	Final election period report for committee receiving or expending \$1,000 or less
11-213(e) (see also section 11-191)	§11-_20	Termination of committee's registration
11-213.5 Failure to file report; filing a substantially deficient or defective report	§11-_33	Failure to file report; filing a substantially deficient or defective report
11-214 Disposition of funds	§11-_61	Disposition of campaign funds; termination of registration
11-215 Advertising	§11-_65	Advertisements
11-216 Complaints, investigation, and notice; determination		
11-216(a)	§11-_71	Filing of complaint
11-216(b)	§11-_72	Notice of complaint; opportunity to explain or respond to complaint
11-216(b)	§11-_73	Initial determination by the commission
11-216(c)	§11-_74	Preliminary determination regarding probable cause
11-216(c)	§11-_80	Criminal referral
11-216(d)	§11-_76	Contested case hearing
11-216(e)	§11-_77	Dismissal
11-216(g)	§11-_78	Final determination of violation; order
11-216(g)	§11-_75	Waiver of further proceedings
11-217 Hawaii election campaign fund; creation	§11-_85	Hawaii election campaign fund; creation
11-217.5 Depletion of fund	§11-_86	Depletion of fund
11-218 Candidate funding; amounts available		
11-218(a) - (d)	§11-_90	Maximum amount of public funds available to candidate
11-218(e)	§11-_92	Reserving use of contributions
11-219 Qualifying campaign contributions; amounts	§11-_94	Minimum qualifying contribution amounts; qualifying contribution statement
11-220(b)(3) Eligibility for payments	§11-_93(2)(A)	Statement of intent
11-221 Entitlement to payments	§11-_94	Minimum qualifying contribution amounts; qualifying contribution statement
11-221(b)	§11-_93(1)	Qualified to be on the ballot; opposed by another candidate
11-222 Candidate funding; application	§11-_95	Application for public funds
11-222	§11-_96	Payment to candidate
11-222(a)	§11-_93(2)(C)	Statement of qualifying contributions
11-222(a)	§11-_93(2)(D)	Application for public funds

11-223 Candidate funding; restrictions	§11-_97	Use of public funds
11-224 Public funds; report required; return of funds	§11-_98	Post-election report required
11-225 Public funds; examination and audit; payments	§11-_99	Post-election examination and audit; return of funds
11-226 Tax deductions	§11-_89	Tax deduction for qualifying contributions
11-227 Public notices	Deleted	
11-228 Administrative fines; relief	§11-_80	Administrative fines; relief
11-229 Criminal prosecution	§11-_81	Criminal prosecution



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Judiciary
The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
Thursday, February 12, 2009, 2:05 p.m.
State Capitol, Conference Room 325

by
Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 215, Relating to Campaign Financing

Purpose: To organize, clarify, update, and recodify the campaign finance laws

Judiciary's Position:

The Judiciary takes no position on this measure as a whole, but supports an amendment to new statutory section 11-__5 in section 2 of this bill, which pertains to the nomination of persons to fill vacancies on the campaign spending commission.

Under new section 11-__5 of the Hawaii Revised Statutes (HRS), which recodifies existing law under section 11-192, HRS, commission members are selected from a list of ten names submitted to the governor by the Judicial Council. Whenever the number of names on that list falls below five, the council is required to meet and to nominate additional persons to the list.

Complying with the above requirement has been burdensome on the council because of the difficulty in recruiting persons willing to serve on the commission. The Judiciary, therefore, requests that the law be amended to require, instead, that, when a vacancy occurs on the commission, the council shall nominate two persons to fill the vacancy. The proposed amendment is as follows:



House Bill No. 215, Relating to Campaign Financing
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§11-__5 Campaign spending commission established; composition. (a) There is established a campaign spending commission which shall be placed within the department of accounting and general services for administrative purposes.

(b) The commission shall consist of five members of the general public, appointed by the governor from a list of ten nominees submitted by the judicial council. ~~A vacancy in the commission shall be filled from the list of nominees; provided that a vacancy on the commission shall be filled by the appointment of one of two persons nominated for the position by the judicial council,~~ or by the reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34.

(c) Notwithstanding section 26-34, an appointment to the commission shall not be subject to senatorial confirmation.

(d) The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper. ~~The judicial council shall meet and expeditiously select additional persons for the list of nominees whenever the number of the eligible nominees falls below five.~~

The proposed nomination procedure is similar to that utilized to address vacancies on the State Ethics Commission under section 84-21, HRS, and establishes more reasonable and realistic requirements than the current law.

Thank you for the opportunity to testify on House Bill. No. 215.