

Honolulu, Hawaii

April 25, 2008

RE: H.B. No. 661
H.D. 1
S.D. 3
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 661, H.D. 1, S.D. 3, entitled:

"A BILL FOR AN ACT RELATING TO CAMPAIGN SPENDING,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of Part I of this measure is to create a pilot comprehensive public funding program for elections to the Hawaii county council in 2010, 2012, and 2014.

Part II of this measure:

- (1) Establishes qualifications, limitations on funding and use of funds, and reporting requirements;
- (2) Clarifies that "ordinary and customary" expenditures are allowable under campaign spending law;



- (3) Clarifies what constitutes a "loan" for purposes of the campaign contribution;
- (4) Clarifies campaign spending law relating to electronic filing of reports;
- (5) Clarifies that the campaign spending commission shall not issue rules through an advisory opinion;
- (6) Establishes that in the case of a corporation or company using funds from its own treasury, there shall be a limit of \$25,000 to its own noncandidate committee;
- (7) Clarifies who is subject to administrative fines for violations relating to campaign contributions and expenditures; and
- (8) Increases the amount a candidate can transfer from campaign or surplus funds to a community or charitable organization.

Upon further consideration, your Committee has amended Part I of this measure by:

- (1) Making technical revisions to conform the new pilot comprehensive public funding program for Hawaii county council elections to many of the general requirements and standards of chapter 11, part XII;
- (2) Establishing filing standards and limitations on seed money contributions;
- (3) Establishing registration, reporting, and filing requirements for individuals who use seed money to determine whether sufficient support exists for them to run for office as comprehensive publicly funded candidates, but who have not already registered with the Campaign Spending Commission (CSC);
- (4) Allowing a certified candidate who is an office holder to raise from private contributions pursuant to chapter 11 an aggregate amount of \$2,000 per year when surplus falls below \$4,000, provided that the contributions are received from individuals each with a contribution limit of \$250 per election period;



- (5) Changing from ten days to thirty days the time period for a candidate who has withdrawn to return funds;
- (6) Establishing that if \$300,000 is distributed in conjunction with an election under the pilot project, CSC shall allow certified candidates to accept and spend contributions, subject to section 11-204;
- (7) Providing that a winning primary candidate who does not have an opponent in a general election shall return all unexpended funds to the Hawaii campaign election fund within thirty days of the date of the primary election, except as may be otherwise allowable to retain;
- (8) Clarifying the amounts and timing for disbursement of equalizing funds for a certified candidate opposed by a nonparticipating candidate;
- (9) Eliminating the criminal misdemeanor penalty for failure to file a report by a nonparticipating candidate, and replacing it with a fine amount pursuant to chapter 11, and establishing that a nonparticipating candidate who files a false report concerning independent expenditures shall be subject to penalties under section 11-228 and prosecution pursuant to section 11-229, and any provision of the Hawaii Penal Code;
- (10) Clarifying that expenditures of public funds received as part of the pilot project shall only be made by debit card or checks drawn on the account required by section 11-199(a);
- (11) Clarifying that seed money and qualifying contributions received by a candidate shall be included in the aggregate contributions of individuals for purposes of section 11-204 under certain conditions;
- (12) Deleting provisions relating to creation of an independent review committee and requiring CSC to establish and provide administrative and staff support to such committee;
- (13) Stipulating that the Hawaii election campaign fund shall be under no obligation to provide money to eligible candidates if in the partial public funding program or the pilot project program for the Hawaii county council, the



funds are "near depletion," rather than "have been depleted"; and

- (14) Allowing CSC to determine whether the pilot project program may remain in operation if the Hawaii election campaign fund is close to depletion.

Your Committee has amended Part II of this measure by:

- (1) Deleting the proposed revision to section 11-204, relating to corporate contributions to noncandidate committees;
- (2) Deleting the revision of the term "ordinary and necessary" expenses, in regard to allowable use of campaign funds or surplus funds;

Your Committee has amended Part III of this measure by deleting the section referencing the case *Charmaine Tavares Campaign v. Barbara U. Wong*.

Your Committee notes that although the section of this measure changing the term "necessary" to the term "customary" relating allowable uses of campaign funds and surplus funds was deleted from this C.D.1, Election Campaign Contributions and Expenditures provisions in Chapter 14.1 of Title 2 Subtitle 1, Hawaii Administrative Rules, includes the following subsection (f) in §2-14.1-16:

Authorized campaign expenditures; unauthorized campaign expenditures:

...

(f) Ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office shall include usual and reasonable expenses, and bear a direct relation to the office; and such expenses shall be **absolutely** necessary for carrying out the duties of the office. Such expenses may include office equipment or supplies, but not travel or related expenses, food or other professional or personal services. (Emphasis added).

Your Committee wishes to express strong concerns that this rule exceeds statutory authority. In your Committee's view, "necessary" expenditures need not be "absolutely" necessary. Customary gestures of good will and hospitality, such as presenting lei and providing refreshments at a gathering of staff or constituents, are within the bounds of ordinary and necessary expenses. The Committee's view is



that the term "ordinary and necessary" should be interpreted in conformance with federal tax law.

Your Committee also notes that section 27 of S.D.3 of this measure, clarifying limitations on contributions from corporations to their non-candidate committees, was deleted from this C.D.1 so that the outcome of the appeal of the case of *Charmaine Tavares Campaign v. Barbara U. Wong, et al.*, Civil No. 06-1-0430, may be reached prior to legislation addressing this issue.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 661, H.D. 1, S.D. 3, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 661, H.D. 1, S.D. 3, C.D. 1.

Respectfully submitted on behalf
of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE


BRIAN T. TANIGUCHI, Chair


BLAKE K. OSHIRO, Co-Chair


SHAN S. TSUTSUI, Co-Chair


MARCUS R. OSHIRO, Co-Chair



