

GUIDEBOOK FOR  
HAWAII COUNTY COUNCIL  
PILOT COMPREHENSIVE PUBLIC FUNDING  
FOR THE 2010 ELECTIONS



*State of Hawaii  
Campaign Spending Commission*

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*This guidebook is provided as a reference and informational source. It should not be construed to constitute legal advice or authority. Readers should consult Act 244, SLH 2008 and other sources for a complete and legal basis of the law or seek assistance from the Commission or a Hawaii licensed attorney.*

## INTRODUCTION

The Hawaii Campaign Spending Commission (“Commission”)<sup>1</sup> has prepared this general guide to assist:

- Hawaii County Council candidates in the 2010 election; and
- Other persons, including individuals, expressly advocating (i.e., making independent expenditures) for or against Hawaii County Council candidates in that election. Independent expenditures and reporting requirements for persons making independent expenditures are discussed in the final bullet of this Introduction and Chapter XIII.

Part I of Act 244, Session Laws of Hawaii 2008 (“Act 244”), established a pilot comprehensive public funding project for elections to the Hawaii County Council. This is a voluntary program for three election cycles beginning with the 2010 election. The public funds for these elections are provided by the Hawaii Election Campaign Fund; voluntary check-offs by individual taxpayers on their Hawaii income tax returns are the main source of current revenue for the Hawaii Election Campaign Fund.<sup>2</sup> Act 244 provides a \$300,000 cap on funding for all candidates in the 2010 election.

A candidate who voluntarily agrees to participate in this program must fulfill certain requirements, including the collection of \$5 qualifying contributions from two hundred registered voters in the district that the candidate is seeking election to. If certified as a comprehensive publicly funded candidate by the Commission, the candidate will receive a base amount of public funds for the election, subject to the \$300,000 cap; the base amount varies for each of the nine Hawaii County Council districts and is based upon the average of the amount spent by the winning candidate for the same district in the previous two county council elections (2006 and 2008), reduced by ten per cent. Equalizing funds are available to the certified candidate, subject to the \$300,000 cap, if the certified candidate is “outspent” by an opposing nonparticipating candidate. A certified candidate is prohibited from receiving private contributions (other than seed money and qualifying contributions), except in very limited circumstances.

Although this comprehensive public funding program is voluntary, all candidates (certified and nonparticipating) for election to the Hawaii County Council and other persons, including individuals, expressly advocating for or against these candidates are subject to mandatory reporting requirements in Act 244 in addition to all reporting requirements in subpart B of part XII of chapter 11, Hawaii Revised Statutes (“HRS”). The reporting requirements of Act 244 are summarized as follows:

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<sup>1</sup> The Commission (five volunteer citizens) and its five staff members are responsible for administering Hawaii’s campaign finance law.

<sup>2</sup> Hawaii also provides a partial public financing (matching public funds) program which allows a candidate who agrees to limit campaign expenditures to raise private contributions which are matched with public funds. The partial public funding program, generally, operates as follows:

- A candidate, including a Hawaii county council candidate, must agree to expenditure limits which are calculated by multiplying the number of voters in the last preceding general election (2008) by a statutory amount (\$1.40 in the case of a Hawaii county council candidate) that can be spent on each voter.
- If the candidate for the Hawaii county council receives a minimum of \$1,500 in qualifying contributions (aggregate monetary contribution of \$100 or less from Hawaii residents), the candidate is provided with matching public funds. A candidate who receives additional qualifying contributions will receive additional matching public funds, up to a maximum statutory amount.

The partial public funding candidate may receive qualifying contributions, matching public funds, and private contributions. These funds may be spent for the purposes specified in the law, subject to the expenditure limits.

See the Commission’s Public Funding Guidebook for more information about partial public financing. This guidebook is available at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) under the heading “Qualifying for Public Funds” by clicking “Public Funding Guidebook.”

- A candidate who intends to participate in the program must file periodic “seed money” reports; if certified by the Commission, the candidate must file post-election reports disclosing expenditures of the public funds.
- Beginning forty-five days before the primary election a nonparticipating candidate whose opponent has been certified as a comprehensive publicly funded candidate must file an initial excess report with the Commission within twenty-four hours after aggregate contributions are received or expenditures are made in an election that exceeds one hundred one per cent of the base amount allotted to the opposing certified candidate. A supplemental excess report must be filed by a nonparticipating candidate within twenty-four hours after the candidate’s aggregate expenditures exceed \$1,000 since the filing of the prior report.
- Moreover, beginning forty-five days before the general election, any noncandidate committee or person, including individuals, who make independent expenditures against a certified candidate or in support of a nonparticipating candidate must file an initial independent expenditure report within twenty-four hours after expenditures exceed \$1,000 in an election. A supplemental independent expenditure report must be filed by a noncandidate committee or person within twenty-four hours after the aggregate expenditures of the committee or person exceed \$1,000 since the filing of the prior report.

## **CHAPTER I: GETTING STARTED**

A candidate who does not have a candidate committee already registered with the Commission must register a committee by filing an Organizational Report on the web-based Candidate Filing System within ten days of receiving more than \$100 in either seed money or qualifying contributions, whichever occurs first.<sup>3</sup>

Please review the Commission’s Candidate Committee Guidebook for additional candidate committee information, including filing the “Application for Electronic Filing Password Candidate Committee,” registering the candidate committee by filing an Organizational Report, appointing a chairperson and treasurer, and opening the committee’s depository (i.e., bank account).

A candidate who previously sought election as a privately funded candidate and already has a committee registered with the Commission should also refer to Chapter XII of this Guidebook.

## **CHAPTER II: SEED MONEY**

Up to \$3,000 in seed money may be received by a candidate from the following sources:

- Private contributions (monetary and nonmonetary) from an individual, provided that the contributions do not exceed \$250 from each individual and are not received from a prohibited source (e.g., false name, anonymous, or foreign national);
- The candidate’s personal funds; and

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<sup>3</sup> An individual qualifies as a candidate when the individual does any of the following:

- Files nomination papers for an office with the county clerk’s office or with the office of elections, whichever is applicable;
- Receives contributions in an aggregate amount of more than \$100 or makes or incurs any expenditures of more than \$100 to bring about the individual’s nomination for election, or to bring about the individual’s election to office;
- Gives consent for any other person to receive contributions or make expenditures to aid the individual’s nomination for election, or the individual’s election to office; or
- Is certified to be a candidate by the chief election officer or county clerk.

- The candidate's surplus funds from a prior campaign.

Seed money may be received until the candidate files the "Declaration of Intent to Seek Comprehensive Public Funding" with the Commission.

Seed money must be used only for expenditures necessary to determine whether sufficient support exists for a candidate to run for office as a comprehensive publicly funded candidate. These expenditures may be made until the candidate is certified by the Commission as a comprehensive publicly funded candidate or the closing date to file nomination papers to run for office for which the candidate intends to seek election, whichever occurs first. If campaign material is purchased with the seed money, the campaign material cannot be used after filing the "Declaration of Intent to Seek Comprehensive Public Funding."

Any seed money that is received but not expended must be donated to the Hawaii Election Campaign Fund or deducted from the candidate's base amount of funds.

Three seed money reports shall be filed on the Candidate Filing System no later than 11:59 p.m. on:

- January 31, 2010 (for the reporting period from July 1, 2009 through December 31, 2009);
- April 30, 2010 (for the reporting period from January 1, 2010 through March 31, 2010); and
- August 30, 2010 (for the reporting period from April 1, 2010 through August 20, 2010).

### CHAPTER III: QUALIFYING FOR PUBLIC FUNDS

The "Declaration of Intent to Seek Comprehensive Public Funding" must be mailed or delivered to the Commission during the period from January 1, 2010 through June 20, 2010 (30 days before the July 20, 2010 deadline for filing nomination papers). Qualifying contributions cannot be collected before filing this Declaration, which will be available on the Commission's website on January 1, 2010.

A candidate must collect \$5 qualifying contributions from two hundred registered voters in the district that the candidate is seeking office to during the qualifying period. The qualifying contribution must be in the form of a personal check or a money order payable to the Hawaii Election Campaign Fund. The voter must not be given anything of value in exchange for the qualifying contribution. ***Further, the qualifying contribution must be from the voter's own funds; if the \$5 is not from the voter's own funds, it is not a qualifying contribution.*** The Commission also recommends that more than two hundred qualifying contributions be collected in case some of the individuals are not registered voters or their checks bounce.

***All qualifying contributions collected by a candidate, whether or not the candidate is certified, shall be deposited into the Hawaii election campaign fund.***

Act 244 requires a "\$5 monetary contribution." Thus, in the case of a husband and wife who support a candidate, each spouse would have to submit a separate \$5 check or money order.

The qualifying period begins on January 1, 2010 and ends on July 20, 2010. The \$5 qualifying contributions must be collected during this period and after filing the "Declaration of Intent to Seek Comprehensive Public Funding." Any contribution not collected during the qualifying period or before filing the declaration is not a qualifying contribution.

Every voter who makes a qualifying contribution must also sign the candidate's "Application for Certification for Comprehensive Public Funding"; and the printed name and address of the voter must be included on the Application. The Application for Certification will be available on the Commission's website on January 4, 2010.

## CHAPTER IV: APPLYING FOR PUBLIC FUNDS

### Verification By The Hawaii County Clerk

The Hawaii County Clerk must verify the following information:

- The candidate resides in the district from which election is sought as of the date of filing nomination papers;
- The candidate is a registered voter in the district from which election is sought; and
- At least two hundred registered voters in the district from which the candidate is seeking election made qualifying contributions to the candidate and signed the candidate's Application for Certification for Comprehensive Public Funding.

After completing the verification, the County Clerk will submit the Application for Certification for Comprehensive Public Funding to the Commission.

### Application For Certification For Comprehensive Public Funding

The "Application for Certification for Comprehensive Public Funding" must be submitted to the Commission no later than August 19, 2010 (thirty days before the primary election on September 18, 2010). The application must:

- Be signed by the candidate and the treasurer, under penalty of perjury;
- Contain at least two hundred printed names of registered voters in the district from which the candidate is seeking election, along with their addresses, signatures, and qualifying contributions. ***The application must be personally signed by the voter; another individual is prohibited from signing for the voter;*** and
- Contain any information deemed necessary and appropriate by the Commission.

### Review Of Application; Distribution Of Funds

Following receipt of a candidate's completed application, including verification by the Hawaii County Clerk, the law requires the Commission to issue a decision to certify or deny certification within ten business days. The Commission's decision is final and conclusive.

A certification shall apply to both the primary and general election even if the candidate is unopposed in the primary election.

Public funds shall be paid to a certified candidate in the manner prescribed in section 11-222, HRS. This means that the funds will be available within twenty days from the date of the Commission's decision to certify the candidate.

### Revocation; Withdrawal

A certification may be revoked by the Commission if a candidate knowingly seeks or receives public funding to fraudulently qualify for or receive public funds (e.g., fraudulent qualifying contributions). Upon revocation of certification, the certified candidate shall repay all public funds received within ten business days.

If a certified candidate withdraws from seeking the nomination for or from the election, all unencumbered funds received by the candidate shall be returned to the Hawaii election campaign fund within thirty days after withdrawal.

## **CHAPTER V: FUNDING RESTRICTIONS AND OTHER RESTRICTIONS AFTER A CANDIDATE IS CERTIFIED**

Upon certification for comprehensive public funding and until the end of the general election campaign period, a candidate shall not accept:

- Contributions from any person, including a political party;
- Loans from any person, including a certified candidate; and
- Any campaign material purchased or held from a date prior to filing the Declaration of Intent to Seek Comprehensive Public Funds.

A certified candidate who accepts contributions (other than seed money, qualifying contributions, and private contributions in the limited circumstances permitted in Act 244) shall be subject to a fine equal to three times the public funding received, in addition to any other action, fines, or prosecution under section 18 of Act 244 and subpart B of part XII of chapter 11, HRS, or any provision of the Hawaii Penal Code.

### **Contribution Defined**

A contribution is anything of value given to influence the nomination for election, or election, of any candidate to office and includes the following:

- A gift;
- Subscription;
- Deposit of money or anything of value including personal services;
- Cancellation of a debt or legal obligation; and
- Purchase of tickets to fundraisers.

A contribution does not include volunteer services. For example, an individual may provide their services for free to the candidate. However, if a person other than the candidate or the committee pays the individual for providing services to the campaign, the activity is no longer considered voluntary and the payments are non-monetary contributions to the candidate. For example, a contribution occurs if an individual provides services during the individual's paid work-time to the candidate with the knowledge of the individual's employer.

### **Types Of Contributions**

(1) A monetary contribution.

(2) A non-monetary contribution includes the following:

- The donation of goods offered without charge or at an unreasonably low charge;
- The payment, by any person other than a candidate of compensation for the services of another person which are rendered to the candidate without charge or at an unreasonably low charge;
- An expenditure made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate; and
- The financing by any person or political party of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's committee or agents.

## CHAPTER VI: EXPENDITURES OF PUBLIC FUNDS

All seed money and public funds received by a certified candidate shall be deposited directly into a depository institution checking account. No expenditures of any public funds shall be made except by debit cards or checks drawn on such account.

In the case of a candidate who previously ran for office and has surplus funds, the surplus funds shall be frozen and maintained in an account separate from the account for the seed money and public funds.

A certified candidate who makes expenditures of more than one hundred per cent of the public funds allocated to the candidate shall repay to the Hawaii Election Campaign Fund an amount equal to three times the excess expenditures. An expenditure, when made or incurred for the purpose of influencing the nomination for election, or election, of any candidate to office whether or not the candidate has filed nomination papers, includes the following:

- Any purchase or transfer of money or anything of value;
- A promise or agreement to purchase or transfer money or anything of value;
- Payment incurred or made; and
- The use or consumption of a non-monetary contribution.

An expenditure is made or incurred when the services are rendered or the product is delivered. (Accrual basis)

The public funds must be spent for expenses directly related to the certified candidate's campaign during the election for which the comprehensive public funds are allocated and include expenses for:

- Voter lists;
- Rent for the campaign headquarters;
- Office supplies;
- Advertising and publicity, including expenditures for producing, printing and broadcasting campaign literature;
- Mailing;
- Promotional event (food, rental, and entertainment);
- Mileage reimbursement (not exceeding – cents per mile) for campaign meetings, voter contact, or volunteers;
- Reasonable expenditures for food and beverages at campaign meetings;
- Telephone costs and phone banks;
- Salaries for campaign staff and fees for consultants;
- Website design, registration, hosting, and maintenance;
- Campaign communications such as bumper stickers; signs; banners; T-shirts, or caps with a campaign logo or slogan; and
- Sundry items such as pens, pencils, magnets, and stickers; Costs for preparing and mailing campaign literature.

A certified candidate is prohibited from expending for campaign purposes:

- Any money except public funds issued by the Commission;
- Public funds for purposes other than those permitted by law;
- Public funds outside the applicable campaign period; and
- Public funds in excess of the comprehensive public funds allocated to the candidate, including equalizing funds.

A certified candidate also is prohibited from making expenditures to promote another candidate's campaign or for the candidate's personal expenses. A personal expense means any expense that would exist irrespective of a candidate's campaign to seek nomination or election to office including, without limitation, the following:

- Household food items and supplies purchased for daily personal consumption by the candidate, a family member of the candidate, or candidate committee;
- Gifts or donations for weddings, Christmas, birthdays, funerals or other personal occasions;
- Clothing usually and customarily worn for everyday wear; provided that a campaign expense for clothing identifying the candidate or campaign for an office shall not be prohibited;
- Tuition and educational fees or expenses not directly related to the performance of duties or responsibilities in a candidate's campaign for elected office;
- Mortgage, rent, and utility expenses for a personal residence;
- Entertainment or sporting events; and
- Dues, fees, or other expenses to a country club, health club, recreational or exercise facility and not arising from a fundraising activity or function held at the facility.

## **CHAPTER VII: REPORTING**

A certified candidate shall comply with all reporting requirements of subpart B in part XII of chapter 11, HRS, in addition to reporting requirements in Act 244. Please review the Commission's Candidate Committee Guidebook for additional information about reporting. Act 244 requires the following:

- A report shall be filed electronically on the web-based Candidate Filing System. There are no exceptions or waivers.
- A report shall be filed by 11:59 p.m. on the date specified for the filing of the report. When any reporting deadline falls on a holiday or weekend, the deadline shall be the first working weekday after the date the report is due. Failure to file the required report by the applicable deadline will result in a penalty of \$50 per day for the first seven days and \$200 or \$300 per day thereafter, subject to a cap, except for specified reports in Chapter 11 that are \$300 per day from the first day.
- A report must be certified as true and correct. This certification requirement for an electronically filed report is met when the "Application for Electronic Filing Password - Candidate Committee," including the original signatures of the Candidate, Chairperson and Treasurer, is mailed or delivered to the Commission.
- A certified candidate must mail or deliver a copy of the most recent available bank statement from the financial depository holding the public funds, as attested to by the candidate's committee, after every report required by Act 244 and subpart B of part XII of chapter 11, HRS, is filed on the Candidate Filing System.

### **Certified Candidate's Reports**

In the case of a candidate who previously ran for office and has surplus funds, the surplus funds shall be frozen and maintained in an account separate from the account for seed money and public funds. Reports must be filed, as provided in the left side of the table below.

The right side of the table lists the reports a certified candidate must file pursuant to Act 244.

Reports for a certified candidate who has surplus funds from a prior election			Reports for a certified candidate who receives public funds pursuant to Act 244		
Due date	Reporting period	Report	Due date	Reporting period	Report
February 1, 2010	July 1 - December 31, 2009	Supplemental			
			February 1, 2010	July 1 - December 31, 2009	Seed Money Report #1
			April 30, 2010	January 1 - March 31, 2010	Seed Money Report #2
August 2, 2010	January 1 – July 31, 2010	1 <sup>st</sup> Preliminary Primary			
			August 30, 2010	April 1 - August 20, 2010	Seed Money Report #3
September 8, 2010	January 1 through September 3, 2010	2 <sup>nd</sup> Preliminary Primary			
September 15, 2010	September 4 through September 14, 2010	Late Contributions Report			
October 8, 2010	September 4 through September 18, 2010	Final Primary Report			
			October 8, 2010	Date of receipt of public funds - September 18, 2010	Post Primary Expenditure Report
October 25, 2010	September 19 through October 18, 2010	Preliminary General Report			
November 1, 2010	October 19 through October 29, 2010	Late Contributions Report			
December 2, 2010	October 19 through November 2, 2010 (For candidates that won in the primary election and advanced to the general election)	Final Election Period Report			
December 2, 2010	September 19 through November 2, 2010 ((For candidates that lost or were elected to office in the primary election)	Final Election Period Report			
December 2, 2010	January 1 - November 2, 2010 (For candidates whose aggregate contributions and expenditures total \$1,000 or less)	Final Election Period Report			
			December 2, 2010	September 19 - November 2, 2010	Post General Expenditure Report

### Nonparticipating Candidate's Reports

A nonparticipating candidate is subject to reporting requirements in (1) subpart B of part XII of chapter 11, HRS, and (2) Act 244.

Act 244 specifies that beginning on August 4, 2010 (forty-five days before the primary election on September 18, 2010) a nonparticipating candidate and the committee must file on the Candidate Filing System an initial excess report with the Commission within twenty-four hours after aggregate contributions are received or expenditures are made in an election that exceeds one hundred one per cent of the base amount allotted to an opposing participating candidate in a contested election.

A nonparticipating candidate and the committee must also file a supplemental excess report within twenty-four hours after the aggregate expenditures exceed \$1,000 since the filing of the prior report. This is an ongoing reporting requirement; a supplemental report must be filed every time the aggregate expenditures exceed \$1,000 since the filing of the prior report.

The purpose of these reports is to determine whether equalizing funds are available to a certified candidate. ***These reports must be filed even if the \$300,000 cap has been reached.***

These reporting requirements for a nonparticipating candidate are also applicable in the general election.

Act 244 also provides that if a nonparticipating candidate fails to file the initial excess report or supplemental excess reports in a contested election on or before the due date or files a false excess report or supplemental excess reports, the Commission, within twenty-four hours of verifying the failure or falsity, shall inform the comptroller. The entire base amount and equalizing funds, subject to the \$300,000 expenditure cap, shall be paid to a certified candidate by the comptroller in the manner prescribed in section 11-222, HRS.

Reporting requirements in subpart B of part XII of chapter 11, HRS			Reporting requirements in Act 244		
Due date	Reporting period	Report	Due date	Reporting period	Report
February 1, 2010	July 1 - December 31, 2009	Supplemental			
August 2, 2010	January 1 – June 30, 2010	1 <sup>st</sup> Preliminary Primary			
			August 2, 2010	N/A	Initial excess report
			Multiple undetermined dates within twenty-four hours after the candidate's expenditures exceed \$1,000 since the filing of the prior report. This reporting requirement continues through the general election if the nonparticipating candidate is a candidate in the general election.	N/A	Supplemental excess reports
September 8, 2010	July 1 - September 3, 2010	2 <sup>nd</sup> Preliminary Primary			
September 15, 2010	September 4 - September 14, 2010	Late Contributions Report			
October 8, 2010	September 4 - September 18, 2010	Final Primary Report			
October 25, 2010	September 19 - October 18, 2010	Preliminary General Report			
November 1, 2010	October 19 - October 25, 2010	Late Contributions Report			
December 2, 2010	October 19 – November 2, 2010 <b>or</b>	Final Election Period Report			
December 2, 2010	September 19, 2010 – November 2, 2010	Final Election Period Report			

### Independent Expenditure Reports

Other persons, including individuals, expressly advocating (i.e., making independent expenditures) for or against Hawaii County Council candidates also must file reports as provided in Chapter XIII.

## CHAPTER VIII: PRIMARY ELECTION FUNDS

### \$300,000 Cap

No distributions in an aggregate amount greater than \$300,000 shall be made from the Hawaii Election Campaign Fund to all Hawaii County Council candidates in the 2010 primary and general elections.

### Public Funds Available (Base Amount; Equalizing Funds)

#### Base Amount

A certified candidate is eligible to receive the base amount of public funding in the primary election. The base amount in a contested primary election is the average of the amount spent by the winning

candidates in the previous two county council primary elections of the same district, reduced by ten per cent.

The base amount of funding, subject to the \$300,000 cap, that is available in the primary election for every certified candidate in each of the nine districts is listed as follows:

Hawaii County Council	Primary Election Base Amounts
District 1	\$5,674
District 2	\$14,917
District 3	\$23,016
District 4	\$34,757
District 5	\$9,826
District 6	\$37,795
District 7	\$14,363
District 8	\$752
District 9	\$13,306

Any seed money that is received but not expended must be donated to the Hawaii Election Campaign Fund or deducted from the candidate's base amount of funds in the primary election.

Unopposed Certified Candidate

An unopposed candidate will receive thirty per cent of the amount provided in a contested primary election.

Equalizing Funds

In addition to the base amount, a certified candidate in a contested primary election may also receive equalizing funds if an opposing nonparticipating candidate "outspends" a certified participating candidate.

The aggregate amount of equalizing funds is limited to an amount equal to the base amount allotted to the certified candidate. Subject to the \$300,000 cap, a certified candidate may receive equalizing funds in a primary election in the following increments:

Payment Trigger	Amount of Equalizing Funds
Opposing nonparticipating candidate's expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 100% of the participating candidate's base amount.	25% of primary election base amount
Opposing nonparticipating candidate's expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 125% but less than 150% of the participating candidate's base amount.	25% of primary election base amount
Opposing nonparticipating candidate's expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 150% but less than 175% of the participating candidate's base	25% of primary election base amount

amount.	
Opposing nonparticipating candidate's expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 175% of the participating candidate's base amount.	25% of primary election base amount

In order to determine whether equalizing funds are available to a certified candidate, beginning on August 4, 2010 (forty-five days before the primary election on September 18, 2010) a nonparticipating candidate and the committee must file on the Candidate Filing System an initial excess report and supplemental excess reports, as discussed in Part VII.

### **Private Funds Available During the Primary Election in Limited Circumstances**

If the Commission determines that the revenues are insufficient to meet distributions to certified candidates under this section or \$300,000 is distributed for the 2010 Hawaii County Council election, the commission shall permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, HRS, and the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding.

Seed money and qualifying contributions received by a candidate shall be included in the aggregate contributions of individuals for purposes of section 11-204, HRS, if the Commission determines that revenues are insufficient to meet distributions to certified candidates.

### **Public Funds Remaining After the Primary Election**

A certified candidate who wins the primary election and has unexpended public funds may carryover those funds to the general election. A winning primary candidate who does not have an opponent in the general election shall return the unexpended public funds to the Hawaii campaign election fund within thirty days after the primary election, except for \$4,000 to be used for in-office constituent communications. Expenditures for these communications shall not exceed \$2,000 per year or \$4,000 for a two-year term.

If the total surplus for a certified candidate who is elected to office falls under \$4,000, the office holder shall be allowed to raise the difference with private contributions in an aggregate amount of \$2,000 per year; provided that the contributions are received from an individual and each individual shall be limited to contributing \$250 for the election period.

A certified candidate who is not successful in the primary election shall return all unexpended public funds to the Hawaii Election Campaign Fund within thirty days after the election.

## **CHAPTER IX: GENERAL ELECTION FUNDS**

### **\$300,000 Cap**

No distributions in an aggregate amount greater than \$300,000 shall be made from the Hawaii Election Campaign Fund to all Hawaii County Council candidates in the 2010 primary and general elections.

### **Public Funds Available (Base Amount; Equalizing Funds)**

#### Base Amount

A certified candidate is eligible to receive the base amount of public funding in the general election. The base amount in a contested general election is the average of the amount spent by the winning

candidates in the previous two county council general elections of the same district, reduced by ten per cent.

The base amount of funding, subject to the \$300,000 cap, that is available in the general election for every certified candidate in each of the nine districts is listed as follows:

Hawaii County Council	General Election Base Amounts
District 1	\$338
District 2	\$2,686
District 3	\$546
District 4	\$7,534
District 5	\$6,619
District 6	\$455
District 7	\$6,218
District 8	\$220
District 9	\$484

Unopposed Certified Candidate

A certified candidate who has no opponent in the general election will not receive any public funds.

Equalizing Funds

In addition to the base amount, a certified candidate in a contested general election may also receive equalizing funds if an opposing nonparticipating candidate “outspends” a certified participating candidate.

The aggregate amount of equalizing funds is limited to an amount equal to the base amount allotted to the certified candidate. Subject to the \$300,000 cap, a certified candidate may receive equalizing funds in the following increments:

Payment Trigger	Amount of Equalizing Funds
Opposing nonparticipating candidate’s expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 100% of the participating candidate’s base amount.	25% of general election base amount
Opposing nonparticipating candidate’s expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 125% but less than 150% of the participating candidate’s base amount.	25% of general election base amount
Opposing nonparticipating candidate’s expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 150% but less than 175% of the participating candidate’s base amount.	25% of general election base amount
Opposing nonparticipating candidate’s expenditures or contributions, whichever is greater, + Independent expenditures in support of the nonparticipating candidate	25% of general election base amount

or against the certified candidate, - Independent expenditures made in support of the certified candidate or against the nonparticipating candidate reported by any person, Exceed 175% of the participating candidate's base amount.	
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In order to determine whether equalizing funds are available to a certified candidate, Act 244 requires the following:

- Beginning on August 4, 2010 (forty-five days before the primary election on September 18, 2010) a nonparticipating candidate and the committee must file on the Candidate Filing System an initial excess report and supplemental excess reports, as discussed in Part VII. This is an ongoing requirement; a supplemental report must be filed every time aggregate expenditures exceed \$1,000 since the filing of the prior report. This requirement also is applicable during the general election campaign if a nonparticipating candidate advances to the general election and is opposed by a participating candidate.
- Beginning on September 18, 2010 (forty-five days before the general election on November 2, 2010), any noncandidate committee or person, including an individual, who makes independent expenditures against a participating candidate or in support of a candidate who is not participating in the program, must file on the Candidate Filing System an initial independent expenditure report within twenty-four hours after expenditures exceed \$1,000 in an election. A supplemental independent expenditure report must be filed on the Candidate Filing System by a noncandidate committee or person, including an individual, within twenty-four hours after the aggregate expenditures exceed \$1,000 since the filing of the prior report. This is an ongoing reporting requirement; a report must be filed every time the aggregate expenditures exceed \$1,000 since the filing of the prior report. See Chapter XIII for more information.

### **Private Funds Available During The General Election In Limited Circumstances**

If the Commission determines that the revenues are insufficient to meet distributions to certified candidates under this section or \$300,000 is distributed for the 2010 Hawaii County Council election, the commission shall permit certified candidates to accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, HRS, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding.

Seed money and qualifying contributions received by a candidate shall be included in the aggregate contributions of individuals for purposes of determining contribution limits in section 11-204, HRS, if the Commission determines that revenues are insufficient to meet distributions to certified candidates.

### **Public Funds Remaining After The General Election**

A certified candidate who wins the general election shall return unexpended public funds to the Hawaii Election Campaign Fund within thirty days after the election except for \$4,000 to be used for in-office constituent communications. Expenditures for these communications shall not exceed \$2,000 per year or \$4,000 for a two-year term.

If the total surplus for a certified candidate who is elected to office falls under \$4,000, the office holder shall be allowed to raise the difference with private contributions in an aggregate amount of \$2,000 per year; provided that the contributions are received from an individual and each individual shall be limited to contributing \$250 for the election period.

A certified candidate who is not successful in the general election shall return all unexpended public funds to the Hawaii Election Campaign Fund within thirty days after the election.

## CHAPTER X: CANDIDATE'S POST-ELECTION RESPONSIBILITIES

### Primary Election

#### Public Funds Remaining After the Primary Election

A certified candidate who wins the primary election and has unexpended public funds may carryover those funds to the general election. If the winning primary candidate does not have an opponent in the general election, the unexpended public funds shall be returned to the Hawaii campaign election fund within thirty days after the primary election except for \$4,000 to be used for in-office constituent communications.

A certified candidate who is not successful in the primary election shall return all unexpended public funds to the Hawaii Election Campaign Fund within thirty days after the election.

#### 20-Day Post Primary Election Expenditure Report

A post-election report shall be filed on the Candidate Filing System no later than twenty days after a primary election. The report shall include information regarding all expenditures made, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements must be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

### General Election

#### Public Funds Remaining After The General Election

If a certified candidate wins the general election, the unexpended public funds shall be returned to the Hawaii Election Campaign Fund within thirty days after the primary election except for \$4,000 to be used for in-office constituent communications. Expenditures for these communications shall not exceed \$2,000 per year or \$4,000 for a two-year term.

If the total surplus for a certified candidate who is elected to office falls under \$4,000, the office holder shall be allowed to raise the difference with private contributions in an aggregate amount of \$2,000 per year; provided that the contributions are received from an individual and each individual shall be limited to contributing \$250 for the election period. The candidate also may use surplus campaign funds together with public funds and private contributions but aggregate expenditures for these communications shall not exceed \$2,000 per year or \$4,000 for a two-year term.

A certified candidate who is not successful in the general election shall return all unexpended public funds to the Hawaii Election Campaign Fund within thirty days after the election.

#### 30-Day Post General Election Expenditure Report

A post-election report shall be filed on the Candidate Filing System no later than thirty days after a general election. The report shall include information regarding all expenditures made, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements must be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

### Office Holder Cannot Accept Private Contributions

A certified candidate who is elected to office in 2010 shall not accept private contributions, except for seed money contributions, until either September 1, 2011, or the date when the Commission determines there are insufficient funds for comprehensive public funding for the 2012 Hawaii County Council election, whichever occurs earlier.

## CHAPTER XI: AUDIT and ENFORCEMENT

Both Act 244 and subpart B of part XII of chapter 11, HRS, authorize audits of committees. A certified candidate and the certified candidate's committee shall furnish to the Commission complete campaign records, including all records of seed money contributions, qualifying contributions and expenditures. A candidate shall fully cooperate with any audit or examination by the Commission.

The Commission also has enforcement authority and may issue an order affecting any person violating any laws in subpart B of part XII of chapter 11, HRS, and may assess an administrative fine as follows:

- (1) If a natural person, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater; or
- (2) If a corporation, organization, association, or labor union, it shall be punished by a fine not exceeding \$1,000 for each occurrence; and
- (3) Whenever a corporation, organization, association, or labor union violates this subpart, the violation shall 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.

## CHAPTER XII: SURPLUS CAMPAIGN FUNDS; CAMPAIGN MATERIAL

### Surplus Campaign Funds

"Surplus campaign funds" means any campaign contributions not spent during a prior election period by a participating candidate who previously sought election as a privately funded candidate.

The surplus campaign funds can only be used for seed money and in-office constituent communications. A candidate's expenditures for these communications from all funds, including surplus funds, shall not exceed \$2,000 per year or \$4,000 for a two-year term.

Once a candidate is certified, the surplus funds must be frozen and maintained in a separate depository account from that established for the comprehensive public funds. Reports regarding the surplus campaign funds must be filed, pursuant to Reporting Schedule 1, which is available on the Commission's website.

These surplus funds remain frozen even if the Commission determines that the revenues are insufficient to meet distributions to certified candidates or \$300,000 is distributed. If either event occurs, a certified candidate may "accept and spend contributions, subject to the campaign contribution limitations set forth in section 11-204, Hawaii Revised Statutes, up to the applicable amounts, including equalizing funds the certified candidate would have received from comprehensive public funding," but cannot access any surplus campaign funds.

### Campaign Material

Any campaign material purchased or held from a date prior to filing the "Declaration of Intent to Seek Comprehensive Public Funds" cannot be used upon certification for comprehensive public funding and until the end of the general election campaign period.

## CHAPTER XIII: INDEPENDENT EXPENDITURES; REPORTING

Other persons, including individuals, expressly advocating for or against (i.e., independent expenditures) Hawaii County Council candidates in the 2010 election are subject to mandatory reporting requirements in Act 244 beginning on September 18, 2010, in addition to the reporting requirements in subpart B of part XII of chapter 11, HRS. The purpose of these additional requirements is to determine whether equalizing funds are available to a certified candidate.

"Independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate's committee, a party, or their agents.

Beginning on September 18, 2010 (forty-five days before the general election on November 2, 2010), any noncandidate committee or person, including an individual, who makes independent expenditures against a participating candidate or in support of a candidate who is not participating in the program, must file on the Candidate Filing System an initial independent expenditure report within twenty-four hours after expenditures exceed \$1,000 in an election.

A supplemental independent expenditure report must be filed on the Candidate Filing System by a noncandidate committee or person, including an individual, within twenty-four hours after the aggregate expenditures exceed \$1,000 since the filing of the prior report. This is an ongoing reporting requirement; a report must be filed every time the aggregate expenditures exceed \$1,000 since the filing of the prior report.

The independent expenditure reports shall identify the nonparticipating candidate or certified candidate for whom the independent expenditure is intended to influence the nomination, election, or defeat.

Reports for a noncandidate committee (not individuals) receiving contributions or making expenditures aggregating more than \$1,000 in a two-year election period			Reports for any person, including an individual, making independent expenditures exceeding \$1,000 against a participating candidate or in support of a non participating candidate pursuant to Act 244		
Due date	Reporting period	Report	Due date	Reporting period	Report
September 8, 2010	January 1 through September 3, 2010	Preliminary Primary			
September 15, 2010	September 4 through September 14, 2010	Late Contributions Report			
			September 18, 2010	N/A	Initial independent expenditure report
			Multiple undetermined dates within twenty-four after the person's independent expenditures exceed \$1,000 since the filing of the prior report.	N/A	Supplemental independent expenditure reports
October 8, 2010	September 4 through September 18, 2010	Final Primary Report			
October 25, 2010	September 19 through October 18, 2010	Preliminary General Report			
November 1, 2010	October 19 through October 25, 2010	Late Contributions Report			
December 2, 2010	October 19 through November 2, 2010	Final Election Period Report			