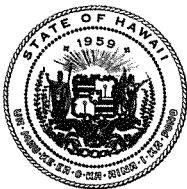


**HB257,HD2**

**Testimony**



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

March 28, 2011

**TO:** The Honorable Clayton Hee, Chair  
Senate Committee on Judiciary and Labor

The Honorable Maile S.L. Shimabukuro, Vice-Chair  
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary and Labor

**FROM:** Kristin Izumi-Nitao, Executive Director  
Campaign Spending Commission

**SUBJECT: Testimony on H.B. No. 257, H.D. 2, Relating to Campaign Spending**

Monday, March 28, 2011  
9:30 a.m., Conference Room 016

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission (“Commission”) strongly supports this bill.

Act 211, Session Laws of Hawaii 2010 (“Act 211”), recodified the campaign finance statutes. This bill seeks to:

- Correct and clarify references; and
- Make several substantive changes (e.g., adding provisions regarding automated phone calls, changing the report filing deadlines, requiring a noncandidate committee to specify in its disclosure reports the name of the candidate that is supported or opposed by an independent expenditure of the committee, suggesting a monetary cap on the price of fundraiser tickets that may be purchased with campaign funds, and applying the notice and disclaimer requirements to an advertisement that was not paid for).

The bill’s provisions are discussed more specifically below.

- Section 1 amends §11-302 (Definitions) as follows:
  - Clarifies that the “address” disclosed on an advertisement is a street address, post office box address or mail box address, including the zip code. A website address is excluded from the term “address.”
  - Adds a definition for “automated phone call” (Section 13 of the bill requires that certain information be stated at the beginning of an automated phone call).
  - Adds a definition of “matching payment period” for purposes of the partial public financing program. A “matching payment period” is included in the definition of

- “qualifying contribution” in §11-302. The definition of “matching payment period” which was in the prior statute (i.e., §11-191) would allow the Commission’s staff to better administer the partial public financing program.
- Amends the definition of “advertisement” to include an “automated phone call.”
- Section 2 amends §11-314 (Duties of the commission) as follows:
    - Corrects typographical errors in §11-314(4) and (12).
    - Under §11-314(5), adds §11-340 (Failure to file report; filing a substantially defective or deficient report) as another source from which the Commission may fine an unfiled or substantially defective or deficient report.
  - Section 3 amends §11-321 (Registration of candidate committee or noncandidate committee) as follows:
    - Requires that the electronically filed reports of candidate and noncandidate committees be certified as true and accurate by the candidate or specified officers of the committee, or both, depending on the type of committee.
    - Corrects a statutory reference in subsection (e), relating to organizational reports by a candidate. The current reference is to §11-323 (noncandidate committee) and the correct reference should be to §11-322 which is applicable to a candidate committee.
    - Adds a new subsection (h) clarifying that the fine is \$100 if an organizational report is not filed by the due date.
  - Section 4 amends §11-331 (Filing of reports, generally) as follows:
    - Requires that the electronically filed reports of candidate and noncandidate committees be certified as true and accurate by the candidate or specified officers of the committee, or both, depending on the type of committee.
    - Corrects a statutory reference in subsection (d) (2) from §11-323 to §11-321 which is the section relating to registration.
  - Section 5 amends §11-334 (Time for candidate committee to file preliminary, final, and supplemental reports) because Act 126, SLH 2010, changed the primary election date from the second to the last Saturday in September to the second Saturday in August. Accordingly, this bill proposes to:
    - Change the deadline for filing a candidate committee’s first preliminary primary report from July 31 to July 5.
    - Add a new subsection (c) to address a gap in Act 211 and the prior statute. An individual who is a “candidate” before an election year is not subject to reporting requirements until the election year begins. This provision would require a “candidate” to file supplemental reports every six months before an election year. This provision is also in H.B. No. 258, H.D. 1.
  - Section 6 amends §11-335 (Noncandidate committee reports) to clarify the type of information that must be reported by a noncandidate committee and require a noncandidate committee to specify in its disclosure reports the name of the candidate that is supported or

opposed by an independent expenditure of the committee. This would provide additional transparency.

- Section 7 amends §11-336 (Time for noncandidate committee to file preliminary, final, and supplemental reports) by adding clarifying language.
- Section 8 amends §11-341 (Electioneering communications; statement of information) as follows:
  - Aligns the terms used in this statute to other campaign finance statutes (e.g., “disbursements” vs. “expenditures”).
  - Reduces the amount of information required to align this statute with the amount of information required by other campaign statutes.
  - Adds a new subsection (e) clarifying that the fine is \$100 if an electioneering communication statement is not filed by the due date.
- Section 9 amends §11-342 (Fundraiser; notice of intent) by adding a new subsection (d) clarifying that the fine is \$100 if a notice of intent to hold the fundraiser is not filed by the due date.
- Section 10 amends §11-355 (Contributions by state or county contractors prohibited) by exempting from the prohibition contributions to a ballot issue noncandidate committee.
- Section 11 amends §11-359 (Family contributions) by correcting subsection (b) so it reads as it did in the prior statute.<sup>1</sup> Family contributions, therefore, should be exempt from §11-

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<sup>1</sup> §11-204 Campaign contributions; limits as to persons.

(a)(1) No person or any other entity shall make contributions to:

(A) A candidate seeking nomination or election to a two-year office or to the candidate's committee in an aggregate amount greater than \$2,000 during an election period;

(B) A candidate seeking nomination or election to a four-year statewide office or to the candidate's committee in an aggregate amount greater than \$6,000 during an election period; and

(C) A candidate seeking nomination or election to a four-year nonstatewide office or to the candidate's committee in an aggregate amount greater than \$4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business;

(2) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office.

(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.

(c) A candidate's immediate family, in making contributions to the candidate's campaign, shall be exempt from the above limitation, but shall be limited in the aggregate to \$50,000 in any election period. The aggregate amount of \$50,000 shall include any loans made for campaign purposes to the candidate from the candidate's immediate family.

...

357 (Contributions to a candidate committee; limits) rather than §11-355 (Contributions by state or county contractors prohibited).

- Section 12 amends §11-381 (Campaign funds only used for certain purposes) to seek a monetary cap on the price of fundraiser tickets that may be purchased with campaign funds. Campaign funds, with several exceptions, must be used “[f]or any purpose directly related . . . to the candidate’s own campaign.” An exception allows a candidate “[t]o purchase not more than two tickets for each event.” In recent years, this exception has been used with greater frequency by a candidate to transfer campaign funds to another candidate. The Commission has noticed that an increasing number of fundraiser notices have been filed where the ticket price is a range which includes the maximum amount that could be contributed to the candidate (e.g., \$50 to \$2000, \$100 to \$4000, \$1000 to \$6000). The Commission notes that the suggested \$100 cap was eliminated from the original bill and would therefore strongly recommend that an amount be determined to permit the Commission to monitor compliance with the campaign finance statutes.
- Section 13 of the bill amends §11-391 (Advertisements) as follows:
  - Adds the term “placing” in subsection (a) to make the notice and disclaimer requirements applicable to an advertisement that was not paid for.
  - Adds a new subsection (c) to require the notice and disclaimer at the beginning of an automated phone call (read together with the new definition of an automated phone call in section 1 of the bill).

#### **Partial public financing amendments**

- Section 14 amends §11-422 (Depletion of fund) by correcting a statutory reference in subsection (b) because an application is filed pursuant to §11-430 (Application for public funds) rather than §11-428 (Eligibility requirements for public funds).
- Section 15 amends §11-423 (Voluntary expenditure limits; filing affidavit) as follows:
  - Clarifies subsection (b) that a candidate applying for partial public financing must file the affidavit to comply with expenditure limits no later than the time the candidate files nomination papers. This is consistent with the prior statute<sup>2</sup> and will allow the Commission’s staff to properly administer the partial public financing program.
  - Amends subsection (d) by adding language regarding partial public financing for candidates for the office of prosecuting attorney. This bill reinstates language drawn from HRS §11-209(a) that was deleted by Act 203, SLH 2005.<sup>3</sup> Hawaii’s constitution

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<sup>2</sup> §11-208 Voluntary campaign expenditure limitation.

...  
(c) Affidavits in compliance with this section shall be filed by the time of filing of nomination papers with the chief election officer or county clerk.

<sup>3</sup> The deletion appears to have been a drafting error. H.B. No. 1747, H.D. 1, S.D. 1, C.D. 1 was enacted as Act 203. The S.D. 1 version of that bill included a new public funding program for candidates to the office of prosecuting

mandates a partial public financing program which allows candidates to raise private contributions which are matched with public money if candidates agree to expenditure limits.<sup>4</sup> This program was intended to “improve the political process, encourage the expenditure of public moneys for a public purpose, permit campaign spending limits, encourage wider participation in the political process and reduce the political influence of money, the appearance of impropriety and potential corruption of public officials.”<sup>5</sup> These goals, perhaps, are even more important in the case of the prosecuting attorney.

- Section 16 amends §11-426 (Candidate exceeds voluntary expenditure limit) by deleting references to the state income tax deduction for qualifying contributions to a candidate applying for partial public financing. The deduction was repealed (effective January 1, 2011) in Act 59, SLH 2010.
- Section 17 amends §11-429(a) (Minimum qualifying contribution amounts; qualifying contribution statement) by clarifying that qualifying contributions received by a candidate applying for partial public financing must be “in amounts of \$100 or less during each matching payment period.”
- Section 18 amends §11-433 (Post-election report required) by adding a new subsection (b) clarifying that the fine is \$100 if the post-election report is not filed by the due date.
- Section 19 repeals §11-424 (Tax deduction for qualifying contributions) as a result of Act 59, SLH 2010.

Lastly, section 22 of this bill provides that the effective date is January 7, 2059. The Commission would like to note the importance of the bill to take effect on approval based on two critical components: (1) Section 5 which changes the deadline to file a candidate committee’s first preliminary primary report from July 31 to July 5 as a result of the new earlier primary election date; and (2) Section 15 which clarifies that candidate applying for partial public financing must file the affidavit to comply with expenditure limits no later than the time the candidate files nomination papers to permit Commission staff to properly administer and operate the partial public financing program.

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attorney (§ 11-C in section 1 of the bill) and deleted the reference to the prosecuting attorney in HRS §11-209(a) (section 13 of the bill).

The CD 1 version of the bill removed the new public funding program, but did not restore the reference to the prosecuting attorney in HRS §11-209(a).

<sup>4</sup> “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.” Article II, section 5.

<sup>5</sup> Proceedings of the Constitutional Convention of Hawaii of 1976, Volume 1, p. 679.