



# State of Hawaii Campaign Spending Commission

## Commission on Improving Standards of Conduct

June 2022

# Topics of Discussion

Hawaii Campaign Spending Commission (“CSC”)

Public Funding

Limiting Contributions and Expenditures

Expanding the Government Contractor Ban

Enhancing the Fundraiser Ban

Increased Penalties for Violations & Administrative Investigative Tools

# Hawaii Campaign Spending Commission (“CSC”)

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# CSC Mission

To maintain the integrity and transparency of the campaign finance process by enforcing the law, educating the public, administering public financing, and training campaign committees in order to encourage compliance.

# CSC - Who We Are

- 5 Commissioners – Volunteers from the community appointed by the Governor from a list of 10 nominees submitted by the Judicial Council. Commissioners serve a 4-year term and may be reappointed for an additional 4-year term.
- 5 Staff – Executive Director, Associate Director, General Counsel, Administrative Assistant, and Elections Assistant
- Administratively attached to the Department of Accounting and General Services (DAGS)
- Oversee/regulate 580 candidate committees (368 candidates running for office) and 268 noncandidate committees each with 1-3 officers
- No investigator on staff

# Public Funding

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# History

1976 - U.S. Supreme Court case called Buckley v. Valeo  
Mandatory expenditure limit struck down as  
unconstitutional

1978 - Hawaii Constitutional Convention

Legislature directed to establish a fund for partial public financing

Expenditure limits authorized for those receiving public funds

Partial Public Financing provided as an alternative source of funding  
for qualified candidates that agree to a “voluntary” expenditure limit

1979 - Hawaii Election Campaign Fund (HECF) created

# Hawaii Election Campaign Fund

What is it? → A trust fund within the state treasury

What does it consist of?

- Moneys collected from \$3 Hawaii State income tax check-off

- Interest from principal

- Other moneys – escheated funds or general fund appropriations

- Not administrative fines – goes to the general fund

HECF provides:

- Public financing for candidates

- Operational funds for the Commission



# Hawaii Election Campaign Fund

- \$1,393,364.26 (balance as of 6/30/21)
- Sample of State Income Tax Check-Off Revenue

FY 2021 - \$128,538

FY 2020 - \$90,641

FY 2019 - \$145,524

FY 2018 - \$195,310

FY 2017 - \$164,254

FY 2016 - \$179,835

FY 2015 - \$162,138

FY 2014 - \$190,192

FY 2013 - \$163,143

FY 2012 - \$197,321

FY 2010 - \$216,834

# Public Financing Programs in Hawaii

- Hawaii County Council Comprehensive Public Funding Program (pilot)
  - 2010 Election – 8 candidates / \$147,716
  - 2012 Election – 8 candidates / \$215,344
  - 2014 Election – Unable to run
- Partial Public Funding Program (since 1980)

# Partial Public Funds Disbursed in Prior Elections

2020 Election – 16 (310 CCs) / \$85,362 (3 won)  
2018 Election – 18 (294 CCs) / \$105,967 (8 won)  
2016 Election – 28 (269 CCs) / \$202,190 (12 won)  
2014 Election – 24 (298 CCs) / \$234,865 (11 won)  
2012 Election – 22 (315 CCs) / \$145,696 (9 won)  
2010 Election – 22 / \$188,286  
2008 Election – 23 / \$144,502  
2006 Election – 21 / \$122,649  
2004 Election – 26 / \$228,174  
2002 Election – 45 / \$322,486  
2000 Election – 33 / \$222,453

# Partial Public Funding: 3-Part Consideration

- Things to consider to determine whether you will seek partial public financing:
  - (1) Voluntarily agree to an EXPENDITURE LIMIT by filing the Affidavit form which must be signed by the candidate and notarized - **how much \$ you can spend overall**
  - (2) File the Statement of Intent form and collect the MINIMUM QUALIFYING CAMPAIGN CONTRIBUTION amount for your office to be ELIGIBLE for public funds - **how much \$ you need to raise** (\$100 or less from Hawaii residents)
  - (3) Recognize that there is a MAXIMUM PUBLIC FUNDS amount that you can receive for your office - **how much \$ you can get**

# Partial Public Funding: Qualifications

- What do I do next if I intend to seek partial public funding?
  - Your name must be on the ballot
  - You must have an opponent on the ballot
  - You must agree to an audit of all public funds received
  - You must keep expense records that the Commission may request
  - File an “Application for Public Funds” form signed by the candidate and notarized
  - Electronically file the “Statement of Qualifying Campaign Contributions” on the CFS and attach a copy to the Application filed with the Commission

# Full Public Funding: Maine Clean Election Act Program

Jonathan Wayne, Executive Director

# Design of Maine Clean Election Act Program

- ▶ Enacted by citizen initiative. In operation since 2000.
- ▶ Available to candidates for Governor and Legislature.
- ▶ System of full public financing. After qualifying for public funds, candidates may accept no cash or in-kind contributions. Everything must be paid for with public funds from the State.
- ▶ Candidates qualify by collecting \$5 “qualifying contributions” payable to the Maine Clean Election Fund.

# Advice: Design a Program that is Right for Hawaii

- ▶ Maine's program design is just one option.
- ▶ Another example: NYC-style matching funds. Small dollar contributions of up to \$250 are matched with public funds at a rate of 8 to 1.
- ▶ Seattle has instituted a voucher program – voters can direct public dollars to candidates they support.
- ▶ Think about: what contribution and spending restrictions are best for Hawaii? Do all candidates receive the same level of funding?
- ▶ Study other programs and explore options.



# How Candidates Qualify

- ▶ Candidates collect \$5 qualifying contributions from registered voters payable to the Maine Clean Election Fund. QCs may be made by check, credit card, or cash.
- ▶ Contributors must sign a petition-like form to affirm contribution. Cash QCs require a special form.
- ▶ Candidates submit the QCs to the Commission during a qualifying period (Jan. 1 – Apr. 20 for legislative candidates)
- ▶ To receive basic level of funding, candidates must collect: 60 QCs (House), 175 QCs (Senate), 3,200 QCs (Governor)

# Funding Available to Legislative Candidates

Basic Level of Funding			
House Candidates		Senate Candidates	
QCs	Payments	QCs	Payments
60 QCs	\$6,025	175 QCs	\$24,025
Maximum Funding Available			
QCs	Payment	QCs	Payment
180 QCs	\$17,025	535 QCs	\$67,825

# Cost and Revenue

- ▶ 55% of 2020 legislative candidates participated in MCEA program (192 program participants).
- ▶ This year, payments to legislative candidates is expected to total around \$4 million.
- ▶ Payments are made from a special revenue account, the Maine Clean Election Fund. Largest source of funding is an annual transfer of \$3 million from the General Fund.

# Accountability

- ▶ Agency staff should review qualifying materials. Be alert to people cutting corners or fraud.
- ▶ Staff should review all expenditures reported by candidates for compliance with spending restrictions.
- ▶ Make sure agency has sufficient staff resources.
- ▶ Auditing recommended – bank statements and selection of invoices. Auditing may be done by independent contractors.

# More Information

- ▶ [www.maine.gov/ethics](http://www.maine.gov/ethics)
- ▶ Jonathan Wayne, Executive Director, [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov)
- ▶ Martha Currier, Assistant Director, [Martha.Currier@maine.gov](mailto:Martha.Currier@maine.gov)
- ▶ Office number: (207) 287-4179

# Possible Bills

- Increase the current partial public funding program to adjust for cost-of-living to deter corruption or the appearance of corruption if candidates do not need to solicit contributions from private sources
  - Full public funding – recommend a legislative appropriation to hire a third party to survey the existing public funding programs in the U.S. to recommend what would be viable in Hawaii.
- \* Notable concern: Does CSC have the funding (probably, not) or the staff (questionable) to administer enhanced public funding programs? And, can it simultaneously carry on with current duties and responsibilities (questionable)?

# Limiting Contributions and Expenditures

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# Contribution Limits



**Q. How much can a candidate committee receive in contributions?**

**A. It depends to which office the candidate is seeking nomination or election.**

- **2-year office**  
House, Hawaii/Maui/Kauai County Council  
\$2,000 in an election period
- **4-year non-statewide office**  
Senate, Mayor, Prosecuting Attorney, Honolulu City Council  
\$4,000 in an election period
- **4-year statewide office**  
Governor, Lt. Governor, OHA  
\$6,000 in an election period





## 8 Authorized Expenditures of Campaign Funds:

- (1) For any purpose directly related to the campaign
- (2) To purchase or lease consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate
- (3) To make donations to any community service, educational, youth, recreational, charitable, scientific, or literary organization (cap of \$4K, \$8K, or \$12K)
- (4) To make donations to any public school or public library (cap of \$4K, \$8K, or \$12K)
- (5) To award scholarships to full-time students attending an institution of higher education or a vocational education school leading to a degree, certificate, or other recognized educational credential (cap of \$4K, \$8K, or \$12K)
- (6) To purchase not more than 2 tickets to an event held by another candidate or committee
- (7) To make contributions to your party
- (8) To pay for ordinary and necessary expenses incurred in connection with your duties as a holder of an office, including expenses incurred for memberships in civic or community groups

# Possible Bills

- Limiting cash contributions to \$100 which is similar to the present threshold for calabash bowls because cash has no money trail
  - Calabash Bowl - Must have a minimum of 10 people contributing to the bowl at the same political function and the total contributions collected must aggregate to less than \$100
- Prohibiting candidates from using campaign funds to purchase 2 tickets to another candidate's fundraiser and thus subsidize the candidate's campaign and/or build war chests as well as build factions
- (Janet Mason) Opposing the increase of the monetary caps (i.e., \$4K, \$8K, & \$12K) of campaign funds for charitable/community donations ("seed the community") – reference SB 2417

# Expanding the Government Contractor Ban

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# Government Contractor Ban



## State or County Contractors

- Persons with certain state and county contracts may not make contributions between execution and completion of the contract
- Contracts for the buying of state or county property, the selling of any land or building to the state or county, rendition of “personal services,” or furnishing of materials, supplies or equipment
  - “Personal services” means the performance of services in the fields of health, law, engineering, architecture, construction, accounting, actuarial science, performing arts, or consulting
- Where funds appropriated by the legislative body
- Prohibition is against the person whose name is on the contract



## Example

If ABC Architects has a contract with the State, no funds may be contributed from the treasury of ABC Architects. However, officers, employees, and shareholders of ABC Architects may make contributions from personal funds.

Subcontractor allowed to contribute if they do not have a contract with the State or county.

# Possible Bills

- Expanding the ban to include the owners/officers of the government contractor (and their immediate family members and employees?)
- Attempts to expand the ban to sub-contractors have not been successful because there is no state or county database that uniformly and timely reports these contracts which CSC could resources for purposes of enforcement
- Prohibit Chapter 42 legislative and county council Grants in Aid recipients (and owners/officers/immediate family/employees?) from making contributions during the election period in which the grants are received

# Enhancing the Fundraiser Ban

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# Fundraiser Notice

- You must file a “Notice of Intent to Hold a Fundraiser” form with the Commission prior to the fundraiser.
- A “fundraiser” means any function held for the benefit of a candidate or candidate committee that is intended or designed, directly or indirectly, to raise contributions for which the price or suggested contribution for attending the function is more than \$25 per person.
- A notice must be eSigned, faxed, mailed, or delivered to the Commission.



# SB 555 – Relating to Campaign Fundraising

- Prohibits elected state and county officials from holding any fundraiser event to raise contributions for which any price is charged or any contribution is suggested for attendance during a regular or special session of the state legislature
- Effective 1/1/2023

# Possible Bills

- Expand the ban to no acceptance of solicitation of campaign contributions during legislative session (regular and special)
  - NOTE: There are considerations with the execution of this ban including how it would be applied to elected officials running for executive or county offices
- Requiring committees to file fundraiser notices regardless of the amount so the ticket price does not have to be more than \$25

# Increased Penalties for Violations & Administrative Investigative Tools

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# Administrative Fines – Late Reports

- There is a \$50 fine per day for the first 7 days that a report is not filed when due - \$200 per day thereafter
  - The fine shall not exceed 25% of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report but the minimum fine for a report filed more than 4 days after the due date shall be \$200
- For the 2<sup>nd</sup> Preliminary Primary Report and the 2<sup>nd</sup> Preliminary General Report, the fine is \$300 per day
  - The fine shall not exceed 25% of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report but the minimum fine shall be \$300
- Commission will publish candidate committee names on its website that have failed to file a report or timely correct a report

# Administrative Fines – Standard Fine Guidelines

- If an individual, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to 3 times the amount of an unlawful contribution or expenditure
- If a corporation, organization, association, or labor union, an amount not to exceed \$1,000 for each occurrence. The violation may also be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

\*In lieu of an administrative determination that a campaign finance violation has been committed, CSC may refer the complaint to the attorney general or county prosecutor at any time it believes the respondent may have recklessly, knowingly, or intentionally committed a violation.

# Criminal Penalties



- Any person who recklessly, knowingly, or intentionally violates any provision of this part shall be guilty of a misdemeanor
- Any person who knowingly or intentionally falsifies any report required by this part with the intent to circumvent the law or deceive the commission, or who violates the anonymous contribution section, or false name contributions section, shall be guilty of a class C felony (and not eligible for a DAG/DANC)
- A person who is convicted under this section shall be disqualified from holding elective public office for a period of 4 years from the date of conviction

# SB 665 – Relating to Violations of Campaign Finance Law

- Makes intentionally providing false information concerning the name and or address of a person paying for a campaign advertisement a class C felony
- Authorizes criminal prosecution for CSC violations in addition to criminal fines
- Increases the period during which a person convicted for a criminal violation of campaign finance law is disqualified from office from 4 to 10 years
- Authorizes the Attorney General or Prosecuting Attorney to commence prosecution of CSC violations without the need for a CSC referral
- Effective upon approval

# Possible Bills

- Amendments to the penal code so that candidate/noncandidate committees are victims for purposes of theft/fraud statutes
- Affirmatively treating a candidate/noncandidate committee officer's refusal to speak with CSC for purposes of an inquiry or investigation as a presumption in CSC's favor
- Listing on the CSC website all candidate/noncandidate committees who fail to register by filing an Organizational Report
- Consideration of any criminal fraud statutes to prevent/deter public corruption to be discussed at the 7/13/22 CISC Meeting (Flo Nakakuni)
- Support for HB1423/SB2044 for next legislative session – increases Super PAC fines from \$1K to \$5K or up to 3x the amount of the unlawful contribution/expenditure and permits CSC to order the Super PAC officers to personally pay the administrative fine(s)
- Support for HB1426/SB2041 for next legislative session – allows the CSC to have an order confirmed as a civil judgment, enforceable and collectible as any other judgment in the circuit court