

HB-91-HD-1

Submitted on: 3/6/2023 12:21:00 PM

Testimony for JDC on 3/9/2023 10:00:00 AM

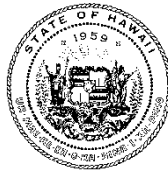
Submitted By	Organization	Testifier Position	Testify
Daniel Foley	Testifying for Commission to Improve Standards of Conduct	Support	Remotely Via Zoom

Comments:

Dear Mr. Chairman and members of the Senate Judiciary Committee,

As Chair of the Commission to Improve Standards of Conduct, I support HB 91 which provides for the waiver of the right to a contested case hearing if a person fails to request one within 20 days of the Campaign Spending Commission's preliminary determination and the filing of the Campaign Spending Commission's final order in circuit court for confirmation as a civil judgment. See Commission on Standards of Conduct December 1, 2022 Final Report at page 21.

Mahalo, judge Daniel Foley (ret.)



STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

March 7, 2023

TO: The Honorable Karl Rhoads, Chair
Senate Committee on Judiciary

The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

Members of the Senate Committee on Judiciary

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

SUBJECT: **Testimony on H.B. No. 91, HD1, Relating to Orders of the Campaign Spending Commission**

Thursday, March 9, 2023
10:00 a.m., Conference Room 016 & 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, provided that there shall be no appeal from a judgment issued pursuant to subsection (d).

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). 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, Hawaii Rules of Civil Procedure. If relief is granted, the Circuit

¹ The companion bill is S.B. No. 196.

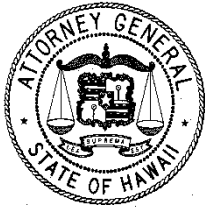
² Rule 60 provides for relief from a judgment or order as follows:

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. There have been up to fifteen candidates referred to that office for enforcement of Commission orders who have repeatedly violated campaign finance law by not filing reports thereby compounding the violations (<http://ags.hawaii.gov/campaign/cc/notice/>). As the law now stands, there is no option to collect fines as a money judgment. The Attorney General's Office has been forced to seek bench warrants with bail up to \$500 to compel payment of fines and the filing of reports; meanwhile, the Commission carries these candidates as they repeatedly violate campaign finance law by not filing subsequent reports.

(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.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 91, H.D. 1, RELATING TO ORDERS OF THE CAMPAIGN SPENDING COMMISSION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, March 9, 2023

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Dean A. Soma, Steve A. Bumanglag, Gurudev D. Allin, or Jennifer
H. Tran, Deputy Attorneys General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

This bill amends section 11-410, Hawaii Revised Statutes (HRS), relating to violations of campaign spending laws, to (1) deem the right to a contested-case hearing under chapter 91, HRS, waived if the person fails to request a contested-case hearing within twenty days of receipt of the preliminary determination of probable cause issued during a chapter 92 meeting of the Campaign Spending Commission (Commission) pursuant to section 11-403; and (2) allow the Commission to file its final order in the First Circuit Court to have it confirmed as a civil judgment so that it can be enforced and collected upon in the same manner as other judgments issued by the circuit courts.

The Department represents the Commission in enforcing its orders in the First Circuit Court. Under the current law, section 11-410(d), HRS, the Commission's only avenue of recourse to collect an administrative fine is to apply to the First Circuit Court to "issue an order requiring the person to comply with the commission's order." Failure to obey the court order may result in a finding of contempt of court and the issuance of a bench warrant.

This bill will provide civil-judgment remedies, as an alternative to contempt-of-court proceedings, which would result in a strengthening of the Department's ability to collect fines and deter future non-compliance with orders of the Commission.

Thank you for the opportunity to comment on this bill.

HB-91-HD-1

Submitted on: 3/7/2023 12:37:50 PM

Testimony for JDC on 3/9/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

Please support this bill. If these people don't respond they should not get a free pass. If this bill becomes law thi bad behavior will either be reduced or end.

Testimony in Support of HB91 HD1

Submitted for: Judiciary Committee Hearing, scheduled for Thursday, 3/9/23 at 10:00 AM.

Aloha Chair Rhoads, Vice Chair Gabbard, and Members of the Committee,

My name is Greg Misakian and I support HB91 HD1.

This is my first year submitting testimony to the Hawaii Legislature for numerous bills, two of which I co-wrote regarding measures which will provide better consumer protections for condominium owners throughout Hawaii (HB178 and HB1501). What I learned along the way is that the process that is currently in place invites unethical and improper behavior, and without protections in place, including oversight, enforcement, and accountability, Hawaii will never be a fair and democratic state.

I thank those that are working to call out unethical and unlawful behavior, and those who provide measures that help make legislators, lobbyists, developers, and others accountable for their actions.