

STATE OF HAWAII
OFFICE OF ELECTIONS
802 LEHUA AVENUE
PEARL CITY, HAWAII 96782
www.hawaii.gov/elections

KEVIN B. CRONIN
CHIEF ELECTION OFFICER

TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON HOUSE BILL NO. 661, S.D. 1
RELATING TO CAMPAIGN SPENDING

March 27, 2008

Chair Baker and members of the Senate Committee on Ways and Means, thank you for the opportunity to testify on House Bill No. 661, S.D. 1. The purpose of this bill is to create comprehensive public funding for elections to the Hawaii County Council.

Presently, all county candidates file with the respective county clerk's office and not the Office of Elections (OE). With this in mind, the OE takes no position on the bill but would like to provide the following comments:

- If the OE is becomes responsible for verifying qualifying contributions from registered voters in a candidate's district, funding in section 21 of the bill must be appropriated. Presently, the OE does not have the resources to make these verifications.
- If this bill is limited to only candidates for the various city/county councils, it may be more appropriate to require each county clerk's office to verify the contributors' registration. This would eliminate the need for candidates who seek public funding from going to the clerk's office and the OE.

Thank you for the opportunity to testify on House Bill No. 661, S.D. 1.

Respectfully Submitted:

By Kevin Cronin



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

March 25, 2008

TO: The Honorable Rosalyn H. Baker
The Honorable Shan S. Tsutsui
Members of the Senate Committee on Ways and Means

FROM: Barbara U. Wong, Executive Director, *B. Wong*
Campaign Spending Commission

SUBJECT: Testimony on H.B. No. 661, H.D. 1, S.D. 1, Relating to Campaign Spending

Thursday, March 27, 2008
9:45 a.m. in Conference Room 211

Chair Baker, Vice-Chair Tsutsui, and Members of the Senate Committee on Ways and Means, thank you for the opportunity to testify on this bill.

This bill¹ proposes to allow “comprehensive public funding” for Hawaii county council candidates² beginning with the 2010 election for three elections and would take effect on July 10, 2010, except that section 5 (relating to seed money) shall take effect on July 1, 2008.³

While the Campaign Spending Commission (“Commission”) supports public campaign financing, we do not support this bill as drafted.

- The general public should be allowed an opportunity to “weigh-in” on this issue by voting on a Constitutional amendment to authorize comprehensive public funding.⁶

¹ H.B. No. 661, as introduced, is virtually identical to H.B. No. 765, a bill that was introduced in the 2007 Regular session but did not carry over to the 2008 Regular session. S.B. No. 1055, the companion bill to H.B. No. 765, also did not carry over to the 2008 Regular session. The main difference is that H.B. No. 765 and S.B. No. 1055 proposed to amend the general excise tax law to provide a \$2 million annual deposit into the Hawaii Election Campaign Fund; while H.B. No. 661 does not have that language.

² H.B. No. 661, as originally introduced, allowed candidates for the House of Representatives to qualify for comprehensive public funding.

³ Section 25, page 30.

⁶ S.B. No. 754 was introduced in the 2007 Legislature to authorize a question on the 2008 general election ballot that asks if the constitution should be amended to allow a full range of public financing levels for campaigns for public offices of the State and its political subdivisions.

- The Committee should carefully consider the costs (monetary and nonmonetary) and complexities of this bill. For example, the bill attempts to “level the playing field” by providing equalizing funds to a participating candidate if the candidate is outspent by a nonparticipating candidate and “independent expenditures made in support of that nonparticipating candidate or against the opposing certified (participating) candidate.”
 - This results in ever increasing demands on public funds for campaigns. A better approach would be to increase the funding allowed under the current partial public funding program law and cap the amount of public funding available to each candidate at the amount needed to operate a viable campaign.⁷
 - This equalizing fund provision is biased towards a participating candidate as independent expenditures supporting the participating candidate or opposing the nonparticipating candidate does not result in a reduction of equalizing funds to the participating candidate. Where is the level playing field for the nonparticipating candidate?
 - The equalizing funds provision is implemented with substantial reporting requirements above and beyond the requirements in the current law. The bill imposes strict reporting requirements and numerous and substantial criminal penalties for a nonparticipating candidate and persons who make independent expenditures supporting the nonparticipating candidate or against the opposing certified (participating) candidate.
- The bill is a “cut and paste” from other documents. The superfluous concepts and terms proposed in this bill should be deleted. For example, participating candidate, certified candidate, and comprehensive publicly funded candidate appear at various parts of the bill; these terms may, or may not, have the same meaning. The Committee should clarify other ambiguous terms and address the concerns that we discuss below in our testimony. Moreover, this bill does not conform to terms and principles in the current campaign finance law.
- There must be adequate funds to avoid interruption of the comprehensive and partial public financing programs from year to year.⁸
- Adequate time must be provided to administer the comprehensive public funding program, including hiring new employees, developing manuals, forms and procedures; modifying the new candidate filing system; and training of staff and candidates.

⁷ The Committee should consider the provisions in other bills which carried over to the 2008 Regular session (S.B. No. 1068, S.D. 1, H.D. 1 and S.B. No.1549) which propose to raise the expenditure limits for the first time in twelve years. This will increase the amount of partial public funding available to candidates without creating a second system of public financing.

⁸ A certified candidate who is opposed in an election may receive (1) a “base amount” in the primary election; (2) multiple “equalizing funds” in the primary election; and (3) the base amount and multiple equalizing funds in the general election. Arizona’s budget for clean elections for 2008 is \$40 million. Connecticut’s budget was \$15 million in 2006, \$30 million in 2007, and projected at \$45 million with an increase in staff from 7 to 27. Maine does not have sufficient funds for the 2010 elections and is asking for an appropriation.

¹⁰ Art. II, section 5 of the Hawaii State Constitution.

CURRENT LAW (PARTIAL PUBLIC FUNDING)

Hawaii currently provides a partial public financing (matching funds) program which allows candidates to raise private contributions which are matched with public funds if the candidate agrees to limit campaign expenditures.

The current program has been in place for fourteen elections since 1980 and implements the following provision in the Hawaii Constitution:

The legislature shall establish a campaign fund to be used for partial public financing of campaigns for public offices of the State and its political subdivisions, as provided by law. The legislature shall provide a limit on the campaign spending of candidates.¹⁰ (Emphasis added.)

The program, generally, operates as follows:

- A candidate, including a Hawaii county council candidate, must agree to expenditure limits which are calculated by multiplying the number of voters in the last preceding general election (2006) by the amount that can be spent on each voter, as set by statute.
- If the candidate receives the minimum \$1,500 amount of qualifying contributions (aggregate monetary contribution of \$100 or less from Hawaii residents), the candidate is provided with matching public funds, up to a statutorily determined maximum amount of public funds.

The candidate may receive both qualifying contributions and private contributions, and spend these funds subject to the expenditure limits. If the candidate exceeds the expenditure limits, the candidate must pay the full filing fee; notify opponents, the Commission, chief election officer, opponents and contributors; and return all public funds.¹¹ By contrast, there is no expenditure limit in this H.B. No. 661, H.D. 1, S.D. 1.

S.B. No. 1068, S.D. 1, H.D. 1¹² and S.B. No.1549 both propose to raise the expenditure limits in the current program for the first time in twelve years, which will increase the amount of public funding available to candidates without creating a second system of public financing with additional reporting requirements.

“No candidate who qualifies for comprehensive public funding under this Act 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 funding.”¹³

We recommend that this section be amended to limit all Hawaii county council candidates to the comprehensive funding under this bill. This would provide a true pilot project and avoid the

¹¹ HRS section 11-209(b).

¹² S.B. 1068, S.D.1, H.D. 1 passed both the Senate and House and was assigned to a Conference Committee.

¹³ Section 20, page 27.

possibility of a candidate receiving comprehensive funding facing off against a candidate who received partial public funding (possible unintended consequences).

COMPREHENSIVE PUBLIC FUNDING PROPOSED IN H.B. No. 661, H.D. 1, S.D.1 (HB 661)

I. Initial requirements - \$3,500,000 in the Hawaii election campaign fund; and certification by the Commission

"On September 1 of each odd-numbered year before a general election year, the commission shall determine whether there is a minimum of \$3,500,000 in the Hawaii election campaign fund to certify participating candidates during the next election and provide funding for comprehensive public funding."¹⁴

This provision ignores funding requests from candidates who qualify for the partial public funding program under the current law (discussed in Part I). The Committee should clarify that this section is read together with the current law. We recommend that the Committee include language drawn in great part from the HD 1 version of the bill as follows:¹⁶

"§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 councils 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 ."

¹⁴ This S.D. 1 reduced the trigger from \$5 million to \$3.5 million; the H.D. 1 had reduced the trigger from \$6 million to \$5 million.

¹⁶ HB 661, H.D. 1, Section 5, pages 31-32.

A "participating candidate"¹⁷ for the Hawaii county council is qualified to receive comprehensive public funding if the candidate, among other things:¹⁹

- Resides in the district from which election is sought as of the date of the filing of nomination papers for the primary election;
- Is a registered voter in the district;
- Files a declaration of intent with the Commission between January 1 of the election year and thirty days²⁰ before the closing date to file nomination papers;
- Collects a "\$5 district qualifying contribution in accordance with section 7." The contribution must be from a contributor who is a registered voter and resides in the county district to which the candidate seeks nomination at the time the contribution is given;²¹
- Accepts only "seed money" and "qualifying contributions" prior to filing the declaration of intent with the Commission.
 - "Seed money" can only be used to determine whether "sufficient support exists to run for office as a comprehensive publicly funded candidate."²² The amount of seed money is capped at \$3,000; personal funds or surplus campaign funds may be used for seed money.²³ "Seed money shall only be spent prior to and during the qualifying period and shall not be collected after the candidate has filed the declaration to run."

We recommend that the following amendment: "Seed money shall only be spent prior to and during the qualifying period and shall not be collected after the candidate has filed the declaration of intent to run."

- The "qualifying contribution" may be a "monetary contribution;" while the term is not defined, it appears that a cash contribution may be made. The Maine law, by contrast, requires that the contribution be "in the form of a check or a money order payable to the fund, signed by the contributor in support of a candidate."²⁴

¹⁷ "Participating candidate" means a candidate who is seeking certification for comprehensive public funding under this subpart. Section 2, page 4. "Candidate" means an individual who seeks nomination for election or seeks election the Hawaii county council. Section 2, page 1.

¹⁹ Section 4, pages 7-8.

²⁰ While the term "days" is used here, the term "business days" elsewhere in the bill. See section 3, page 6; section 8, page 12; and section 18, page 26.

²¹ Section 7, page 11. Qualifying contributions are deposited in the Hawaii election campaign fund.

²² See Section 5, page 9. "Seed money" means contributions made to a participating candidate by a person in accordance with section 5 that shall be expended for the purpose of determining campaign viability. Section 2, page 6.

²³ Section 5, page 9.

²⁴ "Qualifying contribution means a donation:

We recommend the following amendment: “Qualifying contribution’ means a \$5 monetary contribution made in the form of a check or a money order payable to the fund to a participating candidate for purposes of meeting the criteria of section 7.”

- Files an application for certification with the Commission.²⁵

The application must include “two hundred signatures and qualifying contributions for the county of Hawaii from registered voters in the district for which the candidate seeks office”²⁶ and must be submitted no later than thirty days prior to the primary election. A decision to certify or deny certification must be issued by the Commission within ten²⁷ business days following receipt of the completed application.

The Commission does not have access to voter information to determine the residence of the candidate and contributors. The Hawaii County Clerk should be responsible for verifying this information because the Hawaii County Council is a major proponent of this bill. We recommend the following amendment:

“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 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.”

“Surplus campaign funds”²⁹ may be used for:

A. Of \$5 in the form of a check or a money order payable to the fund, signed by the contributor and made in support of a candidate...” Maine Revised Statutes, Title 21A, 21-22

²⁵ Section 4, page 8.

²⁶ Section 8, pages 12.

²⁷ The SD 1 increased this period from five to ten days.

²⁹ “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 2, page 6.

- \$3,000 in "seed money;"³⁰ and
- "In-office constituent communications"³¹

Surplus funds "shall be frozen and maintained in a separate depository account" and a participating candidate "shall continue to file reports" on the surplus funds.

We offer the following comments regarding surplus funds:

- The term "in-office constituent communications" is an undefined term.
- The bill does not specify whether there are limits on the use of surplus campaign funds for in-office communications during a campaign.
- An incumbent candidate applying under this program will have to maintain two bank accounts.
- It appears that surplus funds will be frozen until "September 1 of the next odd-numbered year following the general election in which the candidate was elected."³²
- By contrast, under the current law, "[s]urplus 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 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."³³

Upon certification by the Commission and until the end of the general election period, the certified candidate shall not accept for use in the campaign:

- Contributions from any source, except for "in-kind contributions aggregating less than \$200 in any single month from any single source;
- Loans from any person, including a certified candidate;

³⁰ Section 5, page 9.

³¹ Section 6, page 10.

³² Section 11(e), page 17.

³³ HRS section 11-206(c).

³⁶ Section 9, page 13.

- Contributions from political parties (the use of this term appears to be redundant as the term 'source' includes political parties); and
- Any campaign material purchased or held from a date prior to the declaration of intent to run for office as a comprehensive publicly funded candidate...³⁶

"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."

It is not clear whether the in-kind contribution is limited to less than \$200 in aggregate from all sources or less than \$200 from each single source (i.e., contributions of less than \$200 from numerous sources). If it is the later, than the prohibition on private contributions would have no teeth, as numerous private contributors could make "in-kind" contributions of stamps, banners, signs, etc. with a value of \$199.99 monthly, up to the limits of the office to a certified candidate's campaign.

If a certified candidate is elected to office, public funds "up to \$4,000 may be carried over to cover in-office constituent communications not to exceed the \$2,000 annual allotment or \$4,000 for a two-year term."³⁷

"If the total surplus from a publicly funded campaign falls under \$4,000 the certified comprehensive publicly funded office holder will be allowed to raise the difference pursuant to this subpart B of part XII of chapter 11, Hawaii Revised Statutes."³⁸

"Except for seed money contributions, qualifying contributions, and in-office constituent communications, a certified candidate who is elected to the office sought shall not accept private contributions from any person, political party, or political action committee 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."³⁹

³⁷ Section 11(c), page 16.

³⁸ Section 11(d), page 16.

³⁹ Section 11(e), page 17.

- Remaining public funds will not be returned to the Hawaii Election Campaign Fund by a certified candidate after an election as in the case of partial public financing. Instead council members are provided a \$4,000 slush fund with public money for "in-office constituent communications." Again, this is an undefined term.
- Hawaii County Council members are already provided with a \$15,000 allowance for expenses, including constituent communications.
- Surplus fund may also be used for "in-office constituent communications"⁴⁰
- The participating candidate does not have to raise the "difference" with "district qualifying contributions;" this in contrast to section 4 of the bill.

II. Public funding for certified candidates

A certified candidate is authorized to receive:

- The base amount; and
- Multiple issuances of "equalizing funds."

"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 Act in any given election year in which this Act is operative."⁴¹

A. Base amount

The base amount in a contested primary election is the "average of the amount spent by winning candidates in the previous two county council primary elections of the same district, reduced by ten per cent."

The base amount in a contested general election is the "average of the amount spent by winning candidates in the previous two county council general elections for the same district, reduced by ten per cent."⁴²

The base amount in an uncontested primary election is "thirty percent of the amount provided in a contested election;" no funding is provided in an uncontested general election.⁴³

"The commission shall disburse public funds by check or electronic transfer."⁴⁴

⁴⁰ Section 6, page 10, line 17.

⁴¹ Section 12 (a), page 17.

⁴² Section 12(c), (d), page 19.

⁴³ Section 12(e), page 19.

⁴⁴ Section 12(f), page 19.

If "revenues are insufficient to meet distributions to certified candidates under this section, the commission shall either (sic) permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding."⁴⁵

We have the following comments regarding the base amount:

- The Commission does not have the ability to disburse funds; it is administratively attached to the Department of Accounting and General Services (DAGS) and DAGS is the agency that disburses the funds. See HRS sections 11-217 and 11-222. Section 12(f), therefore, should be amended to read as follows: "~~[The commission shall disburse public funds by check or electronic transfer.]~~ Public funds shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222."
- It is difficult to accurately determine the amount spent in a general election as expenses may be paid for during the primary election and used in the general election.
- Using different elections (the primary and the general election) to calculate the amount of public funding is contrary to the current partial funding law which calculates the amount of funding available to candidates in both the primary and general election based upon the number of voters in the prior general election multiplied by the amount that can be spent on each voter.

B. Equalizing funds

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."⁴⁶

(1) Threshold for equalizing funds

"The commission shall distribute equalizing funds to a certified candidate whenever that candidate is outspent by an opposing nonparticipating candidate. A opposing nonparticipating candidate is deemed to have outspent a certified candidate when the campaign report filed pursuant to subpart B shows that the sum of an opposing nonparticipating candidate and the nonparticipating candidate's committee's expenditures and obligations, or campaign contributions received or borrowed, whichever is greater, added to any independent expenditures made in support of that nonparticipating candidate or against the opposing certified candidate reported by any no candidate's committee, party, or any person, exceeds one hundred per cent of

⁴⁵ Section 12(b), page 18. There is an identical provision for equalizing funds in section 14(d), pages 23-24.

⁴⁶ Section 2, page 3.

⁴⁹ Section 13, page 20.

the amount of comprehensive public funding previously allotted and distributed to the opposing certified candidate in a contested election, including any equalizing funds previously distributed.”⁴⁹ (Emphasis added)

“The commission shall adopt rules under chapter 91, Hawaii Revised Statutes, to compute the amount of equalizing funds allotted to a certified candidate that takes into consideration the contributions and expenditures of the nonparticipating candidate and the candidate's committee, and any independent expenditures incurred to influence the nomination, election, or defeat of the certified candidate. To prevent the abuse of equalizing funds, the commission shall not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning other than to contradict the expressed advocacy.”⁵⁰

We have the following comments regarding the threshold:

- The Commission does not have the ability to disburse funds; it is administratively attached to (DAGS and DAGS is the agency that disburses the funds. See sections 11-217 and 11-222. Section 12(f), therefore, should be amended to read as follows: “[The commission shall disburse public funds by check or electronic transfer.] Equalizing funds shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222....”
- The Commission already is authorized to issue rules, pursuant to section 11-193, HRS. The following language should be deleted from the bill because it is superfluous: “[~~The commission shall adopt rules under chapter 91, Hawaii Revised Statutes, to compute the amount of equalizing funds allotted to a certified candidate that takes into consideration the contributions and expenditures of the nonparticipating candidate and the candidate's committee, and any independent expenditures incurred to influence the nomination, election, or defeat of the certified candidate.~~]”
- This bill adds a different test to determine whether a third party's expenditure is for issue advocacy or express advocacy (independent expenditure) and should be deleted. The bill specifies that the Commission “shall not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning other than to contradict the expressed advocacy.”⁵¹ The current law defines an independent expenditure as “an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate's committee, a party, or their agents.”⁵² We recommend the deletion of the test for independent expenditures in this bill.
- The bill does not address multiple nonparticipating candidates. Is the “opposing nonparticipating candidate” the candidate that spends the most? If so, at what point in

⁵⁰ Page 24

⁵¹ Section 14(e), page 24.

⁵² HRS section 11-191.

time is this measured, as candidate expenditures fluctuate daily?

(2) Amount of equalizing funds – equal to the base amount; and additional equalizing funds if reporting requirements not met

“In a contested election, equalizing funds shall be limited to an amount equal to the base amount of comprehensive public funding allotted to the certified candidate.”⁵⁷

“If a nonparticipating candidate and the candidate’s committee fails to file or files a false excess report or supplemental excess report or supplemental reports...the commission, within twenty-four hours of verifying the failure or falsity shall automatically disburse equalizing funds to any opposing certified candidate up to the maximum authorized under section 13.”⁵⁸

If the Commission “determines there are insufficient funds to meet the potential need for equalizing funds for all certified candidates, the commission shall permit each certified candidate to accept and spend private contributions, subject to the campaign contribution limitations set forth in section 11-204, up to the equalizing funds the certified candidate would have received from comprehensive public funding.”⁵⁹

We have the following comments regarding the amount of equalizing funds:

- There are conflicting provisions regarding the amount of equalizing funds. One section specifies that “equalizing funds shall be limited to an amount equal to the base amount of comprehensive public funding allotted to the certified candidate.”⁶⁰ On the other hand, if the nonparticipating candidate “fails to file or files a false excess report or supplemental excess reports...the commission...shall automatically disburse equalizing funds to any opposing candidate up to the maximum authorized...”⁶¹ These additional reports are required because a nonparticipating candidate must be cognizant of the base amounts received by a certified candidate; if the nonparticipating candidate’s expenditures are “one hundred one per cent” of the base amount for a certified candidate, the nonparticipating candidate must file an initial excess report. Supplemental reports must also be filed by the nonparticipating candidate after subsequent expenditures exceed

⁵⁷ Section 13(b), page 21.

⁵⁸ Section 14(b), page 23.

⁵⁹ Section 14(d), pages 23-24.

⁶⁰ Section 13(b), page 21.

⁶¹ Section 14(b), page 23.

\$1,000 in the aggregate.

- The Commission is not authorized to issue funds; only DAGS is authorized to issue funds.
- If the Committee intends to allow a certified candidate equalizing funds for each unfiled or false report, we recommend that section 14(b) be amended as follows: “If a nonparticipating candidate and the candidate's committee fails to file on or before the due date as required by this section or files a false excess report or supplemental excess reports [~~as required in this section~~], the commission, within twenty-four hours of verifying the failure or falsity, shall [~~automatically disburse equalizing funds to any opposing certified candidate up to the maximum authorized under section 13.~~] inform the comptroller. Public funds shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222.”

III. Additional reporting requirements triggered for nonparticipating candidates and any other person whose independent expenditures exceed \$1,000 because of equalizing funds provision

In order for the Commission to determine whether a certified candidate is eligible to receive equalizing funds, all nonparticipating candidates and any other person making independent expenditures exceeding \$1,000 that expressly advocate the nomination, election, or defeat of a certified candidate must file reports.⁶⁶

- “Commencing 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 cumulative contributions are received, or expenditures are made or committed to be made, including verbal commitments, in an election period that exceeds one hundred one per cent of the base amount of comprehensive 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 any encumbrances or expenditures that exceed \$1,000 in aggregate.”(Emphasis added).
- “Commencing forty-five days before the general election day, noncandidate committees, parties, and any other persons that incur independent expenditures that expressly advocate the nomination, election, or defeat of a certified candidate shall file an independent expenditure report with the commission within twenty-four hours when expenditures exceed \$1,000 in aggregate in an election period. Thereafter, noncandidate committees, parties, and any other persons that incur independent expenditures, including verbal expenditure commitments, shall file supplemental independent expenditure reports within twenty-four hours whenever the aggregate expenditures exceed \$100. The

⁶⁶ Section 14, pages 21-23.

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.” (emphasis added)

As to these “trigger” reports, we have the following comments:

- In the midst of a campaign, a nonparticipating candidate and other persons must file these reports. The combined reporting requirements under the current law and this bill are set forth below.
- The dates for the “initial” reports are different for the participating candidate and other persons. The requirement to file “initial” excess reports commences forty-five days before the primary election date for a nonparticipating candidate. The requirement commences forty-five days before the general election day for other persons.
- A supplemental report must be filed “...after any encumbrances or expenditures that exceed \$1,000 in aggregate.” As drafted, it appears that a trigger report is not due from a nonparticipating candidate who has a series of encumbrances or expenditures, up to \$1,000.

A. Candidate committee reports

Nonparticipating candidates, including candidates who receive partial public funding, therefore, would be required to file the reports required under both the current law and this bill as follows:

Current law			H.B. 661, H.D. 1
Due date	Reporting period	Report	
July 31, 2008	January 1 through June 30, 2008	1 st Preliminary Primary	
August 6, 2008			“Commencing <u>forty-five days before the primary election day</u> , nonparticipating candidates and their candidate's committees shall file an <u>initial excess report</u> with the commission within twenty-four hours after cumulative contributions are received, or expenditures are made or committed to be made, including verbal commitments, in an election period that exceeds one hundred one per cent of the base amount of comprehensive public funding allotted to an opposing certified candidate in a contested election.” ⁶⁷
Multiple undetermined dates		Multiple reports due	“Nonparticipating candidates and the candidate's committees shall file <u>supplemental excess reports</u> within

⁶⁷ Section 14(a)(1), pages 21-22.

⁶⁹ Section 14(a)(1), page 22.

			twenty-four hours after any encumbrances or expenditures that exceed \$1,000 in aggregate. ⁶⁹
September 10, 2008	July 1 through September 5, 2008	2 nd Preliminary Primary	
September 17, 2008	September 5 through September 16, 2008	Late Contributions Report ⁷⁰	
October 10, 2008	September 6 through 20, 2008	Final Primary Report	
October 10, 2008	January 1 through September 20, 2008	Expenditures of Public Funds ⁷¹	
October 24, 2008	September 21 through October 20, 2008	Preliminary General Report ⁷²	
October 24, 2008	January 1 through October 20, 2008	Preliminary General Report ⁷³	
October 31, 2008	October 20 through October 31, 2008	Late Contributions Report ⁷⁴	
December 4, 2008	October 21 through November 4, 2008	Final Election Period Report; ⁷⁵ or	
December 4, 2008	September 21 through November 4, 2008	Final Election Period Report ⁷⁶ or	
December 4, 2008	January 1 through November 4, 2008	Final Election Period Report ⁷⁷	

⁷⁰ This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fourteen calendar days through four calendar days prior to the Primary Election. Late contributions must also be reported on the Final Primary Report. The report is not required if there are no late contributions.

⁷¹ This form is required for candidates who received partial public financing in the primary election.

⁷² This form is for candidates that were successful in the Primary Election and have advanced to the General Election. This report is not required for candidates that won outright or were unsuccessful in the Primary Election. See the Final Election Period Report

⁷³ This is the first report for candidates for the Office of Hawaiian Affairs.

⁷⁴ This form is for reporting contributions from any person or entity that aggregates more than \$500 and made to a candidate during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions or if a candidate won outright or was unsuccessful in the Primary Election.

⁷⁵ For candidates that filed the Preliminary General Report.

⁷⁶ For candidates that won outright or were unsuccessful in the Primary Election and who did not file the Preliminary General Report.

⁷⁷ For candidates whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less. All previous reports, with the exception of the Organizational Report, are not required to be filed.

It appears that participating candidates would file only the reports required under the current law as the reporting requirements in sections 11-212 and 11-213, HRS, are not amended in H.B. No. 661.

B. Noncandidate committee reports

A "noncandidate committee"⁷⁸ must register "within ten days of receiving contributions or making expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period; except that within the thirty day period prior to an election, a noncandidate committee shall file an organizational report within two days of receiving contributions or making expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period."⁷⁹

The noncandidate committee also must file periodic reports.

This bill specifies that "all noncandidate committees, parties, and any other persons that incur independent expenditures that expressly advocate the nomination, election, or defeat of a certified candidate" must file a report with the Commission within twenty-four hours of exceeding \$1,000 in an election period; and supplemental independent expenditure reports must be filed within twenty four hours of aggregate expenditures exceeding \$100.⁸⁰ (emphasis added)

⁷⁸ See HRS section 11-191. "Noncandidate committee" means a committee as defined in this section that has the purpose of making contributions or expenditures to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot, but does not include a candidate's committee. "Committee" means:

(1) Any organization, association, or individual that accepts or makes a contribution or makes an expenditure for or against any:

- (A) Candidate;
- (B) Individual who files for nomination at a later date and becomes a candidate; or
- (C) Party;

with or without the authorization of the candidate, individual, or party. In addition, the term "committee" means any organization, association, or individual who accepts or makes a contribution or makes an expenditure for or against any question or issue appearing on the ballot at the next applicable election; or

(2) Any organization, association, or individual that raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any:

- (A) Candidate;
- (B) Individual who files for nomination at a later date and becomes a candidate; or
- (C) Party; and

subsequently contributes money or anything of value to, or makes expenditures on behalf of, the candidate, individual, or party.

Notwithstanding any of the foregoing, the term "committee" shall not include any individual making a contribution or expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart, or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising.

⁷⁹ HRS section 11-194(e).

⁸⁰ Section 14(a)(2), page 22.

- An individual making a contribution or expenditure of the individual's own funds is not required to register with the Commission and report under the current law except in one circumstance.⁸¹ But the individual appears to be a "person" required to register and report under this bill if the individual's independent expenditures exceed \$1,000 in an election period.
- Individuals incurring more than \$1,000 in independent expenditures and existing noncandidate committees would be required to file the reports required under both the current law and this bill as follows:

Current law			H.B. 661, H.D. 1
Due date	Reporting period	Report	
July 30, 2008	January 1 through June 30, 2008	1 st Preliminary Primary	
September 10, 2008	January 1 through September 5, 2008	Preliminary Primary	
September 17, 2008	September 6 through September 16, 2008	Late Contributions Report	
September 20, 2008			"Commencing <u>forty-five days before the general election day</u> , noncandidate committees, parties, and any other persons that incur independent expenditures that expressly advocate the nomination, election, or defeat of a certified candidate shall file an <u>independent expenditure report</u> with the commission within twenty-four hours when expenditures exceed \$1,000 in aggregate in an election period."
Multiple undetermined dates		Multiple reports due	"Thereafter, noncandidate committees, parties, and any other persons that incur independent expenditures, including verbal expenditure commitments, shall file <u>supplemental independent expenditure reports</u> within twenty-four hours whenever the aggregate expenditures exceed \$100. The independent expenditure reports shall identify the nonparticipating

⁸¹ A "committee" does not "include any individual making a contribution or expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart, or any organization, which raises or expends funds for the sole purpose of the production and dissemination of informational or educational advertising." HRS section 11-191. "Every person who makes a disbursement for electioneering communications in an aggregate amount greater than \$2,000 during any calendar year" must file a statement of information with the Commission. HRS section 11-207.6.

⁸³ Section 14, page 22. The \$1,000 threshold was added in the HD 1; the bill, as introduced, did not specify an amount.

			candidate or certified candidate for whom the independent expenditure is intended to influence the nomination, election, or defeat.” ⁸³
October 10, 2008	September 6 through September 20, 2008	Final Primary Report	
October 27, 2008	September 21 through October 20, 2008	Preliminary General Report	
November 3, 2008	October 21 through October 31, 2008	Late Contributions Report	
December 4, 2008	October 21 through November 4, 2008	Final Election Period Report	

IV. Once the \$300,000 cap is reached, all certified candidates may accept private contributions

There is a \$300,000 cap for all disbursements (base and equalizing funds) to all certified candidates.⁸⁶

If “the commission determines that revenues are insufficient to meet distributions to certified candidates under this section, the commission shall either permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding.”⁸⁷

The bill further specifies that “if the commission determines there are insufficient funds to meet the potential need for equalizing funds for all certified candidates, the commission shall permit each certified candidate to accept and spend private contributions, subject to the campaign contribution limitations set forth in section 11-204, Hawaii Revised Statutes, up to the equalizing funds the certified candidate would have received from comprehensive public funding.”⁸⁸

We have these comments regarding the cap

- Thus, once the cap is reached (e.g., approximately 15 candidates with no equalizing funds; there were 23 candidates in 2006), all certified candidates would be allowed to raise private contributions.
- The second reference regarding the solicitation of private contributions is superfluous and should be deleted; moreover it provides the commission with a different standard (“the potential need”).

⁸⁶ Section 12(a), page 17.

⁸⁷ Section 12(b), page 18.

⁸⁸ Section 14(d) Pages 23-24

V. Sanctions – fines, penalties, and criminal prosecution – against a certified candidate; and a participating candidate and other persons

This bill provides numerous sanctions against both a certified candidate; and a nonparticipating candidate and other persons.

“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.

A certified candidate who spends or incurs an obligation to spend more than one hundred per cent of the public funds allocated to the candidate under this Act shall repay to the Hawaii election campaign fund established under section 11-217, Hawaii Revised Statutes, an amount equal to three times the excess expenditures.”⁸⁹

“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; and

(2) Be subject to fines and penalties as specifically provided in this Act and other fines or penalties pursuant to sections 11-228 and 11-229, Hawaii Revised Statutes.”⁹⁰

“If a nonparticipating candidate and the candidate's committee fails to file or files a false excess report or supplemental excess reports as required in this section, the commission, within twenty-four hours of verifying the failure or falsity, shall automatically disburse equalizing funds to any opposing certified candidate up to the maximum authorized under section 13.

Any nonparticipating candidate and the candidate's committee, noncandidate committee, party, or any other person that makes independent expenditures in a contested election involving a certified candidate who fails to file a report as required under this Act or files a false report shall be:

(1) Guilty of a misdemeanor;

(2) Subject to a fine of up to three times the amount of equalizing funds paid to the certified candidate; and

(3) Subject to any other fine or penalty pursuant to sections 11-228 and 11-229, Hawaii Revised Statutes.”⁹² (Emphasis added)

⁸⁹ Section 9(b) and (c), pages 14-15.

⁹⁰ Section 18, page 26.

⁹² Section 14(b) and (c), page 23.

"All reports required under subpart B of part XII of chapter 11, Hawaii Revised Statutes, and this Act for financial disclosure shall include the most recent bank statement from the financial depository holding the public funds." Section 16(B), page 25.

- This Committee should clarify if a report filed without the most recent bank statement is considered a false or unfiled report, resulting in the sanctions in the bill.
- The penalty for a late report will be a misdemeanor arrest, rather than an initial \$50 fine under the current law.

VI. Section 19, relating to rules; recommend deletion

"The commission shall adopt forms and rules pursuant to chapter 91, Hawaii Revised Statutes, as may be necessary to implement this Act, including the reporting requirements of section 13 and any restrictions on petty cash expenditures by the certified candidate."

We recommend that this section be deleted because the Commission currently is authorized to perform these functions under the current law:

"§11-193 Duties of the commission. (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;
- ...
- (9) To establish rules pursuant to chapter 91..."

VII. Section 21, relating to appropriations; recommend deletion

"There is appropriated out of the Hawaii election campaign fund the sum of \$100,000 or so much thereof as may be necessary for fiscal years 2008-2009, 2011-2012, and 2013-2014 for the campaign spending commission to provide additional staff positions and other assistance to support comprehensive publicly funded elections for the Hawaii county council and funding for the office of elections, or its designate, to verify the qualifying contributions from registered voters in a candidate's district.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act."

We recommend that this section be deleted because it is superfluous. If the Legislature makes a policy decision to pass this bill, the Commission and its staff will implement the provisions and coordinate with other agencies, including the office of elections.

VIII. Section 22; recommend deletion

“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. In addition to the reports required by section 11-210, Hawaii Revised Statutes, the campaign spending commission shall establish and provide administrative and staff support to an independent, nonpartisan review committee to undertake a substantive review of the functioning of the comprehensive public funding program established under this Act following each election in which the comprehensive public funding option is used. The review committee shall report to the legislature no later than twenty days prior to the convening of the next regular session following each election when the comprehensive public funding option is made available. The report shall include:

- (1) Suggested amendments to this Act that may address the need to improve equalizing public funding to match independent expenditures and any excess expenditures of publicly funded and nonparticipating candidates;
- (2) Suggested amendments to this Act that will extend publicly funded campaigns to other state and county elections;
- (3) A summary and evaluation of the commission's activities and recommendations to enhance the effective and timely administration and enforcement of this Act; and
- (4) An examination of mechanisms for increasing revenues of the Hawaii election campaign fund, including methods used in other states.

The campaign spending commission shall gather data from the county clerk of Hawaii to gather data and submit a report to the legislature no later than twenty days prior to the start of the next regular session after each election.

The legislative reference bureau shall assist the campaign spending commission in drafting any proposed amendments to this Act.”

We recommend that this section be deleted because the Commission currently is authorized to perform these functions under the current law and it incurs additional unnecessary costs for the program.

“§11-193 Duties of the commission. (a) The duties of the commission under this subpart are:

- ...
- (11) To administer and monitor the distribution of public funds...”

IX. Additional comments regarding H.B. No. 661, H.D. 1, S.D.1

A. Adequate funding must be provided for the comprehensive public funding program

(1) Current status of the Hawaii Election Campaign Fund

The Hawaii Election Campaign Fund (Fund) had a balance of \$5,469,345 as of December 31, 2007.

The current sources of funding are:

- The voluntary state income tax return check-off;
- Fines and penalties;
- Interest; and
- Excess, surplus, false name and anonymous contributions.

The income tax check-off is the primary source of revenue for the Fund. The percentage of taxpayers that use the check-off has steadily declined since the inception of the program and currently is less than 15%. The check-off provides funding of approximately \$200,000 per year.

Fines and penalties provided a greater amount of funding in the past year, but this source may not be sustainable because compliance with laws should increase.

Interest income was about \$220,000, based upon the current 3% rate and the Fund's current balance.

Moneys in the Fund may be used for partial public financing; and operating expenses of the Commission. \$122,000 in public funds were paid out to twenty-one candidates in 2006; nine were elected to office. Current operating expenses are approximately \$650,000 per year.

(2) H.B. No. 661's impact on the Fund

a. Increase Fund's receipts⁹³

This bill would result in other small sources of revenue for the Fund, primarily the deposit of candidates' qualifying contributions in the Fund;⁹⁶ and fines for violating the new law.

b. Increase Fund's expenditures

(1) Administrative expenditures

Section 21 appropriates "out of the Hawaii election campaign fund the sum of \$100,000 or so much thereof as may be necessary for fiscal years 2008-2009, 2011-2012, and 2013-2014 for the campaign spending commission to provide additional staff positions and other assistance to support comprehensive publicly funded elections for the Hawaii county council and funding for

⁹³ H.B. No. 661 is virtually identical to another bill that would provide comprehensive public funding - H.B. No. 765 (S.B. No. 1055 is the companion bill). The main difference is that H.B. No. 765 amends the general excise tax law to provide a \$2 million annual deposit into the Hawaii Election Campaign Fund; while H.B. No. 661 does not have that language.

⁹⁶ Section 7(d), page 11.

the office of elections, or its designate, to verify the qualifying contributions from registered voters in a candidate's district.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.⁹⁷

(2) Amount of comprehensive public funding requests capped at \$300,000

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 Act in any given election year in which this Act is operative.⁹⁸

3. Increases in partial public funding will impact on the Fund

S.B. No. 1068, S.D. 1, H.D. 1¹⁰² and S.B. No.1549¹⁰³ propose to raise the expenditure limits for the first time in twelve years, which will raise the amount of public financing. One of the charts that are attached shows the amount of increased public funds available under H.B. No. 1130 S.D.

⁹⁷ Section 21, page 27-28.

⁹⁸ Section 12 (a), page 17.

¹⁰² S.B. 1068, S.D.1, H.D. 1 passed both the Senate and House in 2007 and is presently in Conference. The S.D. 1 version of the bill proposed to amend section 11-218 to increase the expenditure limit to 50% for candidates for the House of Representatives and the expenditure limits by 4% for other offices. The H.D. 1 version of the bill proposed to amend section 11-218 to increase the expenditure limit to 50% for candidates for the House of Representatives and the expenditure limits by an unspecified amount for other offices.

¹⁰³ S.B. No. 1549 proposed to increase the maximum amount of public funds available by amending HRS §11-218, relating to candidate funding, amounts available. The amounts available are determined by multiplying the expenditure limits for offices (established in HRS §11-209) by percentage amounts which vary according to the office sought (under current law, 10% for the office of the governor, lieutenant governor, and mayor; and 15% for the office of state senator, state representatives, council member, and prosecuting attorney). S.B. No.1549 proposed to increase those amounts by 4%.

1 to candidates for all offices. Assuming that there are two candidates for each office (e.g., governor, mayor, council) and that each candidate qualifies for the maximum amount of partial public financing in the primary and general election, expenditures from the Fund could increase to \$4 million for a two-year election period, for partial public financing alone.

4. 2008 Legislative proposal to decrease source of funding

S.B. No. 2579 proposes that fines paid for campaign law violations be deposited into the general fund, rather than the Fund.

5. 2008 Legislative proposals to increase funding requests

- SB No. 2607 provides full public funding for candidates for delegates for the constitutional convention.
- S.B. No. 2617 allows candidates for delegates for the constitutional convention to qualify for partial public financing.

B. Adequate time must be provided to administer and implement a comprehensive public funding program

This bill has an effective date of January 1, 2010.¹⁰⁴

If the Committee intends to pass this bill, we note that there will be additional duties and responsibilities for the Commission. In our preliminary review, we have identified the following:

1. All qualifying contributions shall be deposited in the Hawaii Election campaign fund. This may result in the preparation and mailing of thousands of receipts.
2. The application for certification must have 200 signatures and addresses which must be reviewed and verified, in the case of a Hawaii county council candidate. Applications may be submitted to the Commission up to 30 days prior to the primary election.
3. The Commission must make a decision to certify within five business days of receiving an application.
4. Seed money is limited to \$3,000. These amounts will have to be tracked.
5. Surplus campaign funds may be used for seed money and limited in-office communications. Other uses are prohibited and separate reports will have to be filed if a candidate has surplus fund. Surplus funds will have to be tracked.
6. The Commission must post on its website, beginning on January 1 in the election year, monthly reports stating, by district the number of declarations of intent to seek public financing received, the number of applications received, the number of candidates certified for public funds, the base amount certified for each candidate, and the amount available for additional certified candidates.

¹⁰⁴ H.B. 661, as introduced, would have been effective on July 1, 2007.

7. Equalizing funds must be disbursed when a nonparticipating candidate's expenditures and independent expenditures supporting the nonparticipating candidate or opposing the certified candidate exceed the base amounts allotted to the participating candidate. The Commission, therefore, must track and investigate all independent expenditures of all committees and individuals that support the nonparticipating candidates. This would encompass, among other things, daily review of all media advertisements (e.g., television, radio, and newspaper).
8. Equalizing funds must be disbursed within 24 hours; the processing must be done immediately without sufficient time to verify information that is provided. The Commission has no authority or mechanism to disburse funds; this must be done by the Department of Accounting and General Services.
9. To implement the initial excess report, the Commission will have to develop a new report form and business requirements for modifications to the electronic filing system. When filed, the Commission must review these new reports, send appropriate letters where required, track responses, and investigate for violations.
10. To implement the supplemental excess reports, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
11. To implement the independent expenditure report, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
12. To implement the supplemental independent expenditure report, the Commission will have to develop a new report form for the electronic filing system, review these new reports, send appropriate letters where required, track responses, and investigate for violations.
13. Within 24 hours of verifying the failure to file a report, or falsity of report, the Commission shall automatically disburse equalizing funds.
14. The Commission must conduct investigations of failure to file a report (which would be a misdemeanor) and false reports.
15. The Commission must adopt rules to compute the equalizing funds and then compute all funds.
16. The Commission must hire, train and supervise an auditor and systems analyst; create new reports and integrate the reports into the online filing system; and purchase equipment for the new staff members; and locate additional office space.
17. The Commission must hire, train and supervise an employee to administer the public funding program; create an online filing system; and purchase equipment for the administrator.
18. The Commission must create all forms and receipts, create a candidate's guide, and provide training classes.
19. The Commission must establish an independent, nonpartisan review committee for the comprehensive public funding program; and provide administrative and staff support to the committee.
20. The Commission must develop a comprehensive report for the legislature on the comprehensive public funding program.

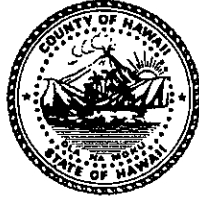
BOB JACOBSON

Councilmember

Chair, Environmental Management Committee

Vice-Chair, Finance Committee

Vice-President Hawai'i State Association of Counties



333 Kīlauea Avenue, Second Floor
Ben Franklin Building, Hilo, Hawai'i 96720

Mailing Address: 25 Aupuni Street, Suite 200

Phone: (808) 961-8263

Fax: (808) 961-8912

E-Mail: bjacobson@co.hawaii.hi.us

HAWAI'I COUNTY COUNCIL

County of Hawai'i

March 25, 2008

Committee on Ways and Means

Senator Rosaly H. Baker, Chair

Senator Shan S. Tsutsui, Vice Chair

And, Member

Hearing Thursday, march 27, 2008 at 9:45 a.m.

Re: HB 661 HD 1 SD 1, Relating to Campaign Spending

I strongly support House Bill 661 HD1, SD 1 which creates a pilot comprehensive public funding program for elections to the Hawaii County Council in 2010, 2012 and 2014. It establishes qualifications, limitations on funding and use of funds and sets reporting requirements. The Hawaii County Council passed Resolution 439-08 to have publicly funded elections in place for the 2010 elections. I believe that public funding will allow non-traditional candidates who don't have the economic means or connections to people with money to run for public office.

Thank you for your continued support for this important piece of legislation.

Sincerely,

A handwritten signature in cursive script that reads "Bob Jacobson".

Bob Jacobson

Hawaii County Council

District 6

Puna, Ka'u, and South Kona



Conservation Council for Hawai'i

Testimony Submitted to the Senate Committee on Ways and Means

Hearing: Thursday, March 27, 2008

9:45 am

Conference Room 211

Support for HB 661 HD 1 SD 1 Relating to Campaign Spending

Aloha. Thank you for hearing HB 661 HD 1 SD 1. The Conservation Council for Hawai'i supports this bill, which provides public financing for a pilot program for Hawai'i County Council races. Publicly financed campaigns will allow more people to run for office because they will be able to afford it. Publicly financed campaigns will allow elected officials to focus on their jobs and the public interest instead of raising money for the next election.

The Hawai'i County Council recently passed a resolution asking for publicly financed campaigns for its elections. But the Legislature must authorize this. Therefore, please pass HB 661 HD 1 SD 1 out of committee. Mahalo for the opportunity to testify.

Sincerely,

Marjorie Ziegler



Working Today for the Nature of Tomorrow!

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www.conservehi.org
P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 212 • Honolulu, HI 96814

Hawai'i Affiliate of the National Wildlife Federation

President: *Julie Leialoha* * Vice-President: *Nelson Ho* * Secretary/Treasurer: *Kim Ramos* * Directors: *Fred Kraus, Ph.D.* * *Douglas Lamerson,*
George Robertson * *Claire Shimabukuro* * *Helene Takemoto* * *Mashuri Waite* * Executive Director: *Marjorie Ziegler*

LIFE OF THE LAND

Ua Mau Ke Ea O Ka `Aina I Ka Pono

The Sovereignty of the Land is Perpetuated in Righteousness

76 North King Street, Suite 203, Honolulu, Hawai'i 96817

Phone: (808) 533-3454 * E-Mail: henry@lifeoftheland.net

COMMITTEE ON WAYS AND MEANS

Sen. Rosalyn Baker, Chair

Sen. Shan Tsutsui, Vice Chair

Thursday, March 27, 2007

9:45 AM

Room 211

SUPPORT HB 661 HD1,SD1- PUBLICLY FUNDED ELECTIONS

Aloha Chair Baker, Vice Chair Tsutsui and Members of the Committee!

Life of the Land, Hawai'i's own environmental and community action group advocating for the people and the `aina since 1970. Our mission is to preserve and protect the life of the land through sustainable land use and energy policies and by promoting open government through research, education, advocacy, and litigation.

HB 661 HD1, SD1 creates a pilot comprehensive public funding program for elections to the Hawai'i county council in 2010, 2012, and 2014. Establishes qualifications, limitations on funding and use of funds, and reporting requirements. Makes appropriation of \$100,000 for each of the three election years.

Life of the Land supports this measure. Too much money is influencing legislation that affects everyone. In 1998, 79 percent of all races were won by the candidate with the most money. The public funding movement has been an overwhelming success in other states around the nation. In Maine and Arizona, a public funding option was adopted for all state races including Lt. Governor and Governor. Public funding has also taken root in Oregon, New Mexico, New Jersey and North Carolina. Public funding has opened the door for more women and other minority groups to become involved in the political process. It has spurred voter participation, given voice to under-represented communities, and provided meaningful options in the selection of our leaders.

This is not a partisan issue as both Democrats and Republicans benefited from publicly funded elections, also known as Voter Owned Elections. Nationally twenty-two Republicans and 17 Democrats won using public funding.

Publicly funded elections increase voter turnout. From 1998 to 2002 national voter turnout increased 24%. That would be a boon to Hawai'i's dismal voting numbers. And, more importantly, it will increase citizen participation in civic issues. One look at the excitement of the recent presidential primary in Hawai'i should be an indication that people *want* to be engaged. They want to participate. Perhaps when people feel truly invested in our electoral process they will become more involved. This can only further the aims of a true representative democracy.

Congratulations to Hawai'i County for stepping up to plate on this one. Let's support democracy by supporting their courage to try something new.

Mahalo for this opportunity to testify.

testimony

From: art@hawaiiart.com on behalf of Glen Carner [glen@hawaiiart.com]
Sent: Tuesday, March 25, 2008 3:07 PM
To: testimony
Subject: HB 661 HD1 SD1 is the right thing to do

I would like to offer my sincere thanks to those of you who support public campaign financing bill **HB 661 HD1 SD1** . This is the most important issue to me as a voter and it is great to see the Big Island taking the lead against entrenched politicians who wish to preserve their own future rather than supporting a more open democratic process. Your courage is duly noted and keep up the good work. Today I feel great about my local government.

Mahalo nui,

Glen Carner
www.HawaiiArt.com
Hawaii's Online Art Gallery
(808) 345-6333

Date of Hearing: March 27, 2008

Time: 9:45 a.m.

Committee: Ways and Means

Place: Conference Room 221

Agency Testifying: Individual: Beppie Shapiro, Ph.D.

Title: HB 661 HD1 SD1: Strong Support

Chair Baker; Vice Chair Tsutsui; members of the Committee:

Thank you for the opportunity to address the Committee. I am testifying in support of HB 661 HD1 SD1.

This bill pertains to elections for the Big Island County Council. It sets up a system to allow Council candidates WHO CHOOSE to abide by certain fund-raising restrictions, and who meet certain qualifying criteria, to receive full public funding for their campaign at a competitive level, based on costs of past elections. At last candidates could, if they choose, get off the treadmill of fund-raising with its inherent appearance of special treatment for large contributors. The Big Island Council wants to try out this system. It will not result in any charges to the General Fund, since funds will only come from the Election Fund (tax check-off). I urge you to pass this bill to support a promising local government initiative.

.....
Beppie J. Shapiro

Senate WAM
Thursday, March 27th, 2008
9:45 am Conference Room 211

Honorable Chair Rosalyn Baker, Vice Chair Tsutsui
& Members of the Senate WAM Committee:

I am testifying in strong support of HB 661 HD1 SD1 which would create a comprehensive public election financing pilot program for the Hawai'i County Council.

My understanding is that the proposal before you requires funding for two new staffing positions within the Campaign Spending Commission, with the actual campaign financing coming from the Campaign Spending Special Fund, which has a surplus balance of \$5.5 million dollars.

I hope you will (WAM!) pass this bill upon seeing, in your wisdom, that the current belief of Campaign Spending Director Barbara Wong ("sure it's a good idea, but it costs too much") is not the real concern to be focused on.

The real concern is the steady stream of favorable press coverage the concept of comprehensive public election financing has gotten since being first introduced in the Legislature over a half-dozen years ago.

Because people feel this bill strike at their core belief of *what democracy could be*; because this bill promises to raise the voice of the average citizen to that of special interest and remove *even the slightest perception* of corruption, the current media coverage of this issue is at its heaviest yet.

With editorial endorsements from *the Honolulu Weekly* and *the Honolulu Advertiser*, with my own favorable coverage as a freelance reporter for *the Big Island Weekly*, and with the hard work of citizen activists from across the islands, the State is at the closest point to enacting this major reform than in any other time in recent history -- but only with your help, if you believe in it.

HB 661 has a lot of support from "the Fifth Estate" because those of us who are paid to watchdog the political arena want to see what good will come out of it.

Please let us. Please pass HB 661 HD1 SD1.
(And please ask Speak Say to, as well.)

mahalo!
Shawn James Leavey
46-3767 Old Mamalahoa Hwy.
Honoka'a, HI 96727

testimony

From: david spafford [dspaf@hotmail.com]
Sent: Tuesday, March 25, 2008 5:44 PM
To: testimony
Subject: strong support for HB 661 HD1 SD1

I want to give my **strong support for HB 661 HD1 SD1.**

Thank you
Dr. David C. Spafford

Watch "Cause Effect," a show about real people making a real difference. [Learn more.](#)

To: Rosalyn Baker, Chair
Senator Shan Tsutsui, Vice Chair
Committee on Ways and Means

Hearing on 3/27/08 at 9:45 a.m., CR #211

From: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

Subject: **Testimony in favor of HB 661, HD1, SD1
RELATING TO CAMPAIGN SPENDING**

On behalf of the Hawai'i County Council, I urge you to pass House Bill 661, HD1, SD1. House Bill 661 creates a pilot project for the comprehensive funding of elections to the Hawai'i County Council. This pilot project will be in effect for election years 2010, 2012 and 2014. HB661 establishes qualifications, limitations on funding and the use of funds and other requirements for this pilot project.

The Hawai'i County Council is fully supportive of this measure. The Hawai'i Council affirmed their support of HB 661 by passing Resolution #41-07 on February 22, 2007 and Resolution #439-08 on January 24, 2008. Hawai'i County residents testified in strong support of these Resolutions. Also, various groups in Hawai'i County gathered over 1500 signatures in support of publicly funded elections.

Resolution #439-08 clearly states the Hawai'i County Council's position that the Council "does embrace the establishment of a "Comprehensive Public Funding for Elections" process for elections to the County Council of the county of Hawai'i and urges the 2008 Legislature of the State of Hawai'i to pass HB661 HD1 in a amended form that would allow for Comprehensive Public Funding of the 2010 Hawai'i County Council elections." For the most part, HB661, HD1, SD1 accomplishes the purpose and intent of Resolution #439-08.

The Hawai'i County Council offers the elections to Hawai'i Council seats to be a pilot project for the testing of the viability of comprehensive public funding for elections. The Hawai'i County Council stands behind the concept and behind the provisions that require each candidate to collect a donation of \$5.00 from each registered voter signing a petition in support of that candidate; that the signatures and donations come from at least 200 registered voters in the district in which the candidate is running for election; that the publicly funded election process be implemented in the year 2010 and that it run for three consecutive elections; and, that the funding for this pilot project be appropriated from the Hawai'i Election Campaign Fund. That fund exists for the purpose of publicly funding elections.

We are concerned about the limitation of no more than \$300,000 for comprehensive public funding in each election cycle. Hawai'i County Council has nine (9) Council Districts. Based on an average of \$21,105 per seat, if just one candidate per District took advantage of this

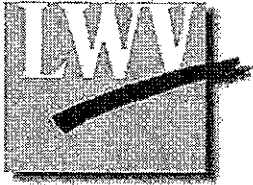
funding, the cost would be \$189,945. If two candidates per District applied for and qualified for the funding the cost would be \$379,890. We hereby request that the expenditure ceiling remain at \$500,000 as previously contained in HB 661, HD1.

In their testimony on HB661, HD1, the Campaign Spending Commission reported that they currently have \$5,469,345 [as of 12/31/08]. They also reported: 1) they receive approximately \$200,000 per year from income tax check off contributions; and, 2) they receive approximately \$220,000 per year from interest on the \$5 million dollars. By their own figures, the Commission brings in approximately \$820,000 per two year election cycle. They have sufficient funds to cover our request without touching the \$5 million they have already placed in savings.

It should be noted that it is highly likely the income tax check off contributions will increase once the public sees that the funds are being used to provide for comprehensive public funding of elections.

The Hawai'i County Council urges you to raise the comprehensive public funding ceiling to \$500,000 and we urge you to pass HB661,HD1,SD1.

Thank you for your support.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

WRITTEN TESTIMONY ON H.B. 661, SD1 RELATING TO CAMPAIGN SPENDING

Committee on Ways and Means
Senator Rosalyn H. Baker, Chair
Senator Shan Tsutsui, Vice Chair
Thursday, March 27, 2008 9:45 a.m.
Conference Room 211

Chair Baker, Vice Chair Tsutsui, members of the Senate Ways and Means Committee,

The League of Women Voters strongly supports H.B. 661, HD1, SD1 which would initiate a comprehensive public funding of election campaigns for candidates for Hawaii County Council in 2010, 2012, and 2014 as a pilot program.

It is time, after years of reviewing the concept of full public funding of election campaigns to really test the program. Not only is the time ripe for such a program, we have incumbents in a certain county enthusiastic about running a campaign under the funding proposals and strict rules of a program that has spelled relief from the demands of fund raising and the obligations that private funding can bring.

Many legislative leaders and serious observers of Capitol Hill and the White House have been calling for the public funding of Congressional elections and the updating of provisions and financing of the presidential election campaign funding program. The amount of time spent in fund raising by individual representatives and senators is enormous, and coupled with shortened work weeks and numerous recesses, there is no wonder that they seem to get very little done. Even more disturbing is the perception of national policies determined by members of corporations and industrial leaders who give generously to election campaigns and parties. There have been too many cases of corruption of members of the ruling class by generous donors.

We think that with the public funding of election campaigns, our politicians can recapture the aura of statesmen and stateswomen of yore, bringing more respectability and luster to the word "politician." Let's give it a try. We have nothing to lose and everything to gain.

We urge you to pass H.B.661, HD1,SD1.

Thank you for this opportunity to support this bill.

Jean Aoki, Legislative Chair
League of Women Voters.



Sierra Club

Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON WAYS AND MEANS

March 27th, 2008, 9:45 A.M.

(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 661 HD1 SD1

Chair Baker and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports HB 661 HD1 SD1, allowing the County of Hawai'i to adopt a publicly funded election process. We believe that publicly funded elections help to remove the pressures of raising campaign donations from individuals or companies that seek to influence the behavior of elected officials. While the Sierra Club's mission is to keep Hawaii's environment clean, it is becoming clearer that the mission can't be achieved with special interests financially backing Hawaii's lawmakers.

At the state and county levels, it is clear that money influences politics. To avoid impugning any current elected official, this testimony will share an older example. On the November 6, 1997, 10pm broadcast of KHON-2 News it was reported, "Bank of Hawaii's Larry Johnson says his bank powerful political action committee will support the re-election of lawmakers who vote for the task force (*Economic Revitalization Task Force*) recommendations and withhold contributions from those who do not." Such a statement is nothing short of bribery. HRS 710-1040 defines bribery as follows:

"(a) The person confers, or offers...pecuniary benefit upon a public servant with the intent to influence a public servant's vote, opinion, judgment, exercise of discretion, or other action in the public servant's official capacity."

Such inappropriate influence from campaign donations continues today. Even the perception of impropriety—actions based on campaign donations instead of citizen representation—harms our democratic processes as citizens question decisions and lose interest in the political process. By allowing the County of Hawaii to test a pilot project for public funding for elections, House Bill 661 HD1 SD1 will help remove pressure on both elected officials to raise funds and individuals and corporations from having to make donations. We believe it will also increase citizen faith in the democratic process and deliberative decision making.

House Bill 661 HD1 SD1 is consistent with the Sierra Club's principles on campaign finance reform: public financing for campaigns and limits on donations and gifts. We encourage its passage.

Thank you for the opportunity to testify.

testimony

From: kory@voterownedhawaii.org [kory.payne@gmail.com]
Sent: Wednesday, March 26, 2008 12:08 PM
To: testimony
Subject: Strong Support for HB 661 HD1 SD1

Chair Baker
Vice Chair Tsutsui & Members of the Committee Hearing Thurs, March 27, 9:45 am, Rm 211

I'm writing to voice strong support for HB 661 HD1 SD1.

This bill addresses all monetary concerns.

1. The Hawaii Election Campaign Fund currently holds \$5.5 million and adds approximately another \$2.7 every two years. This money comes from the voluntary tax check offs, as well as from interest accrued on the account.
2. Hawaii County is asking for a ceiling of \$500,000 every two years. And with \$100,000 set aside each year for staff and resources, the maximum this program could possibly cost would be \$700,000 every two years, or seven tenths of one million dollars.

Also, as election laws are all subject to the jurisdiction of the state, and because this voluntary fund has more than enough money in it, it is inappropriate to suggest that the County itself pay for this program.

The people of the state of Hawaii place trust in the state to manage the public funding system for elections in a manner that serves the public well. Running a pilot program on the Big Island is the right thing to do, and the money is there to do it.

Thank you,

Kory Payne
Community Organizer, Voter Owned Hawaii
945 Lunahai Pl
Kailua, HI 96734

808-457-8622

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Kory Payne
Voter Owned Hawaii
Community Organizer
cell: 808-457-8622
<http://voterownedhawaii.org/>

testimony

From: Barbara Polk [ednbarb8@earthlink.net]
Sent: Tuesday, March 25, 2008 10:22 PM
To: testimony
Subject: HB 661 HD1 SD1, WAM hearing Thursday 9:45

TO: Chair Rosalyn Baker and Vice Chair Shan Tsutsui
Members of the Senate Ways and Means Committee

FROM: Barbara Polk, Legislative Committee Chair
Americans for Democratic Action, Hawaii Chapter

SUBJECT: SUPPORT FOR HB 661 HD 1 SD 1

Thank you for hearing HB 661 HD 1 SD 1 Relating to Campaign Spending.

Americans for Democratic Action, Hawaii Chapter, strongly supports publicly financed elections. In States and communities where public financing is available to candidates, the result has been a broader representation of the public among political candidates, greater trust in government, and more active citizen participation—in other words, increased democracy. Public financing of election campaigns, on a voluntary basis, can go far to restore faith in our democracy in the State of Hawaii.

We are pleased that the Hawaii County Council has requested the State Legislature to allow it to become a test case for public financing of elections. There is no reason not to grant this request: funds, which have been donated for this purpose, are available in the Election Campaign Fund and candidates can choose whether or not to participate.

We strongly urge you to pass this bill.

testimony

From: Windward Ahupua`a Alliance [info@waa-hawaii.org]
Sent: Wednesday, March 26, 2008 5:52 PM
To: testimony
Subject: HB 661 HD1 SD1 - RELATING TO CAMPAIGN SPENDING

Submitted by:

Shannon Wood,
P.O. Box 1013
Kailua, Hi 96734
Cellular: 808/224-4496

COMMITTEE ON WAYS AND MEANS

Sen. Roslyn Baker, Chair
Sen. Shan Tsutsui, Vice Chair

Notice of Decision-Making
9:45 am
Thursday, March 27, 2008
Conference Room 211

HB 661 HD1 SD1 - RELATING TO CAMPAIGN SPENDING
Support

TO THE COMMITTEE ON WAYS AND MEANS:

My name is Shannon Wood, a Kailua, O`ahu resident, speaking only as an individual on my own behalf and not representing any group or organization.

Even though I support the intent of **HB 661 HD1 SD1 - RELATING TO CAMPAIGN SPENDING** and urge that it move forward for further discussion, I continue to have concerns about the limitations in this draft since it is unclear as to why three election cycles are needed before evaluating the effectiveness. It also seems unfair to limit it to one county when the issues are the same in the other three.

Please insert language in the bill to allow for evaluations and reports following the 2010 and 2012 election cycles to the *Legislature*. This way, the members can tweak or even expand the law if things are going well.

Mahalo for the opportunity to present this testimony for the **Committee's** consideration