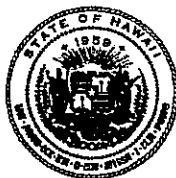


KRISTIN IZUMI-NITAO
EXECUTIVE DIRECTOR



PHONE: (808) 586-0285
FAX: (808) 586-0288
www.hawaii.gov/campaign

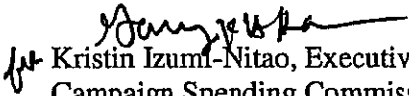
STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
235 SOUTH BERETANIA STREET, SUITE 300
HONOLULU, HAWAII 96813

March 19, 2012

TO: The Honorable Gilbert S. C. Keith-Agaran, Chair
House Committee on Judiciary

The Honorable Karl Rhoads, Vice Chair
House Committee on Judiciary

Members of the House Committee on Judiciary

FROM:  Kristin Izumi-Nitao, Executive Director
Campaign Spending Commission

SUBJECT: Testimony on S.B. No. 2493, S.D. 1, H.D. 1 Proposed, Relating to
Campaign Spending.

Thursday, March 20, 2012
2:00 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") strongly supports this bill as **originally proposed** in the Senate. The Commission opposes the Senate amendment to section 5 of the bill in S.D. 1 and urges the Committee to reinstate the bill in the form originally proposed in the Senate. The Commission also opposes the new proposed amendment to section 4 (deletion of a portion of line 4 and all of lines 5-8 on page 8 of S.D. 1) and strongly opposes the new proposed sections 6 and 7 of the bill proposing amendments to section 12 (c) & (d) of Act 244, Sess. Laws of Haw. (2008).

Section 1 of the bill amends Hawaii Revised Statutes ("HRS") §11-301 (definitions), by adding a definition of "matching payment period." In that same section, the definition of "qualifying contribution" includes a reference to a matching payment period during which a candidate seeking public funding may receive qualifying contributions of \$100 or less. The definition of "matching payment period" was included in a prior law (HRS §11-191 (2009 Replacement)). Adding the definition of "matching payment period" back to the statute would allow Commission staff to better implement the partial public financing program.

Section 2 of the bill makes "housekeeping" amendments to HRS §11-314 (duties of the Commission). For example, the bill replaces "duplicating" with "duplication" in

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subsection 4. The bill does not enlarge or curtail the duties of the Commission in any manner.

Section 3 of the bill amends HRS §11-334(a)(1)(A) (time to file preliminary, final, and supplemental reports) by changing the due date of the 1st Preliminary Primary Report from "July 31 of the election year" to "thirty calendar days prior to a primary election." Act 126, Sess. Laws Haw. (2010), advanced the date of the primary election from the last Saturday in September to the second Saturday in August. Thus, if the due date for the 1st Preliminary Primary Report is not also advanced, in this election year, candidates will have back-to-back reporting deadlines of July 31st and August 1st to file the 1st Preliminary Primary Report and the 2nd Preliminary Primary Report, respectively.

Section 3 of the bill also amends HRS §11-334(a)(4), to more clearly align the law with present practice. Presently, every candidate files the Supplemental Report that is due on January 31st every year and not just on January 31st after an election year. This bill would delete "after an election year" from the statutory provision. This bill does not require an additional or new report. That is, every sitting senator and member of the House of Representatives, and every other elected state and county official (along with all other candidate committees registered with the Commission) filed the Supplemental Report that was due on January 31, 2012. This bill would simply align the law with present practice by deleting "after an election year" from the statutory provision and provide that the Supplemental Report is due on "January 31 of each year." If this amendment is not passed, the Commission may not be able to require the filing of the January Supplemental Report in an election year leaving a one-year gap (July 1st of a nonelection year to June 30th of an election year) in reporting by candidate committees.

Section 4 of the bill amends HRS §11-335 (noncandidate committee reports) by separating the reporting of contributions into contributions received and contributions made by noncandidate committees, and, until proposed H.D. 1, requiring noncandidate committees to identify the candidate supported or opposed by the committees' independent expenditures. However, this section will align the statute with the reality that noncandidate committees both make and receive contributions and report them, and **promote transparency of spending on independent expenditures**. Thus the Commission strongly urges this committee to restore the language deleted from page 8, lines 4-8 of S.D. 1, that provided, "The purpose of an independent expenditure shall include the name of the candidate who is supported or opposed by the expenditure and whether the expenditure supports or opposes the candidate[.]"

Section 5 of the bill amends subsection (d) by adding "prosecuting attorney" to paragraph (4). Thus, the prosecuting attorney, along with state senators, state representatives, and county council members participating in the partial public financing program would be able to spend \$1.40 multiplied by the number of registered voters in the voting district. This amendment reinstates language deleted by Act 203, Sess. Laws

Haw. (2005). This deletion forced the Commission to place the prosecuting attorney in the "all other offices" category of the spending limit, *i.e.*, 20 cents multiplied by the number of registered voters in the voting district. This seems unreasonable given the fact that the prosecuting attorney is a county-wide office. For example, under current law, the expenditure limit for the Honolulu Prosecuting Attorney for the 2012 elections is \$81,560 while the expenditure limit for the Honolulu Mayor is \$815,602. The expenditure limit for the Hawaii County Prosecuting Attorney for the 2012 elections is \$17,978 while the expenditure limit for the Hawaii County Mayor is \$179,776. Finally, the expenditure limit for the Kauai County Prosecuting Attorney for the 2012 elections is \$7,167 while the expenditure limit for the Kauai County Mayor is \$71,672.

Section 5 of S.B. No. 2493, as originally introduced in the Senate, also proposed an amendment to HRS §11-423 (voluntary expenditure limits; filing affidavit) by amending subsection (b) to require candidates to file the affidavit to abide by statutory expenditure limits no later than the time to file nomination papers. This timeline is contained in HRS §12-6(e)¹ and was provided for in the prior campaign spending law (HRS §11-208(c) (2009 Replacement)). This would allow Commission staff to better implement the partial public financing program and **achieve compliance with state election laws**. The Senate Committee on Judiciary and Labor deleted this amendment in S.D. 1. We ask that this amendment to HRS §11-423(b) be reinstated in the bill by this committee.

The Commission strongly opposes Section 6 of the proposed H.D. 1. That section amends section 12(c) of Act 244, Sess. Laws of Haw. (2008), by changing the manner in which base amount of public funding for Hawaii County Council candidates for the primary election are calculated to "the average of the amount spent by the winning candidates in the previous two county council primary elections of all districts, reduced by ten per cent." Section 6 takes effect on January 1, 2013 so would not affect the 2012 primary election. Still, using figures from the 2008 and 2010 primary elections since we don't have 2012 figures, if Section 6 would be in effect for the 2012 primary election, if the section is applied literally, the base amount for each of the nine districts would be \$131,799.22. If one candidate in each district received the Section 6 base amount, the Commission will need to spend a whopping **\$1,186,192.96** for the primary election alone. This would violate section 12(a) of Act 244 which prohibits the Commission from disbursing in excess of \$300,000 for all certified candidates in any election year in which Act 244 is operative.

¹ HRS §12-6(e) provides, "Upon the showing of a certified copy of an affidavit which has been filed with the campaign spending commission pursuant to section 11-208 by a candidate who has voluntarily agreed to abide by spending limits, the chief election officer or clerk shall discount the filing fee of the candidate by the following amounts: (1) For the office of the governor and lieutenant governor -- \$675; (2) For the office of mayor -- \$450; and (3) For all other offices -- \$225."

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Also, in the 2010 elections, in both primary and general elections combined, the Commission gave a total of \$147,716.43 in public funds to certified candidates in the Hawaii County Council Comprehensive Public Funding program. The Commission does not believe that such a huge expansion in the Hawaii County Council Comprehensive Public Funding program, to the detriment of the solvency of the Hawaii Election Campaign Fund and thus to the statewide partial public financing program, is justified.

The Commission also opposes Section 7 of the proposed H.D. 1. That section amends section 12(c) of Act 244, Sess. Laws of Haw. (2008), by changing the manner in which base amount of public funding for Hawaii County Council candidates for the general election are calculated to "the average of the amount spent by the winning candidates in the previous two county council general elections of all districts in which there was a general election held, reduced by ten per cent." Section 7 will have a more moderate increase in the cost of the Hawaii County Council program and appears to be a fairer way to compute base funding for the general election. However, the Commission has already posted the base amounts for the primary and general election. At the very least, Section 7 would change the rules of the game after it has already started. To date, ten candidates have filed their intent to seek comprehensive public funds. By doing so, they have given up their right to accept up to \$2,000 per contributor for the 2010-2012 election period.

As you know, the Hawaii Election Campaign Fund ("HECF") is a public trust fund which was created to enable taxpayers to designate \$3 (previously, \$2) from a portion of their income tax liability to the fund. See, HRS §11-421. It is from the HECF that public funds are provided to candidates that qualify for not only the comprehensive public funding for the Hawaii County Council but also partial public funding for all candidates. It is also from the HECF that all Commission operations are paid for. It therefore represents the primary revenue source for Commission business and programming.²

Consequently, it is essential to discuss the impact to the HECF if proposed sections 6 and 7 were enacted. With a beginning balance of \$5 million on June 30, 2009, the closing balance of the HECF as of June 30, 2010 was \$4.6 million and \$4.1 million as of June 30, 2011. The HECF balance has steadily been decreasing each fiscal year. HECF's revenue is generated by taxpayers designating \$3 from their state income tax to the fund. In the past five years, an average of \$203,000 has been designated to HECF as a result of this check-off. Interest earned on the principal yields about \$200,000. If the principal is reduced, the interest income is reduced. For the 2010 elections, a total of \$188,286 was disbursed from the HECF to pay for twenty-two (22) qualifying candidates in the partial public funding program and a total of as mentioned previously, \$147,716.43

² Pursuant to Act 244, SLH 2008, the legislature reallocated the Commission's other revenue source of fines and penalties to the general fund.

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was disbursed from the HECF to pay for eight (8) certified candidates in the comprehensive public funding program for the Hawaii County Council pilot program. Accordingly, \$336,000 was expended to pay for the two public financing programs.³ To significantly increase the base amounts for the pilot program would strain the Commission's programs and operations. The Commission would require a significant appropriation from the Legislature to implement proposed sections 6 and 7.

The Commission respectfully request that this committee amends sections 4 and 5 of the bill as discussed above, and delete sections 6 and 7 from the proposed H.D. 1. In regard to proposed sections 6 and 7, the Commission strongly suggests that the prudent course is to review this pilot program as it unfolds to permit lawmakers and taxpayers to make an informed decision as to the program's effectiveness before extending Act 244.

³ An average of \$201,000 per election year over the last five elections was disbursed from the HECF to pay for qualifying candidates in the partial public funding program. 2010 was the first year for the comprehensive public funding program so an average cannot be computed.



House JUD Committee
Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads

Tuesday 3/20/12 at 2:00PM in Room 325
SB 2493 SD1 Proposed HD1 – Campaign Spending

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

Common Cause Hawaii supports SB 2493 SD1 Proposed HD1, regarding campaign spending. The proposed HD1 includes changes to deadlines for campaign spending reports, to improve transparency while avoiding redundancy; makes improvements to noncandidate committee reports, to improve disclosure for independent expenditures; and makes small improvements to public financing programs.

We notice that this proposed draft omits the following sentence that was included in the SD1 Section 4, regarding noncandidate expenditures:

The purpose of an independent expenditure shall include the name of the candidate who is supported or opposed by the expenditure and whether the expenditure supports or opposes the candidate;

We support the inclusion of that sentence, but recognize it is also addressed in HB2174, which addresses the issue of independent expenditures in greater detail and is now pending in the Senate. We thank the JUD Committee for moving that bill forward. We ask legislators for your continued support for greater transparency for independent expenditures in campaigns.

Mahalo for the opportunity to submit testimony.