

## Commission to Improve Standards of Conduct

Dear Chairman Tarnas and Members of the Judiciary and Hawaiian Affairs Committee,

Thank you for the opportunity to comment on bills recommended to the House of Representatives (House) by the Commission to Improve Standards of Conduct (Commission). The origin and justification of these bills is extensively discussed in the Commission's December 1, 2022 Final Report (Report) submitted to the House pursuant to HR 9.

The bills recommended by the Commission are a package that would increase transparency and accountability in state and county government and help restore public trust in government which has been severely eroded in the past few years by highly publicized instances of corruption and misconduct in state and county government.

With that in mind, I would like to comment on all the Commission bills in this testimony and submit it for each bill for your consideration.

First, I would like to commend the House for creating the Commission. It has been an honor to carry out the mandate of the House and serve with the distinguished and learned members the House appointed to the Commission. The members of the Commission worked very hard over a period of nine months, reaching out to public officials, community leaders, experts in various fields within the Commission's mandate and held extensive public hearings in drafting the bills recommended to the House. These public hearings are summarized in the Report at 13-18 and Appendix B of the Report which contains the Commission's minutes of these public meetings. The notice of the Commission's meetings with a link to a video recording of each meeting and testimony submitted and documents considered at each meeting can be found at the House webpage's a link to the Commission under House Special Committees.

The following is the list of bills recommended by the Commission with brief summaries and citations to the relevant parts of the Commission's Report where they are discussed.

HB 705 – Requires each house of the Legislature to post a report of the legislative allowance expenditures for each member of the respective house on the Legislature's website. The purpose of this bill is to "increase transparency and ease of access to information related to expenditure of taxpayer monies." Report at 28.

HB 706 – Requires all members of the Legislature to disclose certain relationships with lobbyists or lobbying organizations in their financial disclosures. The purpose of this bill is to "increase transparency and potentially uncover conflicts or self-dealing." Report at 28.

HB 707 – Makes it a class C felony to make false, fictitious or fraudulent claims against the state or a county, or any of their department or agencies, disqualifying a person from holding elective public office for a period of 10 years upon conviction of making a false, fictitious or fraudulent claim. This bill is modeled after the federal false claims statute. Report at 21. This bill comes

with two others – HB 710 (false statement) and HB 711 (fraud) which are also modeled after federal statutes. Federal, state and county law enforcement officials testified before the Commission that state and county law enforcement need statutes as their federal counterpart have to root out corruption in state and county government rather than always relying on federal enforcement to do this job.

HB 708 – Amends the information in the statement of expenditures reports that lobbyists and other individuals are required to file with the State Ethics Commission to include the identity, by bill number, resolution number or other similar identifier, of the legislative or administrative action that was commented on, supported by or opposed by the person filing the statement. Report at 28. As with other bills in the Commission’s package, this bill would increase transparency and expose any potential conflict of interest.

HB 709 – Requires a lobbyist training course to be designed and administered by the State Ethics Commission, makes the training course mandatory for all lobbyists who are required to register and renew their registration with the State Ethics Commission. The Commission found “that more education and training can be done to ensure that lobbyists have notice of the law, understand the application of the law, and comply with legal requirements.” Report at 29.

HB 710 – Is modeled after the federal false statement statute by establishing a class C felony offense for a person who dealing with state or county government to knowingly or willfully falsifies, conceals or covers up a material fact; makes materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document known to have materially false information; and disqualifies a person from holding public office for a period of 10 years upon conviction of making a false statement. Report at 20. As with HB 707 on false claims, federal, state and county law enforcement testified before the Commission this bill is necessary for state and county law enforcement to root out corruption and misconduct in state and county government rather than always relying on federal law enforcement to do this job.

HB 711 – Is the last of three bills recommended by the state and county law enforcement coalition and is modeled after the federal fraud criminal statute in making it a class B felony for a person to obtain financial benefit or other gain by means of false statements, misrepresentations, concealment of important information or deception, and prohibiting a person convicted of fraud from being a candidate for public office for a period of 10 years. Report at 20.

HB 712 – Would encourage public boards to maintain any electronic audio or visual recording of a board meeting as a public record on the board’s website regardless of whether written minutes of the meeting have been posted and to submit a copy of the recording to the State Archives. Report at 27. A similar bill in the last regular session of the Legislature was supported by the Commission, passed by the Legislature but vetoed by the Governor (SB 3172, SD 1, HD 2, CD 1). Report at 10. The Commission has attempted to address the concerns raised by the Governor in this bill.

HB 715 – Prohibits lobbyists from making prohibited gifts to legislators and state employees with administrative fines imposed for violations. Report at 33.

HB 716 – Requires the Office of Elections to prepare a voter information guide to educate voters on each candidate’s positions and their candidate statements and provide ballot question analyses and appropriates funds for the preparation and distribution of guides and analyses. The Commission found “Hawaii’s voter turnout is well below the national average for each election” and “registered voters may not have access to or be aware of information on the candidates or issues on the ballots.” Report at 34.

HB 717 – Prohibits under certain circumstances legislators and state employees from hiring or promoting relatives or household members and from making or participating in certain other employment-related decisions and from awarding a contract to or otherwise taking official action on a contract with a business if the legislator’s or employee’s relative or household member is an executive officer of or holds a substantial ownership interest in the business, and imposing administrative fines for violations. Report at 29.

HB 718 – Authorizes the Campaign Spending Commission to serve preliminary determinations of probable cause via first class mail instead of certified mail, establishes a presumption of receipt when mailed to the address contained in a candidate or committee organizational report. Report at 21.

HB 719 – Imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in electronic format; imposes a cap on charges for searching for, reviewing and segregating records; provides a waiver of fees when the public interest is served by record disclosure; and appropriates funds to carry out the provisions of this act. Report at 27. A similar bill was supported by the Commission and passed by the Legislature last regular session (SB 3252, SD2, HD2, CD1) and vetoed by the Governor. Report at 10. The Commission has attempted in this bill to address concerns raised by the Governor.

HB 720 – Increases the amount of partial public financing available for all offices up for election in varied amounts with a downward adjustment of the minimum amounts of qualifying contributions for county prosecuting offices. The Commission noted “that increased amounts of partial public funding of elections proposed in this bill are intended as a floor, or a minimum level. If fiscal resources are or become available, the Commission encourages the Legislature to be bold and devote additional fiscal resources to further the purpose of this bill and to seek additional permanent funding sources for future elections. Implementation of this proposal would assist in diminishing the impact and influence resulting from Citizens United.” Report at 32.

HB 721 – Eliminates the use of campaign funds to purchase up to two tickets for an event or fundraiser held by another candidate or committee. The Commission found “that this practice is commonplace amongst legislators and gives the appearances of impropriety since the

campaign funds of the purchaser/candidate are likely contributions made to the purchaser/candidate and not to the candidate holding the event or fundraiser.” Report at 33-34.

HB 722 – Expands the reach of the requirement to file a notice of intent to hold a fundraiser or fundraiser event by removing the current \$25 threshold. The Commission stated this bill would further public transparency and improve public confidence in campaigns. Report at 33.

HB 723 – Expands application of the Sunshine Law to legislatively appointed bodies, including task forces, working groups, special committees, and select committees. This bill would also require each chamber of the legislature to hold public hearings on its rules on a biennial basis. The Commission concluded given “the strict legislative timetable and deadlines mandated under Article III of the Hawaii State Constitution” it was not practical to apply the Sunshine Law to the Legislature. This bill would “better effectuate the spirit and intent of the Sunshine Law.” Report at 26.

HB 724 – Amends the prohibition against contributions to a candidate committee or noncandidate committee by state and county contractors by including state and county grantees and owners, officers and immediate family members of a state or county contractor or state or county grantee. Report at 33.

HB 725 – Establishes the Office of Public Advocate and codifies rights of the public with respect to the conduct and operation of the Legislature and its members. This bill would also specify procedures for the investigation and reporting of alleged violations of the public’s rights. “The Commission offers this proposal as an aspirational starting point for how the public and legislators can best engage with each other in a respectful and transparent manner during the legislative process. Collectively, the 13 rights of the public embody ideals of respect, fairness, openness, and dignity in the legislative process. The rights also require that official legislative business be conducted in a transparent and honest manner and that decisions be based on the merits of the legislation.” Report at 26-27.

HB 726 – Prohibits state and county elected officials from soliciting and accepting campaign contributions during any regular or special session of the Legislature, including any legislative recess days, holidays and weekends. This bill if enacted “would reduce the negative perception of legislators soliciting or accepting contributions from individual or organizations that have an interest in matters pending before the legislature during session.” Report at 32.

HB 727 – Limits the permitted uses of campaign funds to only those purposes that are directly related to the campaign of candidates. Report at 33.

HB 728 – Provides funds to county ethic boards “in an effort to ensure that these boards have adequate resources to continue their operations and pursue their respective missions.” Report at 30.

HB 729 – Requires the Campaign Spending Commission to publish on its website the names of candidate committees and noncandidate committees who fail to properly file an organizational report. The Commission found that this bill “would improve compliance and also bring awareness of noncompliance to the public.” Report at 28.

HB 730 – Limits the amount of cash contributions a candidate, candidate committee or noncandidate committee can accept in the aggregate in each election period to \$100 with a receipt required for each contribution. Report at 33.

HB 731 – Provides that a person waives the right to a contested case hearing if that person fails to request a contested case hearing within 20 days of the Commission’s preliminary determination. It would also allow the Campaign Spending Commission to file its final order with the Circuit Court of the First District for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in circuit court. Report at 21.

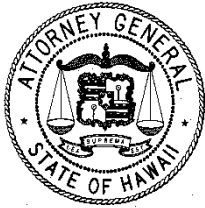
HB 732 – Authorizes the Campaign Spending Commission to presume that a violation of a campaign spending law has occurred if a respondent fails to explain or otherwise respond to a complaint alleging a campaign spending violation. Report at 21.

HB 733 – Increases the amount of fine for campaign spending law violations that may be assessed against a noncandidate committee making only independent expenditures and that has received at least one contribution of more than \$10,000 or spent more than \$10,000 in an election period. It authorizes the Campaign spending Commission to order that the payment of a fine assessed against a noncandidate committee, or any portion thereof, be paid from the personal funds of an officer of the noncandidate committee. Report at 34.

HB 796 – Proposes a constitutional amendment to prohibit a person from serving as a member of the Legislature for more than 16 years during that person’s lifetime. “The Commission discussed this proposal at great length and considered the testimony received and personal viewpoints of each commissioner. The Commission looked at similar provisions for guidance and debated the well-balanced pros and cons of this proposal, which was reflected in the slim 4-3 margin by which the Commission adopted the motion to adopt this proposal.” Report at 35. Despite a turnover in the House of Representative of over 50% and the Senate of more than 33% in the last decade, “people feel a proposal like this is necessary and that a limit on the duration of holding state elected office may reduce the potential for corruption and allow for the periodic infusion of fresh ideas and services to constituents.” Id.

A handwritten signature in black ink that reads "Daniel R. Foley". The signature is written in a cursive, flowing style with a large, stylized 'F' at the end.

Respectfully submitted, Judge Daniel Foley (ret.)



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 731, RELATING TO CAMPAIGN SPENDING COMMISSION ORDERS.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Thursday, February 23, 2023      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Dean A. Soma, Steve A. Bumanglag, or Jennifer H. Tran, Deputy  
Attorneys General

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Chair Tarnas and Members of the Committee:

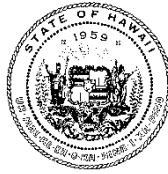
The Department of the Attorney General (Department) provides the following comments on this bill.

The purpose of this bill is to implement recommendations of the Commission to Improve Standards of Conduct relating to orders of the Campaign Spending Commission (Commission). Among other things, the bill provides that a final order of the Commission may be filed in the First Circuit Court for confirmation as a civil judgment so that it can be enforceable and collectible in the same manner as any other judgment issued in the circuit courts.

The Department represents the Commission in enforcing the orders of the Commission in the First Circuit Court. Under the current law, section 11-410(d), HRS, the Commission's only avenue of recourse to collect an administrative fine is to request the First Circuit Court to "issue an order requiring the person to comply with the commission's order." Failure to obey the court order results in a finding of contempt of court. Such action mirrors criminal procedures for the enforcement of civil penalties. This bill will provide civil-judgment remedies, as an alternative method, which would result in a strengthening of the Department's ability to collect fines and deter future non-compliance with orders of the Commission.

Thank you for the opportunity to comment on this bill.

**KRISTIN E. IZUMI-NITAO**  
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**STATE OF HAWAII**  
**CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300  
HONOLULU, HAWAII 96813

February 21, 2023

TO: The Honorable David A. Tarnas, Chair  
House Committee on Judiciary & Hawaiian Affairs

The Honorable Gregg Takayama, Vice Chair  
House Committee on Judiciary & Hawaiian Affairs

Members of the House Committee on Judiciary & Hawaiian Affairs

FROM: Tony Baldomero, Associate Director for *TB*  
Kristin Izumi-Nitao, Executive Director  
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 731, Relating to Campaign Spending Commission Orders.**

Thursday, February 23, 2023  
2:00 p.m., Conference Room 325 & Videoconference

Thank you for the opportunity to testify on this bill, which was submitted by the Commission to Improve Standards of Conduct ("CISC"). The Campaign Spending Commission ("Commission") supports this bill.

This measure amends HRS §11-410 by (1) amending subsection (b) to provide that a person waives the right to a contested case hearing if the person fails to request a contested case hearing within twenty days of receipt of the Commission's preliminary determination, and (2) amending subsection (d) to provide that a final order of the Commission may be filed in the First Circuit Court for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in the circuit courts, provided that there shall be no appeal from a judgment issued pursuant to subsection (d).

The final orders that are confirmed as judgments under subsection (d) are only those orders that are rendered final because the respondents have failed to request a contested case hearing pursuant to HRS §11-405(b). These final orders are not appealable to the Circuit Court since the respondents would have failed to exhaust the administrative process and thus no evidentiary record would exist to perfect an appeal. Further, if a final order is confirmed as a judgment under subsection (d), any respondent would have the right to seek collateral relief from



the judgment under Rule 60(b)<sup>1</sup>, Hawaii Rules of Civil Procedure. If relief is granted, the Circuit Court would most likely refer the case back to the Commission for a contested case hearing, rather than decide the case at that time as an agency appeal because of the lack of an evidentiary record that a contested case hearing would provide.

These amendments were suggested by the deputies in the Civil Recoveries Division of the Department of the Attorney General who are assisting the Commission by enforcing the Commission's orders in the First Circuit Court. There have been up to fifteen candidates referred to that office for enforcement of Commission orders who have repeatedly violated campaign finance law by not filing reports thereby compounding the violations (<http://ags.hawaii.gov/campaign/cc/notice/>). As the law now stands, there is no option to collect fines as a money judgment. The Attorney General's Office has been forced to seek bench warrants with bail up to \$500 to compel payment of fines and the filing of reports; meanwhile, the Commission carries these candidates as they repeatedly violate campaign finance law by not filing subsequent reports.

This Committee passed, with amendments, the Commission's version of this bill (H.B. No. 91) on February 1, 2023. The amendments were to (1) correct a statutory reference, and (2) make technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

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<sup>1</sup> Rule 60 provides for relief from a judgment or order as follows:

**(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**HB-731**

Submitted on: 2/22/2023 9:33:07 AM

Testimony for JHA on 2/23/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I wholeheartedly support this fine bill which came out the "Foley Commission" and other respected organizations. If a respondent ignores or fails to respond to a determination they should lose their rights and deal with the issue in court. Such a law should stop these abuses.