

A Bill for an Act Relating to Campaign Spending.

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

PART I
PILOT COMPREHENSIVE PUBLIC FUNDING FOR ELECTIONS
TO THE HAWAII COUNTY COUNCIL

SECTION 1. There is established a pilot project establishing a comprehensive public funding program for the county of Hawaii council elections. The pilot project shall be for a period of three election cycles, beginning with the 2010 elections.

SECTION 2. **Definitions.** Except for terms that are specifically defined in this part, terms that are defined under section 11-191, Hawaii Revised Statutes, shall apply to this part. When used in this part, unless the context clearly requires otherwise:

“Candidate” means an individual who seeks nomination for election or seeks election to the Hawaii county council, and who meets the criteria of section 4 and section 11-191, Hawaii Revised Statutes.

“Candidate’s committee” means a committee, as defined in section 11-191, Hawaii Revised Statutes, which makes an expenditure or accepts a contribution on behalf of a candidate for nomination for election to the Hawaii county council, with the candidate’s authorization. A candidate shall have only one authorized candidate’s committee.

“Certification for comprehensive public funding” means the decision by the commission that a candidate is certified to receive public funding in accordance with this part.

“Certified candidate” or “comprehensive publicly funded candidate” means a participating candidate who is certified by the commission as eligible for comprehensive public funding under this part and who agrees to abide by the requirements of this part.

“Commission” means the campaign spending commission established under section 11-192, Hawaii Revised Statutes.

“Contested election” means, in a primary election, the certified candidate is opposed by one or more candidates for the nomination; and, in a general election, the certified candidate is opposed by one or more candidates for election to the office.

“County” means the county of Hawaii.

“County council” means the county council of the county of Hawaii.

“Declaration of intent to seek comprehensive public funding” means the form completed by a participating candidate and the filing of which triggers the participating candidate’s ability to begin collecting qualifying contributions.

“District” means a county district, as established in accordance with section 46-1.5, Hawaii Revised Statutes.

“Equalizing funds” means additional public funds released by the commission to a comprehensive publicly funded candidate to allow the publicly funded candidate to stay financially competitive with a nonparticipating candidate in a contested election and to penalize a nonparticipating candidate for filing false or late reports.

“Excess expenditure” means the amount of comprehensive public funds spent or obligated to be spent by a comprehensive publicly funded candidate in excess of one hundred per cent of the allocated funds for a primary election, general election, or both.

“General election campaign period” means the period beginning the day after the primary election and ending on general election day.

“General election year” means the period commencing January 1 of an even-numbered year in which a general election is held and ending on general election day.

“Independent expenditure” means an expenditure by any person for a communication that expressly advocates the nomination, election, or defeat of a clearly identified certified candidate or nonparticipating candidate and that is not made in concert or cooperation with or as part of any coordinated activity or at the request or suggestion of the certified candidate or nonparticipating candidate, a candidate’s committee, or their agents. For the purposes of this definition, “clearly identified” means that the name, likeness, photograph, or drawing of the certified candidate or nonparticipating candidate is used, or the identity of the certified candidate or nonparticipating candidate is apparent by unambiguous reference.

“Nonmonetary contribution” means a contribution other than of money that may include goods or services.

“Nonparticipating candidate” means a candidate who does not qualify for or receive public funding during an election period and is involved in a contested election with a certified participating candidate.

“Participating candidate” means a candidate who is seeking certification for comprehensive public funding under this part.

“Primary election campaign period” means the period in a primary election year beginning with the certification for comprehensive public funding under this part and ending on primary election day.

“Public funding” or “public funds” means campaign funds from the Hawaii election campaign fund under section 11-217, Hawaii Revised Statutes, received by an eligible candidate pursuant to this part.

“Qualifying contribution” means a \$5 monetary contribution made in the form of a check or a money order payable to the Hawaii election campaign fund for purposes of meeting the criteria of section 7.

“Qualifying period” means the period in a general election year, beginning January 1 and ending on the deadline for filing candidate nomination papers during which a candidate may collect qualifying contributions to qualify for comprehensive public funding under this part; provided the commission has determined that the Hawaii election campaign fund has sufficient funds to make payments to comprehensive publicly funded candidates during the election period.

“Seed money” means contributions made to a participating candidate by an individual in accordance with section 5 that shall be expended for the purpose of determining campaign viability.

“Surplus campaign funds” means any campaign contributions not spent during a prior election period by a participating candidate who previously sought election as a privately funded candidate.

SECTION 3. Sufficiency of funding for comprehensive public funding. On September 1 of each odd-numbered year before the general election years of 2010, 2012, and 2014, the commission shall determine whether there is a minimum of \$3,500,000 in the Hawaii election campaign fund established under section 11-217, Hawaii Revised Statutes, to certify participating candidates during the next election and provide funding for comprehensive public funding for elections under this part.

If the commission determines that there is sufficient funding, then within five business days, the commission shall publish notice statewide, pursuant to section 1-28.5, Hawaii Revised Statutes, that the comprehensive public funding program shall become effective on January 1 of the following year. If there is insufficient funding, then this part shall be inoperative.

If this part is inoperative, candidates may seek public funding as provided under subpart B of part XII of chapter 11, Hawaii Revised Statutes.

SECTION 4. Qualifications for comprehensive public funding. (a) A candidate may seek comprehensive public funding for the primary election campaign period if the candidate:

- (1) Resides in the district from which election is sought as of the date of the filing of nomination papers for the primary election in the general election year in which the candidate seeks to be nominated or elected;
 - (2) Is a registered voter in the district from which election is sought;
 - (3) Files a declaration of intent to seek comprehensive public funding with the commission between January 1 of the election year and thirty days before the closing date to file nomination papers to run for office for which the candidate intends to seek election;
 - (4) Collects a \$5 qualifying contribution in accordance with section 7;
 - (5) Accepts only the following contributions prior to applying for certification as a comprehensive publicly funded candidate:
 - (A) Seed money contributions until the candidate files a declaration of intent to seek comprehensive public funding; and
 - (B) Qualifying contributions that may be accepted only after filing the declaration of intent to seek comprehensive public funding;and
 - (6) Files an application for certification for comprehensive public funding with the commission.
- (b) A candidate is qualified to seek comprehensive public funding for the general election campaign period if the candidate:
- (1) Was certified as a comprehensive publicly funded candidate during the primary election campaign period immediately preceding the general election in which the funds under this part are provided; and
 - (2) Received a sufficient number of votes to appear on the ballot in the general election or is otherwise certified by the Hawaii county clerk to be placed on the ballot in the general election.

SECTION 5. Seed money contributions; limitations on use of seed money; penalties. (a) The use of seed money shall be limited to expenditures necessary to determine whether sufficient support exists for a participating candidate to run for office as a comprehensive publicly funded candidate.

(b) The amount of seed money received or expended, or both, by a candidate seeking eligibility for comprehensive public funding for a county council seat shall not exceed \$3,000. A candidate may use personal funds, surplus campaign funds, or receive contributions from individuals in an aggregate amount no greater than \$250 each.

(c) A participating candidate shall not accept contributions of seed money from any individual whose contributions are prohibited under subpart B of part XII of chapter 11, Hawaii Revised Statutes. All contributors whose seed money has been accepted shall be issued a receipt by the participating candidate.

(d) Seed money shall not be collected after the candidate has filed the declaration of intent to seek comprehensive public funding, which must be filed no later than thirty days before the closing date to file nomination papers to run for office for which the candidate intends to seek election. The candidate may spend seed money only until the candidate is certified by the commission as a comprehensive publicly funded candidate or the closing date to file nomination papers to run for office for which the candidate intends to seek election, whichever occurs first.

(e) Any unspent seed money shall be deducted from the base amount of public funding if the certified candidate does not donate the unspent seed money to the Hawaii election campaign fund.

SECTION 6. Restriction on use of surplus campaign funds. A certified candidate who has surplus campaign funds from a previous election is prohibited from using those funds for anything other than seed money pursuant to section 5(d) and in-office constituent communications pursuant to section 11(b). The surplus campaign funds shall be frozen and maintained in a separate depository account from that established for the comprehensive public funds under section 16. The candidate shall continue to file reports on the surplus campaign funds in accordance with subpart B of part XII of chapter 11, Hawaii Revised Statutes, or as otherwise may be required by the commission.

SECTION 7. Qualifying contributions. (a) Each qualifying contribution shall meet the requirements of this section. To be counted as a qualifying contribution, a contributor to a candidate for a seat on the Hawaii county council shall be a registered voter who resides within the county district to which the candidate seeks nomination or election at the time the contribution is given. The voter must not be given anything of value in exchange for the qualifying contribution.

(b) No qualifying contribution shall be collected prior to a candidate filing a declaration of intent to seek comprehensive public funding with the commission.

(c) Any receipt for a qualifying contribution shall be made in a form that may be prescribed by the commission.

(d) All qualifying contributions collected by candidates, whether or not the candidate is certified, shall be deposited into the Hawaii election campaign fund.

SECTION 8. Certification of qualification for comprehensive public funds.

(a) Candidates seeking certification as a comprehensive publicly funded candidate shall submit to the commission an application for certification that contains at least two hundred printed names, addresses, and signatures and qualifying contributions for the county of Hawaii from registered voters in the district for which the candidate seeks office no later than thirty days prior to the primary election, signed by the participating candidate and the participating candidate's campaign treasurer under penalty of perjury. The clerk for the county of Hawaii shall verify that at least two hundred signatures and qualifying contributions were received from registered voters in the district for which the candidate seeks office, that the candidate resides in the district from which election is sought as of the date of the filing of nomination papers, and that the candidate is a registered voter in the district from which election is sought.

(b) The application shall also include any information deemed necessary and appropriate by the commission.

(c) The commission shall issue a decision to certify or deny certification of a candidate as a comprehensive publicly funded candidate within ten business days following receipt of the candidate's completed application for certification for comprehensive public funds, including verification of the information in subsection (a) by the clerk for the county of Hawaii.

(d) After a participating candidate is certified, the candidate's certification shall apply to both the primary and the general election, even if the candidate is unopposed in the primary election.

(e) Initial certification by the commission under subsection (c) and all determinations by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 10(a).

SECTION 9. Comprehensive publicly funded candidates; contributions and expenditures; penalties. (a) Except as authorized under section 12, a certified candidate shall comply with the following restrictions on contributions and expenditures:

- (1) Upon certification for comprehensive public funding and until the end of the general election campaign period, a candidate shall not accept for use in the campaign:
 - (A) Contributions from any person;
 - (B) Loans from any person, including a certified candidate;
 - (C) Contributions from political parties; and
 - (D) Any campaign material purchased or held from a date prior to filing the declaration of intent to seek comprehensive public funds;
 and
 - (2) Upon certification for comprehensive public funding and until the end of the general election campaign period, a candidate shall not expend for campaign purposes:
 - (A) Any money except public funds issued by the commission;
 - (B) Public funds for purposes other than those permitted in this part;
 - (C) Public funds outside the applicable campaign period; and
 - (D) Public funds in excess of the comprehensive public funds allocated to the candidate, including equalizing funds.
- (b) A certified candidate who accepts contributions in violation of this section shall be subject to a fine equal to three times the public funding received, in addition to any other action, fines, or prosecution under section 18 and subpart B of part XII of chapter 11, Hawaii Revised Statutes, or any provision of the Hawaii Penal Code.
- (c) A certified candidate who makes expenditures of more than one hundred per cent of the public funds allocated to the candidate shall repay to the Hawaii election campaign fund an amount equal to three times the excess expenditures.

SECTION 10. Comprehensive publicly funded candidate; reporting.

- (a) A certified candidate and the certified candidate's committee shall furnish to the commission complete campaign records, including all records of seed money contributions, qualifying contributions and expenditure. A candidate shall fully cooperate with any audit or examination by the commission.
- (b) A certified candidate shall comply with the reporting requirements of subpart B of part XII of chapter 11, Hawaii Revised Statutes, in addition to those required under this part or that may be required by the commission.
- (c) An individual who uses seed money to determine whether sufficient support exists to run for office as a comprehensive publicly funded candidate who is not already registered with the commission shall register as a candidate by filing the organizational report required by section 11-194, Hawaii Revised Statutes, within ten days of receiving more than \$100 in seed money, either from contributions or personal funds.
- (d) All reports required by subpart B of part XII of chapter 11, Hawaii Revised Statutes, seed money reports, and post-election reports shall be filed with the commission.
- (e) Seed money reports shall be filed with the commission no later than:
 - (1) January 31 of an election year;
 - (2) April 30 of an election year; and
 - (3) Twenty days prior to the primary election.
 - (f) Each report shall be current through:
 - (1) The six-month period ending on December 31 for the report filed on January 31;

- (2) The three-month period ending on March 31 for the report filed on April 30; and
- (3) Thirty days prior to the primary election for the report filed twenty days prior to the primary election.
- (g) The seed money reports shall include:
 - (1) The committee's name and address;
 - (2) The amount of cash on hand at the beginning of the reporting period;
 - (3) The reporting period and aggregate total for each of the following categories:
 - (A) Contributions;
 - (B) Expenditures; and
 - (C) Other receipts; and
 - (4) The cash on hand at the end of the reporting period.
- (h) Schedules filed with the seed money reports shall also include:
 - (1) The amount and date of deposit of each contribution and the name and address of each contributor who makes contributions aggregating more than \$100 in an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
 - (2) All expenditures made, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements must be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose; and
 - (3) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts.
- (i) Post-election reports shall be submitted to the commission no later than twenty days after a primary election and no later than thirty days after a general election certifying that all public funds paid to the candidate have been used as required by this part. The reports shall include information regarding all expenditures made, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements must be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.
- (j) All certified candidates shall file the reports required under this part by electronic means in the manner prescribed by the commission.

SECTION 11. Comprehensive publicly funded candidate; continuing obligation. (a) A certified candidate shall comply with all requirements under this part through the general election campaign period, except as provided in section 11(d), regardless of whether the certified candidate maintains eligibility for comprehensive public funding in the general election campaign period.

(b) Any surplus of funds up to \$4,000 for a certified candidate elected to the office sought may be carried over to pay for in-office constituent communications. Expenditures for these communications shall not exceed \$2,000 per year or \$4,000 for a two-year term.

(c) If the total surplus for a certified candidate who is elected to office falls under \$4,000, subsection (d) notwithstanding, the office holder shall be allowed to raise the difference with private contributions pursuant to subpart B of part XII of chapter 11, Hawaii Revised Statutes in an aggregate amount of \$2,000 per year;

provided that the contributions are received from an individual and each individual shall be limited to contributing \$250 for the election period.

(d) Except for seed money contributions and qualifying contributions a certified candidate who is elected to the office sought shall not accept private contributions from any person until either September 1 of the next odd-numbered year following the general election in which the candidate was last elected, or the date when the commission determines there are insufficient funds under section 3, whichever occurs earlier.

(e) If a certified candidate withdraws from seeking the nomination for or from the election, all unencumbered funds received by the candidate under this part shall be returned to the Hawaii election campaign fund within thirty days after withdrawal.

SECTION 12. Sufficiency of public funding; amount of base public funding; disbursements. (a) The commission shall not distribute comprehensive public funding to certified candidates that exceeds the total amount of \$300,000 for all candidates subject to this part in any given election year in which this part is operative.

(b) Beginning January 1 of a general election year and ending with the deadline to submit applications for certification, the commission shall post on its website a monthly report stating, by district:

- (1) The number of declarations of intent to seek comprehensive public funding received;
- (2) The number of applications for certification received;
- (3) The number of candidates who have been certified for comprehensive public funding;
- (4) The amount of public funding committed to certified candidates; and
- (5) The amount of public funding available for additional certified candidates.

Notwithstanding any other provisions in this part, if the commission determines that the revenues are insufficient to meet distributions to certified candidates under this section or \$300,000 is distributed, the commission shall permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, Hawaii Revised Statutes, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding.

(c) For primary elections subject to this part, the base amount of public funding shall be the average of the amount spent by the winning candidates in the previous two county council primary elections of the same district, reduced by ten per cent.

(d) For general elections subject to this part, the base amount of public funding shall be the average of the amount spent by the winning candidates in the previous two county council general elections for the same district, reduced by ten per cent.

(e) The base amount of public funding for a primary election in which no other candidate has filed nomination papers shall be thirty per cent of the amount provided in a contested election as determined under subsection (c). No funding shall be allocated in an uncontested general election.

(f) Public funds, including equalizing funds, shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222, Hawaii Revised Statutes.

(g) If the winning primary candidate has residual funds from the primary election, those funds may be carried over to the general election provided that a winning primary candidate who does not have an opponent in the general election

shall return all unexpended public funds to the Hawaii campaign election fund within thirty days after the primary election except as provided in section 11(b).

(h) A certified candidate who is not successful in the election shall return all unexpended public funds to the Hawaii election campaign fund within thirty days after the election in which the candidate was not successful.

SECTION 13. Equalizing funds; sufficiency of funds. (a) Equalizing funds, subject to the expenditure cap in section 12(a), shall be disbursed in the amounts provided in this section to a certified candidate in a contested election whenever that candidate is outspent by an opposing nonparticipating candidate.

(b) An opposing nonparticipating candidate is deemed to have outspent a certified candidate when the campaign report filed pursuant to this subpart shows that the nonparticipating candidate's committee's expenditures or contributions, whichever is greater, added to any independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate reported by any person, minus any independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person exceeds one hundred per cent of the base amount for the certified candidate.

(c) In a contested election, the aggregate amount of equalizing funds shall be limited to an amount equal to the base amount allotted to the certified candidate regardless of the amount of contributions received or expenditures made by an opposing nonparticipating candidate; independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate; or the failure to file an excess report on or before the due date by the nonparticipating candidate or filing of a false excess report.

Twenty-five per cent of the base amount shall be paid to the certified participating candidate in the manner prescribed in section 11-222, Hawaii Revised Statutes, if the commission determines that the nonparticipating candidate's committee's expenditures or contributions, whichever is greater, added to any independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate reported by any person, minus any independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person:

- (1) Exceeds one hundred per cent but is less than one hundred twenty five per cent;
 - (2) Is equal to or exceeds one hundred twenty five per cent but is less than one hundred fifty per cent;
 - (3) Is equal to or exceeds one hundred fifty per cent but is less than one hundred seventy five per cent; or
 - (4) Is equal to or exceeds one hundred seventy five per cent
- of the certified candidate's base amount.

SECTION 14. Reporting; public funds if report not filed by nonparticipating candidate; penalties for failure to report. (a) Reporting obligations under this section for nonparticipating candidates and their candidate's committees or any other persons making independent expenditures shall be in addition to the reporting requirements under this part and chapter 11, Hawaii Revised Statutes, whenever a certified candidate is opposed in a contested election by a nonparticipating candidate as follows:

- (1) Beginning forty-five days before the primary election day, nonparticipating candidates and their candidate's committees shall file an initial excess report with the commission within twenty-four hours after aggregate contributions are received, or expenditures are made in an election that exceeds one hundred one per cent of the base amount of compre-

hensive public funding allotted to an opposing certified candidate in a contested election. Nonparticipating candidates and the candidate's committees shall file supplemental excess reports within twenty-four hours after the committees' aggregate expenditures exceed \$1,000 since the filing of the prior report; and

- (2) Beginning forty-five days before the general election day, noncandidate committees and any other persons that make independent expenditures that expressly advocate the nomination, election, or defeat of a certified candidate shall file the initial independent expenditure report with the commission within twenty four hours after expenditures exceed \$1,000 in aggregate in an election. Noncandidate committees and any other persons that incur independent expenditures shall file supplemental independent expenditure reports within twenty-four hours after the aggregate expenditures exceed \$1,000 since the filing of the prior report. The independent expenditure reports shall identify the nonparticipating candidate or certified candidate for whom the independent expenditure is intended to influence the nomination, election, or defeat.

(b) If a nonparticipating candidate and the candidate's committee fails to file the initial excess report or supplemental excess report in a contested election on or before the due date as required by this section or files a false excess report or supplemental excess reports, the commission, within twenty-four hours of verifying the failure or falsity, shall inform the comptroller. The entire base amount subject to the expenditure cap in section 12(a) and equalizing funds cap in section 13(c) shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222, Hawaii Revised Statutes.

(c) Any nonparticipating candidate and the candidate's committee, or any other person that makes independent expenditures in a contested election involving a certified candidate and that fails to file a report as required under this part shall be subject to a fine pursuant to section 11-_____, Hawaii Revised Statutes.

(d) Any nonparticipating candidate and the candidate's committee, or any other person that makes independent expenditures in a contested election involving a certified candidate and that files a false report as required under this part shall be subject to:

- (1) Any penalty pursuant to section 11-228, Hawaii Revised Statutes; and
- (2) Prosecution pursuant to section 11-229, Hawaii Revised Statutes, and any provision of the Hawaii Penal Code.

SECTION 15. Comprehensive public funding; permitted uses. (a) Comprehensive public funds shall be used only for the purpose of defraying expenses directly related to the certified candidate's campaign during the election campaign period for which the comprehensive public funds are allocated.

(b) A candidate receiving funds under this part or the candidate's campaign treasurer shall not transfer any portion of the funds provided under this part to any other candidate for another campaign.

SECTION 16. Deposit of, and access to, comprehensive public funds. (a) All public funds and seed money received by a certified candidate shall be deposited directly into a depository institution as provided under section 11-199(a), Hawaii Revised Statutes, and accessed through use of debit cards and bank checks. No expenditures of any public funds received under this subpart shall be made except by debit cards or checks drawn on such checking account.

(b) All reports required under subpart B of part XII of chapter 11, Hawaii Revised Statutes, and this part for financial disclosure shall include the most recent,

available bank statement from the financial depository holding the public funds, as attested to by the candidate's committee.

SECTION 17. Deposit of money into the Hawaii election campaign fund.

The following moneys shall be deposited into the Hawaii election campaign fund established under section 11-217, Hawaii Revised Statutes:

- (1) Appropriations from the legislature;
- (2) Excess seed money contributions;
- (3) Qualifying contributions, including any excess qualifying contributions of certified candidates;
- (4) Unspent public funds distributed to any certified candidate;
- (5) Fines levied by the commission for violation of this part; and
- (6) Voluntary donations.

SECTION 18. Violations; penalties. Any candidate who knowingly seeks or receives public funding to fraudulently qualify for or receive public funding shall:

- (1) Have the candidate's certification for comprehensive public funding revoked. Upon revocation of certification, the certified candidate shall repay all public funds received within ten business days to the Hawaii election campaign fund; and
- (2) Be subject to fines and penalties as specifically provided in this part and other fines or penalties pursuant to sections 11-228 and 11-229, Hawaii Revised Statutes, and the Hawaii Penal Code.

SECTION 19. (a) This part shall be a pilot project limited to the elections of 2010, 2012, and 2014 for the county of Hawaii county council elections only.

(b) No candidate who is certified for comprehensive public funding under this part in any of the elections of 2010, 2012, and 2014 shall become eligible for partial public funding in the election for which the candidate qualifies for comprehensive public funding; provided that comprehensive public funding as provided for in this part is practicable according to the terms of Section 3.

(c) Seed money and qualifying contributions received by a candidate shall be included in the aggregate contributions of individuals for purposes of section 11-204, Hawaii Revised Statutes, if:

- (1) A candidate who is not certified for comprehensive public funding subsequently seeks election as a privately funded candidate in the same election for which the candidate was not certified; or
- (2) The commission determines, pursuant to section 12(b), that revenues are insufficient to meet distributions to certified candidates.

SECTION 20. The campaign spending commission shall create and publish all forms and receipts required as well as a candidates' guide to the comprehensive public funding program that shall include an explanation of rules and procedures applicable to candidates.

SECTION 21. Section 11-217.5, Hawaii Revised Statutes, is amended to read as follows:

“§11-217.5 Depletion of fund. (a) The Hawaii election campaign fund shall be under no obligation to provide moneys to ~~[qualified]~~ eligible candidates ~~[in the event that]~~ if, in the partial public funding program or comprehensive public funding for elections to the county of Hawaii council, moneys in that fund ~~[have been depleted.]~~ are near depletion.

(b) ~~[In the event that]~~ 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 [qualified] 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.

(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 .”

SECTION 22. If any provisions in this part conflict with or are otherwise inconsistent with any statutory provision of part XII of chapter 11, Hawaii Revised Statutes, this part shall supersede any such conflicting or inconsistent statutory provisions for the purposes of this part.

PART II

SECTION 23. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to part XII, subpart B, to be appropriately designated and to read as follows:

“§11- Failure to file report; filing a substantially defective or deficient report. (a) True and accurate reports shall be filed with the commission on or before the due date specified in this subpart. Any committee that is required to file reports under this subpart shall be subject to the penalties in this section if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.

(b) The penalty for not filing a report by the due date shall be \$50 per day for the first seven days, beginning with the day after the due date of the report, and \$200 per day thereafter, not to exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty for a report filed more than four days after the due date shall be \$200.

(c) Subsection (b) notwithstanding, if a candidate’s committee does not file the second preliminary primary report or the preliminary general report or if a noncandidate committee does not file the preliminary primary report or the preliminary general report by the due date, the fine shall be \$300 per day, not to exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty shall be \$300.

(d) If the commission determines that a report is substantially defective or deficient, the commission shall notify the candidate’s committee by first class mail that:

- (1) The report is substantially defective or deficient; and
- (2) A penalty may be assessed.

(e) If the corrected report is not filed with the commission’s electronic filing system on or before the fourteenth day after the notice of deficiency has been mailed, the penalty for a substantially defective or deficient report shall be \$50 per day for the first seven days, beginning with the fifteenth day after the notice was sent, and \$200 per day thereafter, not to exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the

report; provided that the minimum penalty for not filing a corrected report more than eighteen days after the notice was sent shall be \$200.

(f) The commission shall publish on its website the names of all candidate's committees that have failed to file a report or to correct a report within the time allowed by the commission.

(g) All penalties collected under this section shall be deposited into the general fund."

SECTION 24. Section 11-191, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "loan" to read:

"“Loan” means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time. A “loan” does not include expenditures made on behalf of a committee by a candidate, volunteer, or employee if:

- (1) A candidate, volunteer, or employee’s aggregate expenditures do not exceed \$1,500 within a thirty day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the committee before the committee reimburses the candidate, volunteer, or employee; and
- (3) The committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made.”

2. By amending the definition of "person" to read:

"“Person” means an individual, partnership, committee, association, corporation, business entity, organization, or labor union and its auxiliary committees."

SECTION 25. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained, and that a penalty may be assessed.¹ [~~The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure~~

to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected.² All penalties collected under this section shall be deposited in the [~~Hawaii election campaign fund;~~] general fund of the State;

- (6) To hold public hearings;
- (7) To investigate and hold hearings for receiving evidence of any violations;
- (8) To adopt a code of fair campaign practices as a part of its rules;
- (9) To establish rules pursuant to chapter 91;
- (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to chapters 76, 78, and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated; and
- (16) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion. Nothing in this section shall be construed to allow the commission to issue rules through an advisory opinion.

SECTION 26. Section 11-195, Hawaii Revised Statutes, is amended to read as follows:

“§11-195 Filing of reports, generally. (a) All reports required to be filed under this subpart by a [~~candidate or those committees directly associated with the candidate’s candidacy~~] candidate’s committee shall be certified by the candidate and treasurer. Reports required to be filed under this subpart by a [~~party or committee that supports more than one candidate~~] noncandidate committee shall be certified by [~~a person authorized to sign the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission.~~] the chairperson and treasurer.

(b) [~~The original and one copy of all~~] All reports required under this subpart shall be electronically filed [~~at the office of the commission. In the case of counties having less than two hundred thousand voters, the filing shall be accomplished~~]

by filing an original and two copies of the required report with either the commission or the clerk of the county in which the candidate resides. The clerk shall then immediately mail the original and one copy of the report to the commission.

~~(c) The commission or county clerk shall give each person filing a report a receipt stating the type of report filed and the date and time of filing.~~

~~(d) All reports filed with the county clerk's office shall be preserved by that office for four years from the date of receipt.] on the commission's electronic filing system.~~

~~[(e)] (c) All reports required to be filed under this subpart shall at all times be available to the general public.~~

~~[(f)] (d) For purposes of this subpart, whenever a report is required to be filed with the commission, "filed" means [received in the office of the commission or county clerk, whichever is applicable,] electronically filed on the commission's electronic filing system by the date and time specified for the filing of the report[; except that a noncandidate committee required to be registered with the commission pursuant to section 11-194(d), and a candidate] by the:~~

~~(1) Candidate or the committee of a candidate who is seeking election to the:~~

- ~~[(1)] (A) Office of governor;~~
- ~~[(2)] (B) Office of lieutenant governor;~~
- ~~[(3)] (C) Office of mayor;~~
- ~~[(4)] (D) Office of prosecuting attorney;~~
- ~~[(5)] (E) County council;~~
- ~~[(6)] (F) Senate;~~
- ~~[(7)] (G) House of representatives;~~
- ~~[(8)] (H) Office of Hawaiian affairs; or~~
- ~~[(9)] (I) Board of education[;~~

~~shall file by electronic means in the manner prescribed by the commission.]; or~~

~~(2) Noncandidate committee required to be registered with the commission pursuant to section 11-194.~~

~~(e) In order to be timely filed, a committee's reports shall be filed on the commission's electronic filing system on or before 11:59 p.m. Hawaii standard time on the prescribed filing date."~~

SECTION 27. Section 11-205.6, Hawaii Revised Statutes, is amended to read as follows:

"§11-205.6 Campaign contributions; loans. (a) Any loan to a candidate or candidate's committee in excess of \$100 shall be documented and disclosed as to lender, including the lender's name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter.

(b) A candidate or candidate's committee may receive and accept loans in an aggregate amount not to exceed \$10,000 during an election period, provided that if the \$10,000 limit is reached, the candidate or candidate's committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full by the candidate or candidate's committee.

(c) If any loan made to a candidate is not repaid within one year of the date that the loan is made, the candidate and candidate's committee shall be prohibited from accepting any other loans, and all subsequent contributions received and any

surplus retained shall only be expended toward the repayment of the outstanding loan, until the loan is repaid in full by the candidate or candidate's committee.

(d) No loan may be accepted or made by noncandidate committees.

(e) Any loan by a financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business, or a loan by a candidate of the candidate's own funds, or a loan from immediate family members of a candidate using their own funds to the candidate's committee shall not be deemed a contribution and not subject to the contribution limits provided in section 11-204 or the loan limit and repayment provisions of subsection (b) and (c); provided that loans from the immediate family members of the candidate shall remain subject to the provisions in section 11-204(c).

(f) For the purposes of this section, a "loan" does not include expenditures made on behalf of a candidate committee by a candidate, volunteer, or employee if:

- (1) The candidate's, volunteer's, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee before the candidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made."

SECTION 28. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Surplus funds may be used after a general or special election for:

- (1) Any fundraising activity;
- (2) Any other politically related activity sponsored by the candidate;
- (3) Any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or
- (4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from [~~campaign funds and~~] surplus funds shall be no more than twice the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

SECTION 29. Section 11-207.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each candidate, candidate's committee, or committee, that within the period of fourteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission [~~or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m.,~~] three calendar days prior to the election."

SECTION 30. Section 11-212, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:
 - "(a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report [~~with the commission or appropriate county clerk's office~~]. Pre-

liminary reports shall be filed ~~[on forms provided by the commission no later than 4:30 p.m.]~~ on the following dates:

- (A) July thirty-first of the year of the primary election;
- (B) Ten calendar days prior to each primary and initial special election; and
- (C) Ten calendar days prior to a special or general election.

- (2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through June 30 prior to the filing of the report filed on the thirty-first of July and fifth calendar day prior to the filing of other preliminary reports:

- (A) The aggregate sum of all contributions and other campaign receipts received;
- (B) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (C) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (D) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (E) A current statement of the balance on hand or deficit.

(b) Each noncandidate committee shall file a preliminary report with the commission ~~[on forms provided by the commission, no later than 4:30 p.m.]~~ on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.”

2. By amending subsection (d) to read:

“(d) A candidate, party, or committee whose aggregate contributions and aggregate expenditures for the reporting period each total \$2,000 or less may file a short form report with the commission ~~[or appropriate county clerk’s office]~~ in lieu of the reports required by this section and section 11-213.”

SECTION 31. Section 11-213, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission [~~on forms provided by the commission no later than 4:30 p.m.~~] on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, [~~with the commission on forms provided by the commission no later than 4:30 p.m.~~] on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.”

2. By amending subsection (d) to read:

“(d) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period [~~general~~] report with the commission on forms provided by the commission [~~no later than 4:30 p.m.~~] on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.”

3. By amending subsections (f) and (g) to read:

“(f) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than ~~[4:30 p.m. on]~~ the thirty-first day after the last day of the election year.

(g) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

- (1) Maintain the cash surplus in a financial depository; and
- (2) Every six months, until the candidate files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than ~~[4:30 p.m. on]~~ the thirty-first calendar day after the last day of the election year.”

SECTION 32. Section 11-216, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) If the commission renders a final determination of violation, its written decision with findings of fact and conclusions of law may also provide, without limitation the following orders:

- (1) The return of any contribution;
- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine payable to the ~~[Hawaii election campaign fund;]~~ general fund of the State;
- (4) Cease and desist violation of this subpart; or
- (5) File any report, statement, or other information as required by this subpart.”

SECTION 33. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any administrative fine collected by the commission shall be deposited ~~[in the Hawaii election campaign fund.]~~ into the general fund of the State of Hawaii.”

SECTION 34. Section 235-102.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any individual whose state income tax liability for any taxable year is ~~[\$2]~~ \$3 or more may designate ~~[\$2]~~ \$3 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax liability of ~~[\$4]~~ \$6 or more, each spouse may designate that ~~[\$2]~~ \$3 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.”

PART III

SECTION 35. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

ACT 244

SECTION 36. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 37. This Act shall take effect upon its approval; provided that part I shall take effect on July 1, 2008, and shall be applicable beginning with the general election year of 2010. This part and part II shall take effect upon their approval.

(Became law on July 8, 2008, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. Period should not be underscored.
2. No end bracket.
3. Edited pursuant to HRS §23G-16.5.