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**STATE OF HAWAII  
CAMPAIGN SPENDING COMMISSION**

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HONOLULU, HAWAII 96813

February 22, 2010

TO: The Honorable Marcus R. Oshiro, Chair  
House Finance Committee  
  
The Honorable Marilyn B. Lee, Vice-Chair  
House Finance Committee  
  
Members of the House Finance Committee

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

**SUBJECT: Testimony on H.B. No. 2003, H.D. 1 Relating to Campaign Financing<sup>1</sup>**

Monday, February 22, 2010  
2:30 p.m., Conference Room 308

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

We strongly support this bill and urge the Committee to pass the bill, though we recommend that the Committee make several changes to the bill as follows:

- Amend §11-HH, to reflect the current law in HRS section 11-205.5 which prohibits contributions from state and county contractors;
- Restore the \$1,000 contribution limit to noncandidate committees; and
- Delete the provision in §11-TT relating to donations to public schools; or amend the language as proposed below in our testimony.

H.B. 2003, H.D. 1 updates, organizes, and clarifies the current campaign finance laws and is drawn from H.B. No. 128, CD2 which was passed by the 2009 Legislature but vetoed by the Governor.<sup>2</sup> H.B. 2003, H.D. 1 would be applicable to reporting periods beginning after November 2, 2010.

<sup>1</sup> The companion is S.B. No. 2251 which is a single referral bill to the Senate Committee on Judiciary and Government Operations. A hearing was held on the bill and decision making is scheduled for Monday February 22 at 11:00 a.m.

<sup>2</sup> We met with Linda Smith, the Governor's Senior Policy Adviser, and a member of her staff prior to the start of the 2010 session to brief her on the contents of this bill and to further address the four concerns in the Governor's statement of objections to H.B. 128 CD2.

While drafting H.B. 2003 we made some changes to the language of H.B. 128 CD2 and those changes are summarized in the table that follows. The table also summarizes changes by JUD that were included in HB 2003, HD 1 and our recommendations to FIN (prior to the FIN hearing on this bill we will attempt to communicate with the JUD chair to determine whether he is opposed or not opposed to our recommendations to FIN).

HB 2003 (some changes to the language of HB 128, CD 2 (2009))	HB 2003, HD1 (JUD)	CSC's Recommendations to FIN
Add a new §11-A, relating to a Declaration of Policy, and §11-B, relating to construction of laws. These provisions were included in H.B. No. 128 (2009), the original recodification bill submitted by the Commission	JUD included this.	N/A
Clarify the definition of "advertisement" in §11-C by adding an "and"	JUD included this.	N/A
Revise the definitions of "contribution" and "expenditure" in §11-C, relating to the "internet exemption," to reflect current law	JUD included this.	N/A
Revise the appointment of commissioners in §11-D to reflect current law by reinstating the requirement that the Judicial Selection Commission submit a list of ten nominees, rather than a list of two nominees. <sup>3</sup>	JUD included this	N/A
Revise the provisions relating to contributions by state and county contractors prohibited, in §11-HH, to reflect the current law in HRS section 11-205.5 so that the prohibition is applicable to all contractors, rather than narrowing the prohibition to contractors who are	JUD deleted the provision in its entirety and "Reserved" §11-HH.	Recommend restoring language from §11-HH of HB 2003 that is already in HRS section 11-205.5. HRS section 11-205.5 currently prohibits contributions to any candidate or committee: <ul style="list-style-type: none"> <li>• From any person who has a state or county contract for the rendition of</li> </ul>

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- Concern: having 2 nominees to select Commissioners from rather than 10; Changed "2" back to "10". This was also discussed with the Chief Justice's office and they will not oppose this year.
  - Concern: removing competitively bid contracts from contribution prohibition; Change: removed exception for competitively bid contracts.
  - Concern: Collapse of 11-200 and 11-206 into one section, 11-UU; Explained the purpose of the change, that a candidate may change from 11-200 to 11-206 funds by merely filing a new organizational report.
  - Concern: increase from 20% to 30% in the amount of nonresident contributions permitted in each reporting period; We left intact the language in HB 128 CD2 after explaining our concerns with the constitutionality of the current law and that this increase would take effect after the general election on November 2, 2010.

<sup>3</sup> Listed in the Governor's statement of objections.

HB 2003 (some changes to the language of HB 128, CD 2 (2009))	HB 2003, HD1 (JUD)	CSC's Recommendations to FIN
<p>exempt from competitive bid solicitations;<sup>4</sup></p>		<p>personal services, the buying of property, or furnishing any material, supplies, or equipment to the State, any of its counties, department or agency thereof, or for selling any land or building to the State, any of its counties, or any department or agency thereof,</p> <ul style="list-style-type: none"> <li>• During the term of the contract,</li> <li>• If payment is to be made in whole or in part from funds appropriated by the legislative body.</li> </ul> <p>This law was included in an omnibus bill (Act 203, SLH 2005) that was enacted because of "concerns in the community with respect to reforming Hawaii's campaign spending laws."</p> <p>There is nothing to indicate that the concerns leading to the passage of this law have disappeared.</p>
<p>N/A. §11-KK as proposed in HB 2003 was identical to the language of §11-II of HB 128, CD 2 (2009) and provided as follows.        "§11-__ Contributions to noncandidate committees; limits. No person shall make contributions to a noncandidate committee in an aggregate amount greater than \$1,000 in an election. This section shall not apply to ballot issue committees."</p>	<p>JUD deleted the provision in its entirety</p>	<p>Recommend restoring language from §11-KK of HB 2003 that is already in HRS section 11-204(b). This would retain the \$1,000 limit that is already in the current law, rather than allowing a noncandidate committee to receive unlimited contributions from a single person.</p> <p>We note that there is language in section 5 of HB 2004, HD 1 which proposes to amend section 11-204(b) as follows:</p> <p><del>"(b) [No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election.] A company shall make all contributions and expenditures greater than \$1,000 in the aggregate in a two-year election period solely through the company's noncandidate committee in accordance with paragraph (a)(1). The noncandidate</del></p>

<sup>4</sup> Listed in the Governor's statement of objections.

HB 2003 (some changes to the language of HB 128, CD 2 (2009))	HB 2003, HD1 (JUD)	CSC's Recommendations to FIN
		<u>committee shall register with the commission pursuant to section 11-194.</u> "
Change the provisions relating to permitted expenditures of campaign funds in §11-UU by removing the category for donations to schools, to reflect current law	JUD amended bill by inserting language in what is now numbered as §11-TT that appears to be drawn from §11-SS of HB 128, CD2 (2009), which was passed by the Legislature.	Recommend deleting this provision in §11-TT. In the alternative, amend the language as follows: "To make donations to any public school or public library; provided that in any election period, the total amount of all [ <del>contributions</del> ] donations shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-JJ and no donations shall be made from <u>the date the candidate files nomination papers to the date of the general election</u> ; provided further that any donation under this paragraph shall not be aggregated with or imputed toward any limitation on donations pursuant to paragraph (3)..."
Change the provisions relating to minimum qualifying contributions with respect to the candidates for the Board of Education and Office of Hawaiian Affairs applying for partial public funding in §11-UUU, to reflect current law	JUD included this	

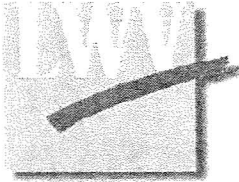
**Recodification is long overdue**

Our final point is that a recodification of the campaign finance laws is long overdue. The current campaign finance laws have their genesis in Act 185, Session Laws of Hawaii 1973. Over the past thirty-seven years, numerous amendments have been made to the campaign finance laws in a piecemeal fashion and, apparently, with little regard to the laws as a whole. The result is laws that are unorganized, difficult to read, and inconsistent in some areas. The current laws are in Part XII, subpart B of HRS chapter 11.

This bill organizes the campaign finance laws into a new part of HRS chapter 11, with ten subparts. Long and involved sections are divided into shorter sections with clear titles for quick reference. All the laws on one subject are grouped together, in contrast to the current laws that require a reader to search through the whole subpart for laws that may apply to that subject.

The Honorable Marcus R. Oshiro  
Testimony on H.B. No. 2003, HD 1  
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This bill is a product of the work of the Campaign Spending Commission's Blue Ribbon Recodification Committee (Committee). The Committee completed its work in 2008 after meeting regularly for nine months. The Committee was comprised of the Commission's staff and seventeen volunteer attorneys experienced in campaign finance law who represented diverse interests.



## THE LEAGUE OF WOMEN VOTERS OF HAWAII

### TESTIMONY ON HB 2003, HD1 RELATING TO CAMPAIGN FINANCING

Committee on Finance  
Monday, February 22, 2010  
2:30 pm  
Conference Room 308

Testifier: JoAnn Maruoka

Chair Oshiro, Vice Chair Lee, and Finance Committee members,

The League of Women Voters of Hawaii is concerned about changes made in HD1. In our testimony on the original bill, Jean Aoki stressed that it should remain what it is, a reorganization of the campaign spending laws, and not be a vehicle for wholesale amending of those laws.

Although the committee report HSCR 404-10 says the League testified in support of the bill, Ms. Aoki pointed out that our support was conditional. We were concerned about the what we saw as a substantial change in the enforcement section where failure to file reports on time or the filing of substantially deficient or defective reports changes from "shall" to "may" be subject to fines.

However, more troubling is that HD1 removes language that specifies the conditions under which contributions from State and county contractors are prohibited; and removes language limiting contribution amounts to noncandidate committees. We see these as seriously flawed, counter to what the electorate wants, and risking perceived and actual abuses of influence. These will only further erode public confidence.

We urge you to reinstate the appropriate language to specify conditions under which contributions from State and county contractors are prohibited; and while we would like to see lower limits, at least restore the language limiting contributions to noncandidate committees.

Thank you for this opportunity to testify.



HAWAII

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February 21, 2010

To: Chair Marcus Oshiro, Vice Chair Marilyn Lee and Members  
House Committee on the Judiciary

From: Americans for Democratic Action/Hawai'i  
Barbara Polk, Legislative Chair

Subject: **Testimony in partial support of HB 2003 HD 1 Relating to Campaign Financing**

Americans for Democratic Action, Hawaii Chapter, believes that it is very important to pass a recodification of the campaign spending law. The law has become disjointed and cumbersome, difficult for candidates, candidate and non-candidate committees, and the general public to understand and follow faithfully. The Campaign Spending Commission has done an excellent job of recodification and we support it in large part.

Unfortunately, however, a large recodification lures people into trying to make policy changes at the same time. We strongly urge that you restore the original HB 2003, eliminating changes made by the House Judiciary Committee, and also delete the policy changes made by the Commission itself, as indicated below. We remind you that last year, after all the work put in by the Commission and the legislature, the recodification was not signed by the Governor because of the many policy changes. Let's not let that happen again. There are other legislative vehicles for considering policy changes.

The most serious changes by JUD are the following:

Section 11-HH: Deletion of current policy that prohibits state and county contractors from contributing to political candidates or parties. As we have stated previously, permitting contractors, even those who go through the bid process (where we all know there is a lot of judgment involved in selecting the winner), leads to the perception or reality of corruption—"pay to play." That is why the legislature passed this ban only a few years ago.

Eliminating entirely the previous Section 11-KK, which set limits on contributions to non-candidate committees. We find it difficult to imagine why this section has been deleted, since it greatly tips the playing field in political matters toward those with the money to “buy” their politicians. Again, this leads to the perception or reality of corruption of our political process.

Section II-TT: Allows politicians to use campaign funds to “seed the community” by making contributions to community groups without using their personal funds. It is an anomaly that the legislature in the two sections above apparently seeks to obtain more campaign funds, but in this section, allows those funds to be used for a purpose other than campaigning!

Three changes to current law, by the Commission or in the drafting of this bill, are of particular concern:

Section 11-G, Duties of the commission has eliminated the responsibility for adopting a code of fair campaign practices as part of its rules. This responsibility should be reinserted at this time so that its deletion can be considered as a policy change.

Section 11-G(5) and Section 11-Y both change “shall” to “may” with respect to assessing fines for failure by candidates or committees to file timely, complete and accurate reports. We believe this is not an appropriate change, since it stands to reduce penalties for substantial violation of the Campaign Spending Act, opens the Commission members to charges of favoritism in the assessment of fines, and undermines the entire purpose of the law. We urge that the wording of the sections referring to fines or penalties revert to current law by changing “may” to “shall” (with reference to assessing penalties or fines) and removing the option for the Commission to not impose a fine. If this policy is to be changed in any way, it should be addressed separately and not contaminate the decision about recodification.

Section 11-NN raises the proportion of campaign contributions that may come from out of state from the 20% in current law to 30%. We strongly object to allowing this much influence on local decision making to be made by out-of-state residents.

We strongly urge that your committee ask the Campaign Spending Commission to identify other areas in which changes of policy not previously adopted by the legislature have been made and to revert those sections to statements of current law.

While we may be supportive of some of the changes made, and we surely have many changes we ourselves would like to see made in campaign finance law, we strongly believe that each change should be considered separately so that the badly needed recodification of Campaign Spending Law may proceed without unnecessary controversy.

Thank you for this opportunity to submit testimony.





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**House FIN Committee**  
**Monday 2/22/10 at 2:30PM in Room 308**  
**HB2003 HD1**

**TESTIMONY**

Nikki Love, Executive Director, Common Cause Hawaii

Chair Oshiro, Vice Chair Lee, and members of the Committee:

I would like to provide comments regarding **HB2003 HD1** relating to campaign financing.

Although we generally support the Campaign Spending Commission's recodification of the campaign finance laws, we are concerned about some of the substantive changes to the law in this bill, including:

**Pay to Play**

This HD1 entirely removes the current law that prohibits government contractors from making political contributions. A separate bill on this topic (HB2249) was recommitted, and it seems there no other vehicle for that section of the law. This bill **MUST** be amended to reinsert that section—and it should be reinserted to maintain the “pay to play” prohibition for all government contractors.

**Nonresident Contributions**

This bill allows for candidates to receive up to 30% of contributions from out of state, up from the current 20%. We urge you to amend this to reinstate the current 20%. We strongly believe that candidates should raise funds and support from their own districts, or at the very least our own state. Our laws should not encourage the influx of campaign money from special interests on the mainland.

**Donations to Schools and Libraries**

The bill allows candidates to donate twice the amount equal to the contribution limits for candidates running for office to schools and libraries, in addition to the same amounts already allowed to community groups. Limits on politicians' contributions to community groups were put in place in an attempt to level the playing field and in response to abuses by certain candidates. This amendment expands the ability of elected officials to “seed the community” with small, but highly visible, contributions from their campaigns.

What is the problem being addressed by this provision? If the issue here is that everyone has excess campaign funds to spend, then perhaps contributions limits should be reduced or other restrictions enacted. Or, if legislators are concerned about funding for schools and libraries, then that should be addressed through sound public policy making—not by occasional donations from campaign coffers.

Mahalo for the opportunity to submit testimony.