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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
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March 28, 2008

TO: The Honorable Marcus Oshiro
Members of the House Finance Committee

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

SUBJECT: Testimony on S.B. No. 2579, S.D. 2, H.D. 1, Relating to a Campaign Spending

Monday, March 31, 2008
3:30 p.m. in Conference Room 325

Chair Oshiro and Members of the House Finance Committee, thank you for the opportunity to testify on this bill.

This bill proposes to:

- Increase late filing penalties (Section 1); and
- Deposit fines paid for campaign law violations into the general fund (Sections 1, 2, 4, and 5).
- Make technical changes to conform to electronic filing requirements (Section 3)
- Proposes to increase the check-off on state income tax returns to the Hawaii Election Campaign Fund (Section 6).

This bill has a defective effective date of July 1, 2050. The Campaign Spending Commission ("Commission") supports the bill and requests that bill be effective upon approval.

Strongly support increase in late filing penalties (Section 1 of the bill)

Under the current law (Section 2, pages 4 to 5 of the bill), a \$50 fine is imposed if a committee's report is filed late. If the Commission publishes notice in the newspaper and on its website, a committee is also subject to a fine of \$50 for each day that a report remains overdue or uncorrected. While most committees file reports on a timely basis, there are committees that do not file timely reports; this defeats the law's disclosure requirements which are at the heart of the campaign spending law.

In order to ensure the filing of timely reports, section 1 of this bill proposes to increase the fines.¹

- The penalty for not filing a report by the due date would increase to \$50 per day for the first seven days beginning with the date after the due date of the report and, thereafter, \$200 per day, not to exceed 25 percent of the total contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty for a report filed more than four days after the due date shall be \$200. However, if a committee does not file the reports due within ten days of an election (the second preliminary primary report or the preliminary general report in the case of a candidate committee; or the preliminary primary report or the preliminary general report in the case of a noncandidate committee) by the due date, the fine shall be \$300 per day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty shall be \$300.
- The bill provides that the Commission shall provide notice of a substantially defective or deficient report. If the corrected report is not filed with the commission's electronic filing system on or before the fourteenth day after the notice of deficiency has been mailed, the penalty for a substantially defective or deficient report shall be \$50 per day for the first seven days beginning with the fifteenth day after the notice was sent and, thereafter, \$200 per day, not to exceed 25 percent of the total contributions or expenditures, whichever is greater, for the period covered by the report; provided that the minimum penalty for not filing a corrected report more than eighteen days after the notice was sent shall be \$200.

Deposit of fines in the general fund; replacement revenue requested (Sections 2, 3, and 4 of the bill)

We are not opposed to the deposit of fines in the general fund if we receive a regular source of funding for the Hawaii Election Campaign Fund in place of fines to avoid the "conflict" that the Commission was previously faced with which required the Commission to request an appropriation from general funds on an annual basis from the same persons that the Commission regulates.

We are hopeful that the increase in the check-off on state income tax returns to the Hawaii Election Campaign Fund from \$2 to \$3, and from \$4 to \$6 for joint returns proposed in section 6 of this bill will replace the amount of fines that are currently deposited in the Hawaii Election Campaign Fund.

¹ The Commission proposed this amendment in S.B. No. 2203; this amendment was inserted in S.B. No. 2579 by the Senate Committee on Judiciary and Labor.

Support technical change to conform to electronic filing (Section 3)

The enactment of Act 200, Session Laws of Hawaii 2007 ("Act 200"), made Hawaii one of the most transparent states in the nation with respect to campaign financing by repealing certain exemptions from electronic filing for candidate committees and extended electronic filing to all noncandidate committees. The Legislature should be commended for the passage of that law which allows the public to review all reports electronically. Prior to electronic filing, reports were kept in filing cabinets at the Commission's office and could be reviewed only by visiting the Commission's office. Section 3 provides a technical change to further implement Act 200.

Increase tax check-off

This bill proposes to amend Hawaii Revised Statutes ("HRS") § 235-102.5(a) to increase the check-off on state income tax returns to the Hawaii Election Campaign Fund ("Fund") as follows:

"(a) Any individual whose state income tax liability for any taxable year is [~~\$2~~] \$3 or more may designate [~~\$2~~] \$3 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax liability of [~~\$4~~] \$6 or more, each spouse may designate that [~~\$2~~] \$3 be paid to the fund..."²

The income tax check-off for the Fund was enacted in Act 224, Session Laws of Hawaii 1979 (Act 224). The Legislature subsequently added three other check-offs for the school-level minor repairs and maintenance fund,³ the libraries special fund,⁴ and the domestic violence and child-abuse fund.⁵ There is at least one proposal in the 2008 Legislature for another check-off.⁶

² This bill as introduced, proposed to increase the check-off amounts to \$5 for individual taxpayers and to \$10 in the case of a joint return.

³ Act 311, SLH 2001.

⁴ Act 193, SLH 2003.

⁵ Act 228, SLH 2004.

⁶ H.B. No. 3025 proposes to allow individuals to designate an unspecified amount of their income tax refund to provide funds for the University of Hawaii.

The Fund currently provides partial public financing to candidates and the Commission's operating expenses.⁷

The 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, and anonymous contributions.

The income tax check-off is the primary source of funding. The percentage of taxpayers that use the check-off has steadily declined since the inception of the program in 1979 and currently is less than 15%. The check-off provides funding of approximately \$200,000 per year and dipped below \$200,000 in 2007 for the first time since 1979.

Fines and penalties provided a greater amount of funding in the past, but this source has declined because compliance with laws should have increased.

Interest income in 2007 was about \$232,000, based upon the current 3% rate and the Fund's current balance.

⁷ HRS section 11-217.

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HOUSE COMMITTEE ON FINANCE

TESTIMONY REGARDING SB 2579 SD 2 HD 1 RELATING TO TAXATION

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: MARCH 31, 2008

TIME: 3:30PM

ROOM: 308

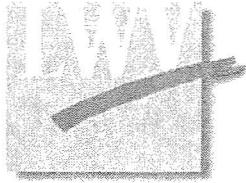
This legislation, among other things, increases the election fund contribution amount on state income tax returns for campaign spending purposes, to \$3 per person.

The Department of Taxation (Department) takes **no position** on this legislation and cites its revenue estimate.

Under current law, a taxpayer may elect on the final page of their Hawaii Net Income Tax return, to designate \$2 of the tax liability as a contribution to the Hawaii Election Campaign Fund. As required by law, the tax forms clearly denote that this contribution does not increase or decrease a person's tax liability. This mechanism serves simply as a person's participation in whether state funds shall be earmarked for campaign purposes.

Assuming this bill was to become effective in FY2009, there is an expected revenue loss of \$93,156 annually. Based on revenue information provided by the Department of Taxation, in FY2006, the election campaign fund generated \$186,312, or 93,156 boxes. The Department assumes the same number of people will contribute to the fund in FY2009.

	Amount Per Check Box	No. of Returns	Amount Collected		
			FY 2007	FY 2007	FY 2006
Hawaii Election Campaign Fund	\$2	91,651	\$220,406	\$186,312	\$220,490



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB 2579,SD2,HD1 RELATING TO CAMPAIGN SPENDING

Committee on Finance
Rep, Marcus Oshiro, Chair
Reo, Marilyn B. Lee Vice Chair
Monday, March 31, 2008 3:00 p.m.
Conference Room 308

Testifying: Jean Aoki

Chair Oshiro, Vice Chair Lee, members of the Committee on Finance,

The League of Woman Voters supports SB 2579, SD2, HD1.

We have, in previous testimony on this bill, praised the compliance enforcement measures included in this bill to encourage the filing of timely and complete reports by candidate and noncandidate committees. This not only helps the CSC staff devote their time to more productive work, it makes the reports available to the public sooner.

We still feel that the original intent of establishing the Election Campaign Fund has been compromised by first, using it to fund the Campaign Spending Commission's operations, and now , turning over funds collected through fines and penalties to the general fund. We fully agree with the House Judiciary Committee report that the transfer of fines and penalties to the general fund will jeopardize the sustainability of the Election Campaign Fund.

However, if the amendment to raise the check-off amount on state income tax returns that may be paid from an individual taxpayer's liability into the Hawaii Election Campaign Fund from \$2 to \$3, preferably \$5, is retained in this bill, in the interest of having the reporting compliance enforcement measures written into law, we would support this bill.

Thank you for the opportunity to testify on SB 2579 SD2, HD1.