

ACT 254

S.B. NO. 2399

A Bill for an Act Relating to Elections.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to conduct a study of the feasibility of a pilot clean elections program for elections held in the years 2002 and 2004. The clean elections pilot program to be studied shall provide that candidates who agree to:

- (1) Forego private campaign contributions;
- (2) Adhere to strict spending limits; and
- (3) Shorten their campaign period,

can qualify to receive a set and competitive amount of campaign financing from a public fund to run their campaigns.

SECTION 2. The campaign spending commission, in cooperation with the League of Women Voters, Common Cause Hawaii, Hawaii Clean Elections, and other relevant stakeholders, shall conduct a comprehensive study of the campaign financing system in Hawaii and submit a report to the legislature, no later than twenty days before the convening of the regular session of 2000, including the following information about the pilot program proposed in this proposed model Act:

- (1) An estimate of how much money would be needed to fund the full amount of "clean election amounts" in this proposed model Act;
- (2) An estimate of how much money would be needed to implement a provision requiring clean elections funding to match independent expenditures and any excess expenditures of nonparticipating candidates;
- (3) Recommendations relating to the feasibility, implementation, administration, and enforcement of this proposed model Act;
- (4) Proposed rules to implement the provisions of this proposed model Act including the offices, races, or elections to which the pilot should apply; and
- (5) Any suggested changes to this proposed model Act, including commentary on whether the following provisions should be adjusted:

- (a) The number of clean elections qualifying contributions necessary to qualify as a clean elections candidate;
- (b) The maximum aggregate amount of additional funding a clean elections candidate shall receive to match independent expenditures and the excess expenditures of nonparticipating candidates; and
- (c) The amount of clean elections funding for eligible clean elections candidates.

The proposed model Act to be studied is as follows:

“Clean elections; requirements for candidates. (a) Primary election; party candidates. A party candidate qualifies as a clean elections candidate for the primary election campaign period if that person files a declaration with the commission that the person has complied and will comply with all of the requirements of this Act, as applicable, and before the close of the clean elections qualifying period, a party candidate collects clean elections qualifying contributions totalling at least one per cent of the number of voters from the preceding general election registered to vote in each respective district.

Each clean elections qualifying contribution shall be:

- (1) Acknowledged by a receipt to the contributor, with a copy to be kept by the candidate and a third copy to be submitted to the commission. The receipt shall indicate, by the contributor’s signature, that the contributor understands that the purpose of the contribution is to help the candidate qualify for clean elections campaign funding. The receipt shall include the contributor’s signature, printed name, home address, and telephone number, and the name of the candidate on whose behalf the contribution is made; and
- (2) Submitted, with a signed and completed receipt, to the commission according to a schedule and procedure to be determined by the commission. A contribution submitted as a clean elections qualifying contribution that does not include a signed and completed receipt will not be counted as a clean elections qualifying contribution.

A party candidate qualifies as a clean elections candidate for the general election campaign period if that person has met all of the applicable requirements and filed a declaration with the commission that the person has fulfilled and will fulfill all of the requirements of a clean elections candidate as stated in this Act; and, as a clean elections candidate during the primary election campaign period, that person had the highest number of votes of the candidates contesting the primary election from the person’s party and, therefore, won the party’s nomination.

(b) Primary election; independent candidates. An independent candidate qualifies as a clean elections candidate for the primary election campaign period if that person files a declaration with the commission that the person has complied and will comply with all of the requirements of this Act, as applicable. An independent candidate shall collect the same number of clean elections qualifying contributions as a party candidate shall collect for the same office as provided subsection (a).

Each clean elections qualifying contribution shall be:

- (1) Acknowledged by a receipt to the contributor, with a copy to be kept by the candidate and a third copy to be submitted to the commission. The receipt shall indicate, by the contributor’s signature, that the contributor understands that the purpose of the contribution is to help the candidate qualify for clean elections campaign funding. The receipt shall include the contributor’s signature, printed name, home address, and telephone number, and the name of the candidate on whose behalf the contribution is made; and

- (2) Submitted, with a signed and completed receipt, to the commission according to a schedule and procedure to be determined by the commission.

An independent candidate qualifies as a clean elections candidate for the general election campaign period, if prior to the primary election, that person has met all of the applicable requirements of this Act and filed a declaration with the commission that the person has fulfilled and will fulfill all of the requirements of a clean elections candidate as stated in this Act; and, during the primary election campaign period, the person has fulfilled all of the requirements of a clean elections candidate as stated in this Act.

(c) Continuing obligation of clean elections candidates. A clean elections candidate who accepts any benefits during the primary election campaign period shall comply with all the applicable requirements of this Act through the general election campaign period whether that person continues to accept benefits or not.

(d) Contributions and expenditures. During the primary, general, and special election campaign periods, a clean elections candidate who has voluntarily agreed to participate in, and has become eligible for, clean elections benefits:

- (1) Shall not accept private contributions from any source other than the candidate's political party as specified in subsection (s);
- (2) Shall not accept any loans from any source; and
- (3) Shall pay for all of that person's campaign expenditures, except petty cash expenditures, by means of the commission's clean elections debit card as authorized under subsection (r).

Eligible candidates shall furnish complete campaign records, including all records of seed money contributions and clean elections qualifying contributions, to the commission at regular filing times, or on request by the commission. Candidates shall cooperate with any audit or examination by the commission.

(e) Use of personal funds. Personal funds contributed as seed money by a candidate seeking to become eligible as a clean elections candidate or by adult members of that person's immediate family shall not exceed the maximum of \$100 per contributor. Personal funds may not be used to meet the clean elections qualifying contribution requirement except for one \$5 contribution from each resident voter, including the candidate and any member of the candidate's immediate family.

For purposes of this subsection, "immediate family" means the same as defined in section 11-191.

(f) Seed money. The only private contributions a candidate seeking to become eligible for clean elections funding may accept, other than clean elections qualifying contributions, are seed money contributions contributed by individual adults prior to the end of the clean elections qualifying period. A seed money contribution shall not exceed \$100, and the aggregate amount of seed money contributions accepted by a candidate seeking to become eligible for clean elections funding shall not exceed amounts as prescribed by rules adopted by the campaign spending commission.

Receipts for seed money contributions under \$25 need only include the contributor's signature, printed name, and address. Receipts for seed money contributions of \$25 or more must include the contributor's signature, printed name, street address and zip code, telephone number, occupation, and name of employer. Contributions shall not be accepted if the required disclosure information is not received. No person shall make a contribution in the name of another person. Any person who receives a seed money contribution that is not from the person listed on the receipt shall be liable to pay the commission the entire amount of that contribution, in addition to any penalties.

Seed money shall be spent only during the clean elections qualifying period. Seed money may not be spent during the primary, general, or special election

campaign periods. Seed money shall not be spent to pay for the solicitation or collection of clean elections qualifying contributions, nor for broadcast advertising or mass mailings. Within forty-eight hours after the close of the clean elections qualifying period, candidates seeking to become eligible for clean elections funding shall fully disclose all seed money contributions and expenditures to the commission; and turn over to the commission for deposit in the clean elections fund any seed money the person has raised during the designated seed money period that exceeds the aggregate seed money limit.

(g) Participation in debates. Clean elections candidates in contested races shall participate in one one-hour debate during a contested primary election, two one-hour debates during a contested general election, and one one-hour debate during a special election. These debates shall be publicly presented live on the cable access channel dedicated to public programming and publicly broadcast on broadcast stations that voluntarily agree to participate. Nonparticipating candidates for the same office whose names will appear on the ballot shall be invited to join the debates.

(h) Media use. Clean elections candidates utilizing media time shall be subject to the requirements of subsection (p).

(i) Certification. No more than five days after a candidate applies for clean elections benefits, the commission shall certify whether the candidate is eligible. Eligibility may be revoked if the candidate violates the applicable requirements of this Act, in which case all clean elections funds shall be repaid. The candidate's request for certification shall be signed by the candidate and the candidate's campaign treasurer under penalty of perjury. The commission's determination shall be subject to examination and audit by an outside agency and to a prompt judicial review.

(j) Benefits provided to candidates eligible to receive clean elections money. Candidates who qualify for clean elections funding for primary, general, and special elections shall receive clean elections funding from the commission for each election, the amount of which is specified in subsection (l). This funding may be used to finance any and all campaign expenses during the particular campaign period for which it was allocated.

- (1) Additional clean elections funding to match any excess expenditure amount spent by a nonparticipating candidate, as specified in subsection (n); and
- (2) Additional clean elections funding to match any independent expenditure made in opposition to their candidacies or on behalf of their opponents' candidacies, as specified in subsection (o).

The maximum aggregate amount of additional funding a clean elections candidate shall receive to match independent expenditures and the excess expenditures of nonparticipating candidates shall be one hundred per cent of the full amount of clean elections funding allocated to a clean elections candidate for a particular primary, general, or special election campaign period.

(k) Schedule of clean elections payments. An eligible party candidate shall receive that person's clean elections funding for the primary election campaign period on the date on which the commission certifies the candidate as a clean elections candidate. This certification shall take place no later than five days after the candidate has submitted the required number of clean elections qualifying contributions and a declaration stating that the person has complied with all other requirements for eligibility as a clean elections candidate, but no earlier than the beginning of the primary election campaign period.

An eligible party candidate shall receive that person's clean elections funding for the general or special election campaign period within forty-eight hours after certification of the primary or general election results. An eligible independent

candidate shall receive that person's clean elections funding for the primary election campaign period on the date on which the commission certifies the candidate as a clean elections candidate. This certification shall take place no later than five days after the candidate has submitted the required number of clean elections qualifying contributions and a declaration stating that the person has complied with all other requirements for eligibility as a clean elections candidate, but no earlier than the beginning of the primary election campaign period.

An eligible independent candidate shall receive that person's clean elections funding for a general or special election campaign period within forty-eight hours after certification of the primary or general election results.

- (1) Determination of clean elections amounts. For eligible party candidates:
 - (1) The amount of clean elections funding for an eligible party candidate in a contested primary election is the expenditure limits identified in section 11-209;
 - (2) The clean elections amount for an eligible party candidate in an uncontested primary election is twenty-five per cent of the amount provided in a contested primary election;
 - (3) In a contested general election, if an eligible party candidate or that candidate's party received at least twenty per cent of the total number of votes cast for all candidates seeking that office in the primary election or in the previous general election, the candidate shall receive the full amount of clean elections funding for the general election, which is the expenditure limits identified in section 11-209;
 - (4) In a contested general election, if an eligible party candidate or that candidate's party received at least five per cent but less than twenty per cent of the total number of votes cast for all candidates seeking that office in the primary election or in the previous general election, the candidate shall receive a portion of the full amount of clean elections based on the ratio that their vote percentage is to twenty per cent.
 - (5) The clean elections amount for an eligible party candidate in an uncontested general election is five per cent of the amount provided in a contested general election for the same office; and
 - (6) The clean elections amount for an eligible party candidate in a special election is twenty-five per cent of the amount provided in the preceding primary or general election that resulted in the need for a special election.

The clean elections amount for an eligible independent candidate: in a primary election is twenty-five per cent of the amount received by a party candidate in a contested primary election; and the clean elections amount for an eligible independent candidate in the general election is the same as the full amount received by a party candidate in the general election.

(m) Expenditures made with clean elections funds. (a) The clean elections funding received by a clean elections candidate shall be used only for the purpose of defraying that candidate's campaign-related expenses during the particular election campaign period for which the clean elections funding was allotted.

(b) Payments shall not be used:

- (1) In violation of the law; or
- (2) To repay any personal, family, or business loans, expenditures, or debts.

(n) Disclosure of excess spending by nonparticipating candidates. If a non-participating candidate's total expenditures exceed the amount of clean elections funding allocated to that person's clean elections opponents, that person shall declare every excess expenditure amount over \$1,000 to the commission within forty-eight hours.

During the last two weeks before the end of the relevant campaign period, a nonparticipating candidate must declare to the commission each excess expenditure amount over \$500 within twenty-four hours of the time the expenditure is made or obligated to be made.

The commission may make its own determination as to whether excess expenditures have been made by nonparticipating candidates.

Upon receiving an excess expenditure declaration, the commission shall immediately release additional clean elections funding to the opposing clean elections candidates equal to the excess expenditure amount the nonparticipating candidate has spent or intends to spend.

(o) Disclosure of, and additional clean elections to match independent expenditures. Any person who makes or is obligated to make an independent expenditure during a primary, general, or special election campaign period in excess of \$1,000 per expenditure shall report each expenditure within forty-eight hours to the commission. Reporting shall be on forms provided by the commission, and shall require the names, address, occupation, employer, and amount paid for those persons who contributed more than \$250 each to the independent expenditure.

The report to the commission shall include a statement, made under penalty of perjury, by the person or persons making the independent expenditure identifying the candidate whom the independent expenditure is intended to help elect or defeat, and affirming that the expenditure is totally independent and involves no cooperation or coordination with a candidate or a political party. A person may file a complaint with the commission if the person believes that such a statement is false. The commission shall make a prompt determination about the merits of the complaint.

Any person who makes or is obligated to make an independent expenditure during the last two weeks before the end of the relevant campaign period shall declare to the commission each excess expenditure amount over \$500 within twenty-four hours of the time the expenditure is made or obligated to be made.

Upon receiving a report that an independent expenditure has been made or is obligated to be made, the commission shall immediately release additional clean elections funding, equal in amount to the cost of the independent expenditure, to all clean money candidates whom the independent expenditure is intended to oppose or defeat; provided that the maximum aggregate amount of additional funding a clean elections candidate shall receive to match independent expenditures and the excess expenditures of nonparticipating candidates is no more than one hundred per cent of the full amount of clean elections funding allocated to a clean elections candidate in that election. Matching money is only granted to a clean elections candidate if that person is opposed by a nonparticipating candidate whose campaign expenditures, combined with the amount of the independent expenditures, exceeds the amount of clean elections funding received by the clean elections candidate.

(p) Paid broadcast media advertising. Clean elections candidates, as a condition of receiving benefits under this Act, may purchase television and radio time only in blocks of one minute or more, and shall appear in person on television and use their own voice on radio for at least fifty per cent of the broadcast time. If a clean elections candidate has a physician-certified voice-related disability, this requirement may be waived and a brief statement added by the candidate or the candidate's representative saying that the candidate has approved the advertisement.

(q) Deposit of moneys into the Hawaii election campaign fund. The following sources of revenue shall be deposited in the fund in addition to section 11-217:

- (1) Any general fund or other revenues appropriated by the legislature;
- (2) The clean elections qualifying contributions required of candidates seeking to become certified as clean elections candidates according to

subsection (a), and candidates' excess clean elections qualifying contributions;

- (3) The excess seed money contributions of candidates seeking to become certified as clean elections candidates, as provided in subsection (f);
- (4) Unspent funds distributed to any clean elections candidate who does not remain a candidate until the primary, general, or special election for which they were distributed, or such funds that remain unspent by a clean elections candidate following the date of the primary, general, or special election for which they were distributed;
- (5) Fines levied by the commission against candidates for violation of election laws;
- (6) Voluntary donations made directly to the clean elections fund;
- (7) Any interest generated by the fund;
- (8) All moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5;
- (9) Any funds that escheat to the fund;
- (10) Any remaining funds in the Hawaii election campaign fund prior to the enactment of this section; and
- (11) Any other sources of revenue determined necessary by the legislature.

(r) Administration and dispersal of money from the fund. Upon determination that a candidate has met all the requirements for becoming a clean elections candidate, the commission shall issue to the candidate a card, known as the "clean elections debit card", and a line of debit entitling the candidate and authorized members of the candidate's staff to draw clean elections funds from a commission account to pay for all campaign costs and expenses up to the amount of clean election funding the candidate has received. In the case of utility bills and wages or fees for services, these expenditures shall be reported at the time of obligation and paid off within forty-five days after the election is over or the candidate ceases to be a clean elections candidate.

Neither a clean elections candidate nor any other person on behalf of a clean elections candidate shall pay campaign costs by cash, check, money order, loan, or by any other financial means besides the clean elections debit card, except as otherwise provided by law. Cash amounts of \$100 or less per week may be drawn on the clean elections debit card and used to pay expenses of no more than \$25 each. Records of all such expenditures shall be maintained and reported to the commission.

(s) Political party contributions and expenditures. Clean elections candidates may not accept any monetary contributions from political parties. Clean elections candidates may accept in-kind contributions from political parties; provided that the aggregate amount of such contributions from all political party committees combined does not exceed the equivalent of ten per cent of the clean elections financing amount for that office. In-kind contributions made during a general election campaign period on behalf of a group of the party's candidates shall not be considered an improper party contribution or count against the ten per cent limit for the state party committee making such in-kind contributions, if that group includes at least fifty per cent of the party's candidates whose names will appear on the general election ballot.

Contributions made to, and expenditures made by, political parties during primary, general, and special campaign periods shall be reported electronically to the commission on the same basis as contributions and expenditures made to or by candidates. Nothing in this subsection shall prevent political party funds from being used for general operating expenses of the party; conventions; nominating and endorsing candidates; identifying, researching, and developing the party's positions on issues; party platform activities; noncandidate-specific voter registration;

noncandidate-specific “get-out-the-vote” drives; travel expenses for noncandidate party leaders and staff; and other noncandidate-specific party building activities.

(t) Repayments of excess expenditures. If a clean elections candidate spends or obligates to spend more than one hundred five per cent of the clean elections funding the candidate is allocated, and if this is determined not to be an amount that had or could have been expected to have a significant impact on the outcome of the election, then the candidate shall repay to the clean elections fund an amount equal to the excess. If a clean elections candidate spends or obligates to spend more than the clean elections funding the candidate is given, and if this is determined to be an amount that had or could have been expected to have a significant impact on the outcome of the election, then the candidate shall repay to the clean elections fund an amount equal to ten times the value of the excess.

(u) Definitions. For the purposes of this section:

“Clean elections candidate” means a candidate who qualifies for clean elections campaign funding. Such candidates may receive clean elections funding during primary, general, and special election campaign periods.

“Clean elections qualifying contribution” means a contribution of \$5 that is received during the designated clean elections qualifying period by a candidate seeking to become eligible for clean elections campaign funding and that is acknowledged by a written receipt identifying the contributor. Contributors shall be registered voters who reside within the candidate’s district or State. Qualifying contributions shall be made in cash, or by check or money order, and shall be accompanied by a signed receipt fully identifying the contributor and indicating that the contributor fully understands the purpose of the contribution, which shall be turned over to the campaign spending commission for deposit in the clean elections fund. Qualifying contributions must be gathered by candidates themselves or by volunteers who receive no compensation.

“Clean elections qualifying period” means the period during which candidates may collect qualifying contributions in order to qualify for clean elections funding, beginning ninety days before the beginning of the primary election campaign period and ending thirty days before the beginning of the primary election day.

“Coordination” means a payment made for a communication or anything of value that is for the purpose of influencing the outcome of a state election and that is made:

- (1) By a person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any general or particular understanding with a candidate, the candidate’s authorized committee, or an agent acting on behalf of a candidate or authorized committee;
- (2) By a person for the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by a candidate, a candidate’s authorized committee, or an agent of a candidate or authorized committee;
- (3) Based on information about the candidate’s plans, projects, or needs provided to the person making the payment by the candidate or the candidate’s agent who provides the information with a view toward having the payment made;
- (4) By a person if, in the same election cycle in which the payment is made, the person making the payment is serving or has served as a member, employee, fundraiser, or agent of the candidate’s authorized committee in an executive or policymaking position;
- (5) By a person if the person making the payment has served in any formal policy or advisory position with the candidate’s campaign or has participated in strategic or policymaking discussions with the candidate’s campaign relating to the candidate’s pursuit of nomination for election,

or election, to a state office, in the same election cycle as the election cycle in which the payment is made; and

- (6) By a person if the person making the payment retains the professional services of an individual or person who has provided or is providing campaign-related services in the same election cycle to a candidate in connection with the candidate's pursuit of nomination for election, or election, to state office, including services relating to the candidate's decision to seek state office, and the payment is for services of which the purpose is to influence that candidate's campaign.

"Excess expenditure amount" means the amount of money spent or obligated to be spent by a nonparticipating candidate in excess of the clean elections amount available to a clean elections candidate running for the same office.

"Express advocacy":

- (1) Means a communication that is made through a broadcast medium, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising that:
 - (A) Advocates the election or defeat of a clearly identified candidate, including any communication that contains such phrases as "vote for", "re-elect", "support", "cast your ballot for", "(name of candidate) for (name of office)", "(name of candidate) in (year)", "vote against", "defeat", "reject", and the like; or that contains campaign slogans or individual words that in context can have no reasonable meaning other than to recommend the election or defeat of one or more clearly identified candidates; or
 - (B) Involves aggregate disbursements of \$1,000 or more, refers to one or more clearly identifiable candidates, and is made not more than thirty days before the date of a primary election or sixty days before the date of a general election;

but

- (2) Does not include:
 - (A) A communication that is limited solely to providing information about voting records of elected officials on legislative matters that a reasonable person would not understand as advocating the election or defeat of a particular candidate or candidates;
 - (B) Any news story, commentary, or editorial by a broadcasting station, newspaper, magazine, or other publication; provided that such entity is not owned by or affiliated with any candidate or candidate committee; or
 - (C) A regularly published newsletter whose circulation is limited to an organization's members, employees, shareholders, other affiliated individuals, and those who request or purchase the internal publication.

"Fund" means the Hawaii election campaign fund.

"General election campaign period" means the period beginning the day after the primary election and ending on the day of the general election.

"Independent candidate" means a candidate who is not a party candidate.

"Mass mailings" means mailings of two hundred or more identical or nearly identical pieces of mail sent by candidates or elected officials to the voters, residents, or postal box-holders within the jurisdiction candidates are seeking to represent, consisting of substantially identical letters, newsletters, pamphlets, brochures, or other written material. "Mass mailings" does not include:

- (1) Mailings made in direct response to communications from persons or groups to whom the matter is mailed;

- (2) Mailings to federal, state, or local government officials;
- (3) Mailings whose sole purpose is to communicate information about a public meeting; and
- (4) News releases to the communications media.

“Nonparticipating candidate” means a candidate who is on the ballot but has chosen not to apply for clean elections campaign funding, or a candidate who is on the ballot and has applied but has not satisfied the requirements for receiving clean elections funding.

“Party candidate” means a candidate who represents a political party that has been granted ballot status and holds a primary election to choose its nominee for the general election.

“Primary election campaign period” means the period beginning ninety days before the primary election and ending on the day of the primary election.

“Seed money contribution” means a contribution of no more than \$100 made by an individual adult during the seed money period.

“Seed money period” means the period beginning the day following the previous general election for that office and ending on the last day of the clean elections qualifying period, in which candidates who wish to become eligible for clean elections funding for the next election may raise and spend a limited amount of private seed money, in contributions of up to \$100 per individual, for the purpose of “testing the waters” and fulfilling the clean elections eligibility requirements.

“Special election campaign period” means the period beginning the day after the primary or general election that resulted in the need for a special election, and ending on the day of the special election.”

SECTION 3. This Act shall take effect upon approval.

(Approved July 20, 1998.)