

JAN 25 2006

S.B. NO. 2590

A BILL FOR AN ACT

RELATING TO CAMPAIGN SPENDING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended
2 by adding a new section to subpart B of part XII to be
3 appropriately designated and to read as follows:

4 **"§11- Failure to file reports; substantially defective**
5 **reports.** (a) When any candidate, committee, or party has
6 failed to file a report required by this subpart or has filed a
7 substantially defective or deficient report, the commission
8 shall notify these persons by first class mail that their
9 failure to file or filing of a substantially defective or
10 deficient report must be corrected and explained. The
11 correction and explanation shall be submitted in writing to the
12 commission not later than 4:30 p.m. on the fifth day after
13 notification of the failure to file or the deficiency has been
14 mailed to these persons.

15 (b) The commission shall publish in the newspaper, and on
16 its website, the names of all candidates, committees, and
17 parties who have failed to file a report to correct their
18 deficiency within the time allowed by the commission.



1 (c) Failure to file or correct a report when due, as
2 required by this subpart, shall result in a penalty of \$50.

3 (d) Failure to respond after a newspaper notification or
4 website publication shall result in an additional penalty of \$50
5 for each day a report remains overdue or uncorrected.

6 (e) All penalties collected under this section shall be
7 deposited in the Hawaii election campaign fund."

8 SECTION 2. Section 11-191, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending the definition of "contribution" to read:

11 ""Contribution" means:

12 (1) A gift, subscription, deposit of money or anything of
13 value, or cancellation of a debt or legal obligation
14 and includes the purchase of tickets to fundraisers
15 and legal and accounting services, except for
16 accounting services provided by the treasurer and
17 deputy treasurers, for the purpose of:

18 (A) Influencing the nomination for election, or
19 election, of any person to office;

20 (B) Influencing the outcome of any question or issue
21 that appears or is reasonably certain to appear



1 on the ballot at the next applicable election
2 described in subparagraph (A); or
3 (C) Use by any party or committee for the purposes
4 set out in subparagraph (A) or (B);
5 (2) The payment, by any person, political party, or any
6 other entity other than a candidate or committee, of
7 compensation for the personal services or services of
8 another person, including legal and accounting
9 services, except for accounting services provided by
10 the treasurer and deputy treasurer, that are rendered
11 to the candidate or committee without charge or at an
12 unreasonably low charge for the purposes set out in
13 paragraph (1) (A), (1) (B), or (1) (C);
14 (3) A contract, promise, or agreement to make a
15 contribution; provided that notwithstanding this
16 paragraph and paragraphs (1) and (2), the term
17 "contributions" shall not include services or portions
18 thereof voluntarily provided without reasonable
19 compensation by individuals to or in behalf of a
20 candidate or committee; provided that "contributions"
21 include legal and accounting services, except for



1 accounting services provided by the treasurer or
2 deputy treasurers; or

3 (4) Notwithstanding paragraphs (1), (2), and (3), a
4 candidate's expenditure of the candidate's own funds
5 or the making of a loan or advance in the pursuit of
6 the candidate's campaign shall not be a contribution
7 for the purpose of this subpart but shall nevertheless
8 be reportable as a campaign receipt."

9 2. By amending the definition of "expenditure" to read:

10 ""Expenditure" means:

11 (1) Any purchase or transfer of money or anything of
12 value, or promise or agreement to purchase or transfer
13 money or anything of value, or payment incurred or
14 made, or the use or consumption of a nonmonetary
15 contribution for the purpose of:

16 (A) Influencing the nomination for election, or
17 election, of any person seeking nomination for
18 election, or election, to office whether or not
19 the person has filed the person's nomination
20 paper;

1 (B) Influencing the outcome of any question or issue
2 that has been certified to appear on the ballot
3 at the next applicable election; or

4 (C) Use by any party or committee for the purposes
5 set out in subparagraph (A) or (B);

6 (2) The payment, by any person other than a candidate or
7 committee, of compensation for the personal services
8 of another person that are rendered to the candidate
9 or committee for any of the purposes mentioned in
10 paragraph (1); [~~or~~]

11 (3) The expenditure by a candidate of the candidate's own
12 funds for the purposes set out in paragraph (1) [~~or~~]; or

13 (4) The term does not include: volunteer personal
14 services, except for legal and accounting services,
15 provided that volunteer personal services includes
16 accounting services by a treasurer or deputy
17 treasurers; and voter registration efforts that are
18 not partisan."

19 3. By amending the definition of "matching payment period"
20 to read:

21 ""Matching payment period" means:



1 (1) For a primary election, from January 1 of the year of
 2 a general election through the day of the primary
 3 election[~~, or nine months prior to a special election~~
 4 ~~through the day of a special election~~]; and

5 (2) For a general election, from January 1 of the year of
 6 a general election through the day of the general
 7 election."

8 4. By amending the definition of "qualifying campaign
 9 contribution" to read:

10 ""Qualifying campaign contribution" means an aggregate
 11 monetary contribution of \$100 or less, by [~~any person~~] an
 12 individual resident of Hawaii during any matching payment
 13 period. Qualifying contributions do not include loans or in-
 14 kind contributions."

15 SECTION 3. Section 11-193, Hawaii Revised Statutes, is
 16 amended by amending subsection (a) to read as follows:

17 "(a) The duties of the commission under this subpart are:

18 (1) To develop and adopt reporting forms required by this
 19 subpart;

20 (2) To adopt and publish a manual for all candidates and
 21 committees, describing the requirements of this



- 1 subpart, including uniform and simple methods of
2 recordkeeping;
- 3 (3) To preserve all reports required by this subpart for
4 at least ten years from the date of receipt;
- 5 (4) To permit the inspection, copying, or duplicating of
6 any report required by this subpart pursuant to rules
7 adopted by the commission; provided that no
8 information or copies from the reports shall be sold
9 or used by any person for the purpose of soliciting
10 contributions or for any commercial purpose;
- 11 (5) To ascertain whether any candidate, committee, or
12 party has failed to file a report required by this
13 subpart or has filed a substantially defective or
14 deficient report~~[, and to notify these persons by~~
15 ~~first class mail that their failure to file or filing~~
16 ~~of a substantially defective or deficient report must~~
17 ~~be corrected and explained. The correction or~~
18 ~~explanation shall be submitted in writing to the~~
19 ~~commission not later than 4:30 p.m. on the fifth day~~
20 ~~after notification of the failure to file or~~
21 ~~deficiency has been mailed to these persons. The~~
22 ~~commission shall publish in the newspaper, and on its~~



1 ~~website, the names of all candidates, committees, and~~
2 ~~parties who have failed to file a report or to correct~~
3 ~~their deficiency within the time allowed by the~~
4 ~~commission. Failure to file or correct a report when~~
5 ~~due, as required by this subpart, shall result in a~~
6 ~~penalty of \$50. Failure to respond after a newspaper~~
7 ~~notification or website publication shall result in an~~
8 ~~additional penalty of \$50 for each day a report~~
9 ~~remains overdue or uncorrected. All penalties~~
10 ~~collected under this section shall be deposited in the~~
11 ~~Hawaii election campaign fund];~~

- 12 (6) To hold public hearings;
- 13 (7) To investigate and hold hearings for receiving
14 evidence of any violations;
- 15 (8) To adopt a code of fair campaign practices as a part
16 of its rules;
- 17 (9) To establish rules pursuant to chapter 91;
- 18 (10) To request the initiation of prosecution for the
19 violation of this subpart pursuant to section 11-229;
- 20 (11) To administer and monitor the distribution of public
21 funds under this subpart;



1 (12) To suggest accounting methods for candidates, parties,
2 and committees, as the commission may deem advisable,
3 in connection with reports and records required by
4 this subpart;

5 (13) To employ or contract, without regard to chapters 76
6 and 89 and section 28-8.3, and, at pleasure, to
7 dismiss persons it finds necessary for the performance
8 of its functions, including a full-time executive
9 director, and to fix their compensation;

10 (14) To do random audits, field investigations, as
11 necessary;

12 (15) To file for injunctive relief when indicated; and

13 (16) To render advisory opinions upon the request of any
14 candidate, candidate committee, noncandidate
15 committee, or other person or entity subject to this
16 chapter, as to whether the facts and circumstances of
17 a particular case constitute or will constitute a
18 violation of the campaign spending laws. If no
19 advisory opinion is rendered within ninety days after
20 all information necessary to issue an opinion has been
21 obtained, it shall be deemed that an advisory opinion
22 was rendered and that the facts and circumstances of



1 that particular case do not constitute a violation of
2 the campaign spending laws. The opinion rendered or
3 deemed rendered, until amended or revoked, shall be
4 binding on the commission in any subsequent charges
5 concerning the candidate, candidate committee,
6 noncandidate committee, or other person or entity
7 subject to this chapter, who sought the opinion and
8 acted in reliance on it in good faith, unless material
9 facts were omitted or misstated by the persons in the
10 request for an advisory opinion."

11 SECTION 4. Section 11-194, Hawaii Revised Statutes, is
12 amended by amending subsections (b) and (c) to read as follows:

13 "(b) Committees that form within ten days of any election
14 and intend to expend in the aggregate more than \$1,000 for the
15 election shall register and fully disclose the expenditure by
16 4:30 p.m. on the last calendar day prior to the expenditure.

17 (c) Each candidate [~~who files nomination papers for office~~
18 ~~with the chief election officer or county clerk~~] shall file an
19 organizational report within ten days of:

- 20 (1) Filing the nomination papers for office; or
21 (2) The date the candidate or candidate's committee
22 receives contributions or makes expenditures that



1 amount to more than \$100 in the aggregate during the
 2 applicable election period~~(-)~~, whichever occurs
 3 first."

4 SECTION 5. Section 11-204, Hawaii Revised Statutes, is
 5 amended to read as follows:

6 **"§11-204 Campaign contributions; limits as to persons.**

7 (a) (1) No person or any other entity shall make
 8 contributions to:

9 (A) A candidate seeking nomination or election to a
 10 two-year office or to the candidate's committee
 11 in an aggregate amount greater than \$2,000 during
 12 an election period;

13 (B) A candidate seeking nomination or election to a
 14 four-year statewide office or to the candidate's
 15 committee in an aggregate amount greater than
 16 \$6,000 during an election period; and

17 (C) A candidate seeking nomination or election to a
 18 four-year nonstatewide office or to the
 19 candidate's committee in an aggregate amount
 20 greater than \$4,000 during an election period.

21 These limits shall not apply to: a loan made [~~to a~~
 22 ~~candidate~~] by a financial institution in accordance



1 with applicable law in the ordinary course of
2 business; a loan from immediate family members; or a
3 loan from the candidate's own funds;

4 (2) For purposes of this section, the length of term of an
5 office shall be the usual length of term of the office
6 as unaffected by reapportionment, a special election
7 to fill a vacancy, or any other factor causing the
8 term of the office the candidate is seeking to be less
9 than the usual length of term of that office.

10 (b) No person or any other entity shall make contributions
11 to a noncandidate committee, in an aggregate amount greater than
12 \$1,000 in an election.

13 (c) A candidate's immediate family, in making
14 contributions to the candidate's campaign, shall be exempt from
15 the above limitation, but shall be limited in the aggregate to
16 \$50,000 in any election period. The aggregate amount of \$50,000
17 shall include any loans made for campaign purposes to the
18 candidate from the candidate's immediate family.

19 (d) A contribution by a dependent minor shall be reported
20 in the name of the minor but shall be counted against the
21 contribution of the minor's parent or guardian.



1 (e) Any candidate, candidate's committee, or committee
2 that receives in the aggregate more than the applicable limits
3 set forth in this section in any primary, initial special,
4 special, or general election from a person, shall be required to
5 return any excess contribution to the original donor within
6 thirty days of receipt of the excess contribution. Any excess
7 contribution not returned to the original donor within thirty
8 days shall escheat to the Hawaii election campaign fund. A
9 candidate, candidate's committee, or committee who complies with
10 this subsection prior to the initiation of prosecution shall not
11 be subject to any penalty under section 11-228.

12 (f) All payments made by a person or political party whose
13 contributions or expenditure activity is financed, maintained,
14 or controlled by any corporation, labor organization,
15 association, political party, or any other person or committee,
16 including any parent, subsidiary, branch, division, department,
17 or local unit of the corporation, labor organization,
18 association, political party, political committees established
19 and maintained by a national political party, or any other
20 person, or by any group of those persons shall be considered to
21 be made by a single person or political party.



1 (g) An individual and any general partnership in which the
2 individual is a partner, or an individual and any corporation in
3 which the individual owns a controlling interest, shall be
4 treated as one person.

5 (h) No committee that supports or opposes a candidate for
6 public office shall have as officers individuals who serve as
7 officers on any other committee which supports or opposes the
8 same candidate. No such committee shall act in concert with, or
9 solicit or make contributions on behalf of, any other committee.

10 (i) No contributions or expenditures shall be made to or
11 on behalf of a candidate or committee by a foreign national or
12 foreign corporation, including a domestic subsidiary of a
13 foreign corporation, a domestic corporation that is owned by a
14 foreign national, or a local subsidiary where administrative
15 control is retained by the foreign corporation, and in the same
16 manner prohibited under 2 United States Code section 441e and 11
17 Code of Federal Regulations 110.20, as amended. No foreign-
18 owned domestic corporation shall make contributions where:

- 19 (1) Foreign national individuals participate in election-
20 related activities such as decisions concerning the
21 making of contributions or the administration of a
22 political committee; or

1 (2) The contribution funds are not domestically-derived.

2 (j) No person or any other entity other than political
3 committees established and maintained by a national political
4 party shall make contributions to a political party in an
5 aggregate amount greater than \$25,000 in any two-year election
6 period. No political committee established and maintained by a
7 national political party, shall make contributions to a
8 political party in an aggregate amount greater than \$50,000 in
9 any two-year election period.

10 (k) The contribution limits under this section shall apply
11 for the office sought by the candidate. This section shall not
12 apply to ballot issue committees.

13 (l) A contribution made by two or more corporations shall
14 be treated as one person when the corporations:

15 (1) Share the majority of members of their boards of
16 directors;

17 (2) Share two or more corporate officers;

18 (3) Are owned or controlled by the same majority
19 shareholder or shareholders; or

20 (4) Are in a parent-subsidary relationship."

21 SECTION 6. Section 11-205.6, Hawaii Revised Statutes, is
22 amended by amending subsection (e) to read as follows:



1 "(e) Any loan by a financial institution regulated by the
2 State or a federally chartered depository institution and made
3 in accordance with applicable law in the ordinary course of
4 business, or a loan by a candidate of the candidate's own funds,
5 or a loan from immediate family members of a candidate using
6 their own funds to the candidate's committee shall not be deemed
7 a contribution and not subject to the contribution limits
8 provided in section 11-204 or the loan limit and repayment
9 provisions of subsection (b) and (c); provided that loans from
10 the immediate family members of the candidate shall remain
11 subject to the provisions in section 11-204(c). All other loans
12 are subject to the contribution limits in section 11-204."

13 SECTION 7. Section 11-207.5, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Each candidate, candidate's committee, or committee,
16 that within the period of [~~fifteen~~] fourteen calendar days
17 through four calendar days prior to a primary, special primary,
18 general, or special general election, makes contributions
19 aggregating more than \$500, or receives contributions from any
20 person or entity aggregating more than \$500, shall file a report
21 with the commission or appropriate county clerk's office on



1 forms provided by the commission, no later than 4:30 p.m., three
2 calendar days prior to the election."

3 SECTION 8. Section 11-209, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) From January 1 of the year of any primary, special,
6 or general election, the total expenditures for each election
7 for candidates who voluntarily agree to limit their campaign
8 expenditures, inclusive of all expenditures made or authorized
9 by the candidate alone and all campaign treasurers and
10 committees in the candidate's behalf, shall not exceed the
11 following amounts expressed respectively multiplied by the
12 number of voters in the last preceding general election
13 registered to vote in each respective voting district:

- 14 (1) For the office of governor--\$2.50;
15 (2) For the office of lieutenant governor--\$1.40;
16 (3) For the office of mayor--\$2.00;
17 (4) For the offices of state senator, state
18 representative, [~~and~~] county council member, and
19 prosecuting attorney--\$1.40; and
20 (5) For the offices of the board of education and all
21 other offices--20 cents."



1 SECTION 9. Section 11-215, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) In addition to subsection (a), no candidate or
4 committee shall cause or submit any advertisement in support of
5 a candidate, against a candidate's opponent, or with regard to a
6 ballot issue to be published, broadcast, televised, or otherwise
7 circulated and distributed except under the following
8 conditions:

9 (1) The advertisement shall contain a notice in a
10 prominent location that the literature or
11 advertisement is published, broadcast, televised, or
12 circulated with the approval and authority of the
13 candidate, provided that in the event that the
14 literature or advertisement is paid for by a
15 candidate, [~~committee directly associated with a~~
16 ~~candidate,~~] the candidate's committee, or ballot issue
17 committee, the notice of approval and authority need
18 not be included; or

19 (2) The advertisement shall contain a notice in a
20 prominent location that the literature or
21 advertisement is published, broadcast, televised, or



1 circulated without the approval and authority of the
2 candidate."

3 SECTION 10. Section 11-216, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) Upon hearing the response of the person cited, if the
6 person elects to respond to the complaint, and upon completion
7 of any investigation, the commission may make a prompt
8 preliminary determination as to whether probable cause exists
9 that a violation of this subpart has been committed. [~~In lieu~~
10 ~~of an administrative determination that a violation of this~~
11 ~~section has been committed, the] The commission may refer the
12 complaint [~~to the attorney general or county prosecutor]~~ for
13 criminal prosecution pursuant to section 11-229 at any time it
14 believes that the person cited may have intentionally,
15 knowingly, or recklessly committed a violation. A referral of a
16 complaint for criminal prosecution does not preclude any
17 administrative proceeding by the commission at any time."~~

18 SECTION 11. Section 11-219, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§11-219 Qualifying campaign contributions; amounts.** As a
21 condition of receiving public funds for a primary or general
22 election, a candidate shall not be unopposed in any election for



1 which public funds are sought, shall have filed an affidavit
2 with the commission pursuant to section 11-208 to voluntarily
3 limit the candidate's campaign expenditures, and shall be in
4 receipt of the following sum of qualifying campaign
5 contributions for the election period from individual residents
6 of Hawaii:

- 7 (1) For the office of governor--qualifying contributions
8 that in the aggregate, exceed \$100,000;
- 9 (2) For the office of lieutenant governor--qualifying
10 contributions that in the aggregate, exceed \$50,000;
- 11 (3) For the office of mayor for each respective county:
 - 12 (A) County of Honolulu--qualifying contributions that
13 in the aggregate, exceed \$50,000;
 - 14 (B) County of Hawaii--qualifying contributions that
15 in the aggregate, exceed \$15,000;
 - 16 (C) County of Maui--qualifying contributions that in
17 the aggregate, exceed \$10,000; and
 - 18 (D) County of Kauai--qualifying contributions that in
19 the aggregate, exceed \$5,000; and
- 20 (4) For the office of prosecuting attorney for each
21 respective county:



- 1 (A) County of Honolulu--qualifying contributions that
- 2 in the aggregate, exceed \$30,000;
- 3 (B) County of Hawaii--qualifying contributions that
- 4 in the aggregate, exceed \$10,000; and
- 5 (C) County of Kauai--qualifying contributions that in
- 6 the aggregate, exceed \$5,000;
- 7 (5) For the office of county council--for each respective
- 8 county:
- 9 (A) County of Honolulu--qualifying contributions that
- 10 in the aggregate, exceed \$5,000;
- 11 (B) County of Hawaii--qualifying contributions that
- 12 in the aggregate, exceed \$1,500;
- 13 (C) County of Maui--qualifying contributions that in
- 14 the aggregate, exceed \$5,000; and
- 15 (D) County of Kauai--qualifying contributions that in
- 16 the aggregate, exceed \$3,000;
- 17 (6) For the office of state senator--qualifying
- 18 contributions that, in the aggregate, exceed \$2,500;
- 19 (7) For the office of state representative--qualifying
- 20 contributions that, in the aggregate, exceed \$1,500;



1 (8) For the office of Hawaiian affairs--qualifying
2 contributions that, in the aggregate, exceed \$1,500;
3 and

4 (9) For all other offices, qualifying contributions that,
5 in the aggregate, exceed \$500."

6 SECTION 12. Section 11-220, Hawaii Revised Statutes, is
7 amended by amending subsections (b) and (c) to read as follows:

8 "(b) To be eligible to receive payments pursuant to
9 section 11-217, a candidate shall certify to the commission
10 that:

11 (1) The candidate and [~~all committees authorized by the~~
12 ~~candidate~~] the candidate's committee shall not incur
13 campaign expenses in excess of the expenditure
14 limitations imposed by section 11-209;

15 (2) The candidate has qualified to be on the election
16 ballot in a primary or general election;

17 (3) The candidate has filed a statement of intent to seek
18 qualifying contributions. A contribution received
19 before the filing of a statement of intent to seek
20 public funds shall not be considered a qualifying
21 contribution;



1 (4) The candidate or committee authorized by the candidate
2 has received the qualifying sum of private
3 contributions for the office sought by the candidate
4 as set forth in section 11-219; and

5 (5) The aggregate of contributions certified with respect
6 to any person under paragraph (4) does not exceed
7 \$100.

8 (c) Each candidate and candidate's committee in receipt of
9 qualifying campaign contributions which may be taken into
10 account for purposes of public funding shall maintain, on a form
11 prescribed by the commission, records which show the date and
12 amount of each qualifying campaign contribution and the full
13 name and mailing address of the person making the contribution.
14 The candidate and [~~all committees authorized by the candidate~~]
15 the candidate's committee shall transmit to the commission all
16 reports with respect to these contributions that the commission
17 may require."

18 SECTION 13. Section 11-223, Hawaii Revised Statutes, is
19 amended by amending subsection (b) to read as follows:

20 "(b) Public campaign funds provided under this subpart
21 shall only be used to:



- 1 (1) Defray campaign expenses incurred by and paid for an
2 eligible candidate or [~~all committees authorized by~~
3 ~~such candidate;~~] the candidate's committee; and
4 (2) Repay loans, the proceeds of which were used to defray
5 campaign expenses."

6 SECTION 14. Section 11-226, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) The affidavit shall remain effective until the
9 termination of the [~~central committee of the candidate]~~
10 candidate's committee or the opening of filing for the next
11 succeeding election for the office held or sought at the time of
12 filing of the affidavit, whichever occurs first. An affidavit
13 filed under this section may not be rescinded."

14 SECTION 15. Section 11-197, Hawaii Revised Statutes, is
15 repealed.

16 [~~"§11-197 Designated central committee. Each candidate~~
17 ~~for a statewide or county office who is supported by more than~~
18 ~~one committee shall designate a central committee which shall be~~
19 ~~responsible for aggregating the total contributions and~~
20 ~~expenditures of all committees directly associated with the~~
21 ~~candidate and for filing composite reports indicating this~~
22 ~~information pursuant to sections 11-212 and 11-213."]~~



S.B. NO. 2590

1 SECTION 16. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 17. This Act shall take effect upon its approval.

4

INTRODUCED BY: 

By Request



SB. NO. 2590

Report Title:

Campaign Spending Reports

Description:

Exempts accounting services by treasurer and deputy treasurer from definitions of "contributions" and "expenditures". Clarifies that loans from immediate family members are not subject to certain contribution limits. Establishes conditions under which 2 or more corporations are treated as 1 person for the purposes of campaign contribution limits.

