

SENATE FLOOR AMENDMENT

FLOOR AMENDMENT NO. 6 Date APR 08 2008

TO: House Bill No. 661, H.D. 1, S.D. 2

SECTION 1. House Bill No. 661, H.D. 1, S.D. 2, is amended as follows:

1. By renumbering "SECTION 23" (supersession clause) as "SECTION 22".
2. By designating Sections 1 – 22 as "PART I".
3. By changing the term "Act", as used throughout the newly designated part I to reference the House Bill, to the term "part".
4. By renumbering "SECTION 22" (the boilerplate severability clause as it was numbered in H.B. No. 661, H.D. 1, S.D. 2) as "SECTION 35".
5. By adding a new part II to read as follows:

"PART II.

SECTION 23. Section 11-191, Hawaii Revised Statutes, is amended by:

1. Amending the definition of "loan" to read:

"Loan" means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time. A "loan" does not include expenditures made on behalf of a committee by a candidate, volunteer, or employee if:

- (1) A candidate, volunteer, or employee's aggregate expenditures do not exceed \$1,500 within a thirty day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the committee before the committee reimburses the candidate, volunteer, or employee; and
- (3) The committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made."

2. By amending the definition of "person" to read:



"Person" means an individual, partnership, committee, association, corporation, business entity, organization, or labor union and its auxiliary committees."

SECTION 24. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- ~~[(5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these persons by first class mail that their failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to these persons. The commission shall publish in the newspaper, and on its website, the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;~~
- ~~+(6)]~~ (5) To hold public hearings;
- ~~[(7)]~~ (6) To investigate and hold hearings for receiving evidence of any violations;
- ~~[(8)]~~ (7) To adopt a code of fair campaign practices as a part of its rules;



- [+9)] (8) To establish rules pursuant to chapter 91;
- [+10)] (9) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- [+11)] (10) To administer and monitor the distribution of public funds under this subpart;
- [+12)] (11) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- [+13)] (12) To employ or contract, without regard to chapters 76, 78, and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- [+14)] (13) To do random audits, field investigations, as necessary;
- [+15)] (14) To file for injunctive relief when indicated; and
- [+16)] (15) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion. Nothing in this section shall be construed to allow the commission to issue rules through an advisory opinion."

SECTION 25. Section 11-195, Hawaii Revised Statutes, is amended to read as follows:

"**§11-195 Filing of reports, generally.** (a) All reports required to be filed under this subpart by a candidate [~~or those committees directly associated with the candidate's candidacy~~] committee shall be certified by the candidate and treasurer. Reports required to be filed under this subpart by a [~~party or~~



~~committee that supports more than one candidate]~~ noncandidate committee shall be certified by ~~[a person authorized to sign the reports. All reports required to be filed under this subpart shall be open for public inspection in the office of the commission.]~~ the chairperson and treasurer.

(b) ~~[The original and one copy of all]~~ All reports required under this subpart shall be electronically filed ~~[at the office of the commission. In the case of counties having less than two hundred thousand voters, the filing shall be accomplished by filing an original and two copies of the required report with either the commission or the clerk of the county in which the candidate resides. The clerk shall then immediately mail the original and one copy of the report to the commission.]~~

~~(c) The commission or county clerk shall give each person filing a report a receipt stating the type of report filed and the date and time of filing.~~

~~(d) All reports filed with the county clerk's office shall be preserved by that office for four years from the date of receipt.]~~ on the commission's electronic filing system.

~~[(e)]~~ (c) All reports required to be filed under this subpart shall at all times be available to the general public.

~~[(f)]~~ (d) For purposes of this subpart, whenever a report is required to be filed with the commission, "filed" means ~~[received in the office of the commission or county clerk, whichever is applicable,]~~ electronically filed on the commission's electronic filing system by the date and time specified for the filing of the report ~~[, except that a noncandidate committee required to be registered with the commission pursuant to section 11-194(d), and a candidate]~~ by the:

(1) Candidate or the committee of a candidate who is seeking election to the:

- ~~[(1)]~~ (A) Office of governor;
- ~~[(2)]~~ (B) Office of lieutenant governor;
- ~~[(3)]~~ (C) Office of mayor;
- ~~[(4)]~~ (D) Office of prosecuting attorney;
- ~~[(5)]~~ (E) County council;
- ~~[(6)]~~ (F) Senate;
- ~~[(7)]~~ (G) House of representatives;
- ~~[(8)]~~ (H) Office of Hawaiian affairs; or
- ~~[(9)]~~ (I) Board of education~~[-~~

~~shall file by electronic means in the manner prescribed by the commission.]; or~~

(2) Noncandidate committee required to be registered with the commission pursuant to section 11-194.

(e) In order to be timely filed, a committee's reports shall be filed on the commission's electronic filing system on



or before 11:59 p.m. Hawaii standard time on the prescribed filing date."

SECTION 26. Section 11-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate's committee, as a contribution:

- (1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203;
- (2) May use campaign funds for any ordinary and [necessary] customary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office, as the term is used in section 11-206(c); and
- (3) May make contributions from its campaign fund to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

SECTION 27. Section 11-204, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election[-]; except that, in the case of a corporation or company using funds from its own treasury, a contribution by the corporation or company to its noncandidate committee shall not exceed \$25,000 in an election. A corporation or company shall not contribute any funds directly to a candidate, candidate committee, or party."

SECTION 28. Section 11-205.6, Hawaii Revised Statutes, is amended to read as follows:

"§11-205.6 Campaign contributions; loans. (a) Any loan to a candidate or candidate's committee in excess of \$100 shall be documented and disclosed as to lender, including the lender's name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to document the loan or to disclose



the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter.

(b) A candidate or candidate's committee may receive and accept loans in an aggregate amount not to exceed \$10,000 during an election period, provided that if the \$10,000 limit is reached, the candidate or candidate's committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full by the candidate or candidate's committee.

(c) If any loan made to a candidate is not repaid within one year of the date that the loan is made, the candidate and candidate's committee shall be prohibited from accepting any other loans, and all subsequent contributions received and any surplus retained shall only be expended toward the repayment of the outstanding loan, until the loan is repaid in full by the candidate or candidate's committee.

(d) No loan may be accepted or made by noncandidate committees.

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

(f) For the purposes of this section, a "loan" does not include expenditures made on behalf of a candidate committee by a candidate, volunteer, or employee if:

- (1) The candidate's, volunteer's, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee before the candidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made."

SECTION 29. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Surplus funds may be used after a general or special election for:



- (1) Any fundraising activity;
- (2) Any other politically related activity sponsored by the candidate;
- (3) Any ordinary and [~~necessary~~] customary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or
- (4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than twice the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a); provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

SECTION 30. Section 11-207.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each candidate, candidate's committee, or committee, that within the period of fourteen calendar days through four calendar days prior to a primary, special primary, general, or special general election, makes contributions aggregating more than \$500, or receives contributions from any person or entity aggregating more than \$500, shall file a report with the commission [~~or appropriate county clerk's office on forms provided by the commission, no later than 4:30 p.m.,~~] three calendar days prior to the election."

SECTION 31. Section 11-212, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

- "(a) (1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report [~~with the commission or appropriate county clerk's office~~]. Preliminary reports shall be filed [~~on forms provided by the commission no later than 4:30 p.m.~~] on the following dates:
- (A) July thirty-first of the year of the primary election;
 - (B) Ten calendar days prior to each primary and initial special election; and
 - (C) Ten calendar days prior to a special or general election.
- (2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through June 30 prior to the filing



of the report filed on the thirty-first of July and fifth calendar day prior to the filing of other preliminary reports:

- (A) The aggregate sum of all contributions and other campaign receipts received;
- (B) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (C) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (D) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (E) A current statement of the balance on hand or deficit."

2. By amending subsection (b) to read:

"(b) Each noncandidate committee shall file a preliminary report with the commission~~[, on forms provided by the commission, no later than 4:30 p.m.]~~ on the tenth calendar day prior to each primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization,



- or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
 - (5) A current statement of the balance on hand."

3. By amending subsection (d) to read:

"(d) A candidate, party, or committee whose aggregate contributions and aggregate expenditures for the reporting period each total \$2,000 or less may file a short form report with the commission [~~or appropriate county clerk's office~~] in lieu of the reports required by this section and section 11-213."

SECTION 32. Section 11-213, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission [~~on forms provided by the commission no later than 4:30 p.m.~~] on the twentieth calendar day after a primary or initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (4) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (5) The cash balance and a statement of surplus or deficit."



2. By amending subsection (b) to read:

"(b) Each noncandidate committee shall file a final primary report, certified pursuant to section 11-195, [~~with the commission on forms provided by the commission no later than 4:30 p.m.~~] on the twentieth calendar day after a primary election. The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand."

3. By amending subsection (d) to read:

"(d) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period [~~general~~] report with the commission on forms provided by the commission [~~no later than 4:30 p.m.~~] on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report."

4. By amending subsection (f) to read:

"(f) Deficit. In the event of a deficit the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports covering all items prescribed in subsection (a) or subsection (b) in the case of noncandidate committees. The first report shall be due no later than [~~4:30 p.m. on~~] the thirty-first day after the last day of the election year."

5. By amending subsection (g) to read:



"(g) Surplus. In the event of a surplus the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall:

- (1) Maintain the cash surplus in a financial depository; and
- (2) Every six months, until the candidate files to be on the ballot with the state office of elections, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

The first report shall be due not later than [~~4:30 p.m. on~~] the thirty-first calendar day after the last day of the election year. " "

6. By adding a new part III to read as follows:

"PART III.

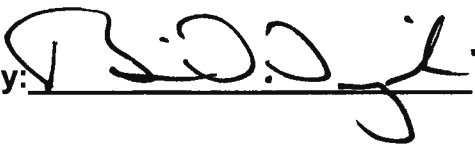
SECTION 33. Nothing in this Act shall affect the outcome of the case of Charmaine Tavares Campaign v. Barbara U. Wong, et al., Civil No. 06-1-0430, Circuit Court of the Second Circuit, or its appeal.

SECTION 34. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 35. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 36. Part I of this Act shall take effect on July 1, 2008, and shall be applicable beginning with the general election year of 2010. This part and part II shall take effect upon their approval; provided that section 27 shall take effect on November 5, 2008."



Offered by:  () Carried
() Failed to Carry
() Withdrawn