



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 29, 2021

TO: The Honorable Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

The Honorable Scot Z. Matayoshi, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Members of the House Judiciary & Hawaiian Affairs

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

SUBJECT: **Testimony on S.B. No. 399, SD 1, HD 1, Relating to Orders of the Campaign Spending Commission**

Tuesday, March 30, 2021
2:00 p.m., Via Videoconference

Thank you for the opportunity to testify on this bill.¹ The Campaign Spending Commission (“Commission”) supports this bill.

This measure amends HRS §11-410 by (1) amending subsection (b) to provide that a person waives the right to a contested case hearing if the person fails to request a contested case hearing within twenty days of receipt of the Commission’s preliminary determination, and (2) amending subsection (d) to provide that a final order of the Commission may be filed in the First Circuit Court for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in the circuit courts.

The final orders that are confirmed as judgments under subsection (d) are only those orders that are rendered final because the respondents have failed to request a contested case hearing pursuant to HRS §11-405(b). GVR removed language from S.D. 1 of the bill that provided there was no appeal from the civil judgment. However, even without the deleted language, these final orders are not appealable to the Circuit Court since the respondents would have failed to exhaust the administrative process and thus no evidentiary record would exist to perfect an appeal. Further, if a final order is confirmed as a judgment under subsection (d), any respondent would have the right to seek collateral relief from the judgment under Rule 60(b)²,

¹ The companion bill is H.B. No. 139.

² Rule 60 provides for relief from a judgment or order as follows:

Hawaii Rules of Civil Procedure. If relief is granted, the Circuit Court would most likely refer the case back to the Commission for a contested case hearing, rather than decide the case at that time as an agency appeal because of the lack of an evidentiary record that a contested case hearing would provide.

These amendments were suggested by the deputies in the Civil Recoveries Division of the Department of the Attorney General who are assisting the Commission by enforcing the Commission's orders in the First Circuit Court. The Commission urges this Committee to pass this measure.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Hawaii
*Holding Power Accountable*Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
TUESDAY, MARCH 30, 2021
2:00 PM
VIA VIDEO CONFERENCE, CONFERENCE ROOM 325in consideration of
SB 399, SD1, HD1
RELATING TO ORDERS OF THE CAMPAIGN SPENDING COMMISSION.

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the Judiciary & Hawaiian Affair Committee

Common Cause Hawaii supports SB 399, SD1, HD1 with suggested amendments, which (1) provides that certain rights shall be deemed waived if a preliminary determination of probable cause is rendered during a meeting subject to the requirements of chapter 92, HRS, and the person fails to request a contested case hearing within twenty days of receipt of the preliminary determination and (2) allows the campaign spending commission to have an order confirmed as a judgment by the first circuit court, giving the order the same force and effect as any other judgment issued by the circuit courts.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through improving our campaign finance system with laws that amplify the voices of everyday Americans by requiring strong disclosures and making sure everyone plays by the same commonsense rules.

Common Cause Hawaii supports SB 399, SD1, HD1 which deleted from the original bill language making an order of the Campaign Spending Commission confirmed as a judgment by the First Circuit Court non-appealable. A person's right to due process and his/her fair day in court are crucial to our democracy. SB 399, SD1, HD1 reaffirms this due process right.

Thank you for the opportunity to testify in support of SB 399, SD1, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

SB-399-HD-1

Submitted on: 3/30/2021 7:12:04 AM

Testimony for JHA on 3/30/2021 2:00:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| John D. Smith | Individual | Support | No |

Comments:

I support this bill and pass it through.