



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

February 6, 2008

TO: The Honorable Brian Taniguchi
The Honorable Clayton Hee
Members of the Senate Committee on Judiciary and Labor

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

SUBJECT: Testimony on S.B. No. 2579, Relating to Campaign Spending

Wednesday, February 6, 2008
9:00 a.m. in Conference Room 016

Chair Taniguchi, Vice-Chair Hee, and Members of the Senate Committee on Judiciary and Labor, thank you for the opportunity to testify on this bill.

This bill proposes:

- That fines paid for campaign law violations be deposited into the general fund; and
- Additional requirements before fines may be imposed.

This bill would take effect on July 1, 2008.

Not opposed to deposit of fines in the general fund (Section 1, Section 2, and Section 3 of the bill), provided there is another source of continuing funds other than a general appropriation to the Hawaii election campaign.

Under the current law, fines collected by the Campaign Spending Commission ("Commission") are deposited in the Hawaii election campaign fund ("Fund"). The Fund provides partial public financing to candidates and provides the Commission's operating expenses.¹

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

The current sources of funding are:

- The \$2 voluntary state income tax return check-off;²

¹ HRS section 11-217.

² HRS section 11-217

- 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 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 the Fund was created in 1979.

Fines and penalties provided amounts of funding ranging from about \$100,000 to \$500,000 in past years.

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

We recommend a continuing source of revenue other than a general appropriation to avoid the "conflict" that the Commission was previously faced with which required the Commission to request funds on an annual basis from the same persons that the Commission regulates.

Opposed to adding requirements before fines may be imposed (Section 3 of the bill)

Currently, fines are authorized as follows:

- **A natural person may be fined an amount not to exceed \$1,000 for each occurrence or three times the amount of the unlawful contribution or expenditure, whichever is greater.**
- A corporation, organization, or labor union may be fined an amount not to exceed \$1,000 for each occurrence. Whenever a corporation, organization, association, or labor union violates the law, the violation shall be deemed to be also that of the individual directors, officers, or agents who knowingly authorized, ordered, or did any of the acts constituting the violation.

This bill proposes the following changes:

- Fines of up to \$1,000 for each occurrence may be assessed if a natural person or candidate's committee does not "disclose" the occurrence.
- Fines equivalent to three times the amount of the unlawful contribution or expenditure may be assessed against a natural person or candidate's committee "for willfully not disclosing or failing to correct a violation upon notice by the commission."
- A fine may be imposed on the candidate as a natural person or the candidate's committee, but not both.
- Clarification of the current statutory scheme which allows fines of up to \$1,000 for each occurrence against a corporation, organization, or labor union and

deeming such violations to be violations by the individual directors, officers, or agents who knowingly authorized, ordered, or did any of the acts constituting the violation.

We are opposed to these changes.

- Since taking over as the Executive Director, I reviewed all past fines and have recommended to the Commission fines that are consistent with past fines for campaign law violations.
- The term “disclosure” is not defined in the bill.
- If you commit a violation and report it, you get a free pass.
- This eliminates all administrative fines for any violation not involving disclosure.
- This drastically raises the standard of proof from the “preponderance of the evidence” to “beyond a reasonable doubt” when an intentional state of mind “willful” has to be proven.
- If a candidate commits a violation and the candidate’s committee commits a violation, one gets a free pass.
- In at least the past three years, when the candidate and the candidate’s committee has been named in a conciliation agreement, there has been one fine, not a total of two fines, one for the candidate, one for the committee. Naming both in the complaint and conciliation agreement holds parties responsible.
- The language in this bill limiting fines to either the candidate or the committee is puzzling. Hawaii Revised Statutes (“HRS”) §11-195(a) specifies that “reports required to be filed under this subpart...shall be certified by the candidate and treasurer.” The candidate, therefore, is responsible for reports filed by the committee.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

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Testimony on S.B. 2579 Relating to Campaign Spending

Committee on Judiciary and Labor
Wednesday, February 6, 2008
9 a.m. Conference Room 016

Testifier: JoAnn Maruoka, Legislative Team member, League of Women Voters of Hawaii

Chair Taniguchi, Vice Chair Hee, and members,

The League of Women Voters opposes those portions of S.B. 2579 that would cause collected fines from violations of campaign contributions and expenditures to be deposited in the state general fund instead of the Hawaii election campaign fund, as currently specified.

The three places in the bill that make this change are:

Section 1 subsection (a) (5) last sentence, which reads "All penalties collected under this section shall be deposited in the [~~Hawaii election campaign fund;~~] general fund of the State;"

Section 2, subsection (f) (3), which reads "The payment of any administrative fine payable to the [~~Hawaii election campaign fund;~~] general fund of the State;"

Section 3, paragraph 2 subsection (d), which reads "Any administrative fine collected by the commission shall be deposited [~~in the Hawaii election campaign fund;~~] into the general fund of the State;"

In all instances, we strongly recommend deleting the references to the "general fund of the State" and restoring the language in each to the original so that collected penalties and fines continue to go to the Hawaii election campaign fund.

We believe the existing process is appropriate and necessary, considering the source and relationship. There does not appear to be a compelling reason for this change. Rather, in view of the very real and growing citizen demand for public funding of campaigns, the need is to shore up the Hawaii election campaign fund. Regardless, collected fines from violations of campaign contributions and expenditures should not be diverted to the state general fund.

We strongly urge you to modify S.B. 2579 to reinstate the current language that specifies such penalties and fines will be deposited in the Hawaii election campaign fund. Thank you for the opportunity to testify.

Opposition to SB 2579

Dear Senators,

I write in strong opposition to SB 2579. Specifically, changing the payment of administrative fines to the General Fund rather than the Hawaii Election Campaign Fund is an indirect attack on the clean elections movement. Fines represent a significant portion of the funds available for public funding of elections. Of course, those interested in selling themselves to corporations instead of their constituents would like to deplete this resource - and thereby argue more vehemently that clean elections are not financially feasible.

Do not be fooled. Please do not be duped into depleting the Hawaii Election Campaign Fund.

The people of Hawaii are ready for clean elections.

Sincerely,

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LATE

Isaac W. Choy, CPA
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Before the Committee on Judiciary and Labor
Wednesday, February 6, 2008 at 9:00am
Conference Room 016

Support of SB 2579

Chair Taniguchi, Vice Chair Hee and other committee members.

I am testifying in support of this legislation.

This bill corrects two situations which does not affect the public's right to know.

First, it places the fines levied by the Campaign Spending Commission to the state general fund. Currently the fines assessed by the Campaign Spending Commission are placed in the campaign spending fund. This is clear conflict of interest since the Commission duties are to conduct investigations, hold hearings and levy fines.

Second, this bill embodies the sprit of the Campaign Spending Commission which is disclosure. At the present time there are over 200 possible violation of the campaign spending laws. This is leading to a night mare to candidates who are trying to abide by the law. This bill will give relief to the candidate who properly discloses every transaction. If the candidate inadvertently makes a mistake and violates the law, he has an opportunity to correct the violation within a reasonable time following notification by the commission.

This bill is an administrative relief bill and does not apply to any willful violations or undisclosed transactions.

Thank you for this opportunity to testify

Respectfully submitted.

Isaac W. Choy, CPA