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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
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January 31, 2011

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary

The Honorable Karl Rhoads, Vice-Chair
House Committee on Judiciary

Members of the Senate Committee on Judiciary

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

SUBJECT: Testimony on HB. No. 257, Relating to Campaign Spending[1]

Tuesday, February 1, 2011
2:00 p.m., Conference Room 325

Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") strongly supports this bill and urges the Committee to pass the bill.

Act 211, Session Laws of Hawaii 2010 ("Act 211"), recodified the campaign finance statutes. This bill amends Act 211 by:

- Correcting and clarifying references; and
- Making 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; adding a $100 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).

H.B. No. 257 would take effect on approval.

The bill's provisions are discussed more specifically below.

- Section 1 amends §11-302 (Definitions) as follows:

[1] This bill was referred to this Committee and the House Committee on Finance. The companion bill (S.B. No. 990, Relating to Campaign Spending) was referred to the Senate Committee on Judiciary and Labor.

  - 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 14 of the bill requires that certain information be stated at the beginning of an automated phone call); and
  - 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,[2] would allow the Commission's staff to better administer the partial public financing program.
- Section 2 amends §11-314 (Duties of the commission) as follows:
  - Corrects a reference in §11-314(5) because fines for an unfiled or substantially defective or deficient report are imposed pursuant to §11-340 (Failure to file report; filing a substantially defective or deficient report), rather than §11-410 (Administrative fines; relief); and
  - Corrects a typographical error in §11-314(12).
- Section 3 amends §11-321 (Registration of candidate committee or noncandidate committee) as follows:
  - Corrects a statutory reference in subsection (e), relating to organizational reports by a candidate. The current reference is to §11-323 (noncandidate committee); the correct reference should be to §11-322, which is applicable to a candidate committee; and
  - 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:
  - Adds a new subsection (c) clarifying that by signing an application for electronic filing form a person is certifying that information in disclosure reports are true; and
  - Corrects a statutory reference in subsection (e) (2) to §11-323 by replacing it with a reference 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. The draft amendments propose to:
  - Change the deadline for filing a candidate committee's first preliminary primary report from July 31 to July 5; and
  - 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 and companion S.B. No. 989.

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[2] "Matching payment period" means:
(1) For a primary election, from January 1 of the year of a general election through the day of the primary election, or nine months prior to a special election through the day of a special election; and
(2) For a general election, from January 1 of the year of a general election through the day of the general election. HRS §11-191.

- 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 to 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" v. "expenditures"); and
  - Reduces the amount of information required by this statute to align the 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.[3] Family contributions, therefore, should be exempt from §11-357 (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 provide a $100 cap on the price of fundraiser tickets that may be purchased with campaign funds.

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[3] §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.

...

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 surplus funds to another candidate; an increasing number of notices of fundraiser are filed with the Commission specifying that the ticket price included the maximum amount that could be contributed to the candidate (e.g., "$50 to $2,000").

- 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; and
  - 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[4] 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.[5] Hawaii's constitution 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.[6] This program was intended to "improve the political process, encourage the expenditure of public moneys for a public purpose, permit campaign

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[4] §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.

[5] 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 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).

[6] "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.

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."[7] 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.

[7] Proceedings of the Constitutional Convention of Hawaii of 1976, Volume 1, p. 679.

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January 31, 2011

TO: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads
Members of the House Committee on Judiciary

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

TESTIMONY IN PARTIAL SUPPORT OF HB 257 RELATING TO CAMPAIGN SPENDING

Americans for Democratic Action/Hawaii (ADA/H) would like to commend the Campaign Finance Commission for proposing important improvements to campaign finance law. In particular, we support the additions and clarifications on reporting of contributions made by a noncandidate committee on page 12, lines 17ff; page 13, lines 10ff; and page on 15, as well as the additional requirement on p. 23, lines 8-9 requiring that automated phone calls begin with information about who is calling and why. There are also numerous other smaller changes that help clarify the intent of campaign finance law.

We also have some recommendations and concerns;

A. On p. 7, lines 1-3, we suggest changing the word "person" to "individual" in the phrase:
Every person signing the application . . .
In general this bill is careful to distinguish between "individuals" and "persons" (the latter of which may now include organizations, corporations and other entities).

B. We note and oppose the discrepancy between the contribution level that triggers reporting for individuals and that designed primarily for corporate enties:
p. 12, line 9ff requires committees to report information on contributors of more than $100 (this originally applied primarily to individuals; now it is unclear)
p, 14 line 15ff requires reporting of electioneering communications expenditures of over $2000 (this has been added to deal mainly with corporate contributions)
p. 16, lines 17ff requires reporting of initial expenditures of over $2000 and additional expenditures over $1000 (again, designed primarily for corporate expenditures).

We see no reason why the entity making the expenditure or the type of expenditure made should make a difference in the threshhold for reportiing the expenditure. In the interests of transparency, we urge that the threshhold for reporting all expenditures or contributions to influence elections be $100, which has, for years, been the standard for individuals. If corporate entities wish to be considered "persons" and have the political rights of natural-born persons, they should be required to meet all the requirements expected of natural-born persons, not expect that those requirements be changed to accommodate them.

C. Although no change from current law is being recommended in this bill, ADA/H continues to object

to the provisions on page 20 line 21 through page 21 line 17 that give candidates extensive rights to "seed the community" through donations from their campaign funds to various community groups. Community groups often feel (and are intended to feel) indebted for the "generosity" of candidates when, in fact, the candidates are not donating their own money, but that of other people. The ability to make such contributions gives an enormous advantage to incumbents who have been able to build up a "war-chest."

D. We also point out, though we take no position, that this bill deletes income tax deductions for some political contributions to candidates who receive public funding.

Finally while we support the changes offered in this bill, and urge consideration of our recommendations, we do not believe it goes far enough to deal with the new situation of the increased involvement of corporate bodies in campaign financing opened by the Citizens United vs. the FEC case decided last year. We urge you to consider HG 872, to be heard later at this hearing, as going farther to address these changes and ensure the continuation of transparency of campaign financing. We suggest that a merger of aspects of the two bills be passed.