

JAN 25 2012

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# A BILL FOR AN ACT

RELATING TO CAMPAIGN SPENDING.

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

1           SECTION 1. The legislature recognizes that the State has a  
2 duty to its citizens to ensure that information concerning  
3 campaign contributions and expenditures is readily available and  
4 easily accessible by the public. Disclosure is even more  
5 important to the elections process in light of the dramatic  
6 changes in contributions policy reflected in recent court cases,  
7 such as *Citizens United v. Federal Election Commission*, 130  
8 S.Ct. 876 (U.S. 2010). In Hawaii, noncandidate committee  
9 reports and electioneering communication reports document some  
10 independent campaign expenditures, but more detail is needed to  
11 ensure transparency.

12           The purpose of this Act is to improve transparency by  
13 clarifying reporting requirements in noncandidate committee and  
14 electioneering communications reports, ensuring disclosure for  
15 persons other than individuals, including independent  
16 expenditures, requiring reporting of late expenditures,  
17 improving disclosures in advertisements, and ensuring disclosure  
18 in cases of transferred funds.



1 SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended  
2 by adding three new sections to part XIII to be appropriately  
3 designated and to read as follows:

4 **"§11-A Registration of persons other than individuals,**  
5 **candidates, candidate committees, and noncandidate committees.**

6 All persons required to report to the campaign spending  
7 commission under section 11-B shall register with the  
8 commission. The registration shall include:

- 9 (1) The person's name, address, and telephone number; and  
10 (2) The name and telephone number of a contact individual,  
11 if different from the information provided in (1).

12 **§11-B Filing report by persons other than individuals,**  
13 **candidates, candidate committees, and noncandidate committees.**

14 (a) A person other than an individual, candidate, candidate  
15 committee, or noncandidate committee shall file a report with  
16 the commission for contributions to candidates, candidate  
17 committees, or noncandidate committees or independent  
18 expenditures that aggregate more than \$1,000 per two-year  
19 election period; provided that this section shall not authorize  
20 contributions to a candidate, candidate committee, or  
21 noncandidate committee where otherwise prohibited by this part.



1 The reporting shall be made pursuant to the time requirements  
2 contained in section 11-336 and section 11-338.

3 (b) The authorized person shall file preliminary, final,  
4 and supplemental reports that disclose the following  
5 information:

- 6 (1) The person's name and address;  
7 (2) The reporting period and election period aggregate  
8 totals for each of the following categories:  
9 (A) Contributions made to candidates, candidate  
10 committees, and noncandidate committees; and  
11 (B) Independent expenditures; and  
12 (3) Certification by the chief executive officer, board  
13 chair, president, or other so designated highest  
14 ranking individual of the authorized persons'  
15 organization, that no expenditures have been  
16 coordinated with a candidate, candidate committee, or  
17 noncandidate committee; or agent of a candidate,  
18 candidate committee, or noncandidate committee.

19 (c) Schedules filed with the reports shall include the  
20 following additional information:

- 21 (1) The amount and date of each contribution made;



1       (2) The name and address of the candidate committee or  
2       noncandidate committee to which the contribution was  
3       made; and

4       (3) All independent expenditures, including the name and  
5       address of each payee and the amount, date, and  
6       purpose of each expenditure; provided that:

7       (A) Expenditures for consultants, advertising  
8       agencies, and similar firms; credit card  
9       payments; salaries; and candidate reimbursements  
10       shall be itemized to allow a reasonable person to  
11       determine the intended recipient of the  
12       expenditure and its purpose; and

13       (B) The purpose of an independent expenditure shall  
14       include the name of the candidate or issue that  
15       is supported or opposed by the expenditure, and  
16       whether the expenditure supports or opposes the  
17       candidate or issue;

18       (d) If a person, in addition to using the person's own  
19       funds, solicits or accepts donations from other persons for the  
20       purpose of influencing an election, the person shall register  
21       and report as a noncandidate committee or, if a corporation,  
22       business, union, or other organization, shall establish a



1 separate, segregated account for electioneering purposes,  
2 register that account as a noncandidate or ballot issue  
3 committee, and file reports pursuant to sections 11-335, 11-336,  
4 and 11-338.

5 (e) All persons covered by this part that make political  
6 contributions, independent expenditures for political purposes,  
7 or electioneering communications shall place, in prominent view,  
8 on their website, a notice that the entity has engaged in  
9 political activity and a link to its filing with the commission  
10 or information regarding how to obtain a copy of that filing  
11 from the entity, if the official filing is not available on-  
12 line.

13 **§11-C Transfers of funds.** (a) If any person other than  
14 an individual makes a transfer of funds to another person for  
15 the purpose of making an independent expenditure or  
16 electioneering communication, the person shall be deemed to be  
17 making an independent expenditure or electioneering  
18 communications and shall be responsible for the filing of  
19 reports pursuant to sections 11-335 and 11-338.

20 (b) A person shall be deemed to have transferred funds for  
21 the purpose of making campaign-related expenditures if one of  
22 the following exists:



- 1        (1) The funds have been solicited for such purpose;
- 2        (2) There have been substantial discussions regarding such
- 3        expenditures between the person administering the
- 4        transfer and the person receiving the funds;
- 5        (3) The person transferring the funds has knowledge of the
- 6        intent to make campaign-related expenditures by the
- 7        person receiving the funds; or
- 8        (4) The person receiving the funds made a campaign-related
- 9        expenditure in the last two-year election period or
- 10       the current two-year election period."

11       SECTION 3. Section 11-314, Hawaii Revised Statutes, is  
 12 amended to read as follows:

13       **"[+]§11-314[+] Duties of the commission.** The duties of  
 14 the commission under this part are to:

- 15       (1) Develop and adopt forms required by this part;
- 16       (2) Adopt and publish a manual for all candidates,
- 17       candidate committees, and noncandidate committees,
- 18       describing the requirements of this part, including
- 19       uniform and simple methods of recordkeeping;
- 20       (3) Preserve all reports required by this part for at
- 21       least ten years from the date of receipt by the
- 22       commission;



- 1 (4) Permit the inspection, copying, or duplicating of any  
2 report required by this part pursuant to rules adopted  
3 by the commission under chapter 91; provided that this  
4 paragraph shall not apply to the sale or use of  
5 information under section 11-344;
- 6 (5) Ascertain whether any person, candidate, candidate  
7 committee, noncandidate committee, or party has failed  
8 to file a report required by this part or has filed a  
9 substantially defective or deficient report. The  
10 commission shall notify these persons by first class  
11 mail that a fine may be assessed for the failure to  
12 file or the filing of a substantially defective or  
13 deficient report, and the defective or deficient  
14 report shall be corrected and explained. All fines  
15 collected under this section as authorized by section  
16 11-410 shall be deposited in the general fund of the  
17 State;
- 18 (6) Hold public hearings;
- 19 (7) Investigate and hold hearings for receiving evidence  
20 of any violations pursuant to subpart I of this part;
- 21 (8) Adopt rules pursuant to chapter 91;



- 1           (9) Request the initiation of prosecution for the
- 2           violation of this part pursuant to section 11-411;
- 3           (10) Administer and monitor the distribution of public
- 4           funds under this part;
- 5           (11) Suggest accounting methods for persons, candidates,
- 6           candidate committees, or noncandidate committees in
- 7           connection with reports and records required by this
- 8           part;
- 9           (12) Employ or contract with, without regard to chapters
- 10          76, 78, and 89, persons it finds necessary for the
- 11          performance of its functions, including a full-time
- 12          executive director, and to fix their compensation;
- 13          provided that the commission shall have the authority,
- 14          at its discretion, to dismiss persons employed by or
- 15          contracted with the commission;
- 16          (13) Conduct random audits and field investigations, as
- 17          necessary; and
- 18          (14) File for injunctive relief when indicated."

19          SECTION 4. Section 11-331, Hawaii Revised Statutes, is  
20 amended to read as follows:

21          **§11-331 Filing of reports, generally.** (a) Every report  
22 required to be filed by a candidate or candidate committee shall





1 be certified as complete and accurate by the candidate and  
2 treasurer.

3 (b) Every report required to be filed by a noncandidate  
4 committee shall be certified as complete and accurate by the  
5 chairperson and treasurer.

6 (c) Every report filed by a person other than an  
7 individual, candidate, candidate committee, or noncandidate  
8 committee shall be certified as complete and accurate by the  
9 chief executive officer, board chair, president, or other so  
10 designated highest ranking individual of the entity.

11 (d) Every report filed by an individual shall be certified  
12 as complete and accurate by that individual.

13 [~~e~~] (e) All reports required to be filed under this part  
14 shall be filed on the commission's electronic filing system.

15 [~~d~~] (f) For purposes of this part, whenever a report is  
16 required to be filed with the commission, "filed" means that a  
17 report shall be filed with the commission's electronic filing  
18 system by the date and time specified for the filing of the  
19 report by:

20 (1) The candidate or candidate committee of a candidate  
21 who is seeking election to the:

22 (A) Office of governor;



- 1 (B) Office of lieutenant governor;
- 2 (C) Office of mayor;
- 3 (D) Office of prosecuting attorney;
- 4 (E) County council;
- 5 (F) Senate;
- 6 (G) House of representatives; or
- 7 (H) Office of Hawaiian affairs; or
- 8 (2) A noncandidate committee required to be registered
- 9 with the commission pursuant to section 11-323.

10 [~~e~~] (g) To be timely filed, a committee's reports shall  
11 be filed with the commission's electronic filing system on or  
12 before 11:59 p.m. Hawaiian standard time on the filing date  
13 specified.

14 [~~f~~] (h) All reports filed under this part are public  
15 records."

16 SECTION 5. Section 11-335, Hawaii Revised Statutes, is  
17 amended by amending subsections (a) and (b) to read as follows:

18 "(a) The authorized person in the case of a party, or  
19 treasurer in the case of a noncandidate committee that is not a  
20 party, shall file preliminary, final, and supplemental reports  
21 that disclose the following information:

- 22 (1) The noncandidate committee's name and address;



- 1           (2) The cash on hand at the beginning of the reporting
- 2                   period and election period;
- 3           (3) The reporting period and election period aggregate
- 4                   totals for each of the following categories:
- 5                   (A) Contributions[+] received;
- 6                   (B) Contributions paid out;
- 7                   [~~(B)~~] (C) Expenditures; and
- 8                   [~~(C)~~] (D) Other receipts;
- 9           (4) The cash on hand at the end of the reporting period;
- 10                   and
- 11           (5) The surplus or deficit at the end of the reporting
- 12                   period.
- 13           (b) Schedules filed with the reports shall include the
- 14 following additional information:
- 15           (1) The amount and date of deposit of each contribution
- 16                   received and the name, address, occupation, and
- 17                   employer of each contributor making a contribution
- 18                   aggregating more than \$100 during an election period,
- 19                   which was not previously reported; provided that if
- 20                   all the information is not on file, the contribution
- 21                   shall be returned to the contributor within thirty
- 22                   days of deposit;



1        (2) The amount and date of each contribution made, and the  
2        name and address of the candidate committee or  
3        noncandidate committee to which the contribution was  
4        made;

5        [~~2~~] (3) All expenditures, including the name and address  
6        of each payee and the amount, date, and purpose of  
7        each expenditure[~~-~~]; provided that:

8        (A) Expenditures for consultants, advertising  
9        agencies and similar firms[~~-~~]; credit card  
10       payments[~~-~~]; salaries[~~-~~]; and candidate  
11       reimbursements shall be itemized to permit a  
12       reasonable person to determine the ultimate  
13       intended recipient of the expenditure and its  
14       purpose; and

15       (B) Any independent expenditure purpose shall include  
16       the name of the candidate or issue that is  
17       supported or opposed by the expenditure, and  
18       whether the expenditure supports or opposes the  
19       candidate or issue;

20       (4) For noncandidate committees solely making independent  
21       expenditures, certification that no expenditures have  
22       been coordinated with a candidate, candidate



1           committee, or noncandidate committee; or agent of a  
 2           candidate, candidate committee or noncandidate  
 3           committee;

4       ~~[(3)]~~ (5) The amount, date of deposit, and description of  
 5           other receipts and the name and address of the source  
 6           of each of the other receipts;

7       ~~[(4)]~~ (6) A description of each durable asset, the date of  
 8           acquisition, value at the time of acquisition, and the  
 9           name and address of the vendor or contributor of the  
 10          asset; and

11       ~~[(5)]~~ (7) The date of disposition of a durable asset, value  
 12          at the time of disposition, method of disposition, and  
 13          name and address of the person receiving the asset."

14       SECTION 6. Section 11-337, Hawaii Revised Statutes, is  
 15       amended to read as follows:

16       "~~[(1)]~~**§11-337**~~[(1)]~~ **Reporting expenditures.** For purposes of  
 17       this part, an expenditure is deemed to be made or incurred when  
 18       the services are rendered or the product is delivered. Services  
 19       rendered or products delivered for use during a reporting period  
 20       are deemed delivered or rendered during the period or periods of  
 21       use; provided that these expenditures shall be reasonably



1 allocated between periods in accordance with the time the  
2 services or products are actually used.

3 Any expenditures contracted or paid for that are to be  
4 rendered during the last three days of the election period shall  
5 be included in a late expenditures report."

6 SECTION 7. Section 11-338, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "~~§~~11-338~~§~~ **Late contributions; late expenditures;**  
9 **report.** (a) The candidate, authorized person in the case of a  
10 noncandidate committee that is a party, or treasurer in the case  
11 of a candidate committee or other noncandidate committee, that,  
12 within the period of fourteen calendar days through four  
13 calendar days prior to any election, makes contributions  
14 aggregating more than \$500, or receives contributions from any  
15 person aggregating more than \$500, shall file a late  
16 contribution report by means of the commission's electronic  
17 filing system on or before the third calendar day prior to the  
18 election.

19 (b) The late contribution report shall include the  
20 following information:

21 (1) Name, address, occupation, and employer of the  
22 contributor;



- 1           (2) Name of the candidate, candidate committee, or
- 2           noncandidate committee making or receiving the
- 3           contribution;
- 4           (3) The amount of the contribution;
- 5           (4) The contributor's aggregate contributions to the
- 6           candidate, candidate committee, or noncandidate
- 7           committee; and
- 8           (5) The purpose, if any, to which the contribution will be
- 9           applied[-], including contributions to a noncandidate
- 10          committee, the name of any candidate or issue to be
- 11          supported or opposed and whether that candidate or
- 12          issue is to be supported or opposed.

13          (c) A noncandidate committee or a person that registers  
14 pursuant to section 11-332 that, within the period of fourteen  
15 calendar days through four calendar days prior to any election,  
16 makes contributions or independent expenditures aggregating more  
17 than \$500, shall file a late expenditures report by means of the  
18 commission's electronic filing system on or before the third  
19 calendar day prior to the election.

20          (d) The late expenditures report shall disclose the  
21 following information:



- 1        (1) The amount, date, and recipient for each expenditure
- 2                made to a candidate, candidate committee, or
- 3                noncandidate committee;
- 4        (2) The vendor name, address, and contact information for
- 5                each expenditure;
- 6        (3) The amount and date of the expenditure;
- 7        (4) The purpose of the expenditure, including the name of
- 8                any candidate supported directly or by implication by
- 9                the expenditure, and whether the expenditure was made
- 10               to support or oppose that candidate.

11        [~~e~~] (e) A late contribution report or late expenditures  
12 report filed pursuant to this section shall be in addition to  
13 any other report required to be filed by this part."

14        SECTION 8. Section 11-340, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16        "(a) True and accurate reports shall be filed with the  
17 commission on or before the due dates specified in this part.  
18 The commission may assess a fine against a person, candidate  
19 committee, or noncandidate committee that is required to file a  
20 report under this part if the report is not filed by the due  
21 date or if the report is substantially defective or deficient,  
22 as determined by the commission."





1 SECTION 9. Section 11-341, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~{}~~§11-341~~{}~~ **Electioneering communications; statement of**  
4 **information.** (a) Each person who makes [~~a disbursement~~] an  
5 expenditure for electioneering communications in an aggregate  
6 amount of more than \$2,000 during any calendar year shall file  
7 with the commission a statement of information within twenty-  
8 four hours of each disclosure date provided in this section.

9 (b) Each statement of information shall contain the  
10 following:

11 (1) The name of the person making the [~~disbursement,~~]  
12 expenditure, name of any person or entity sharing or  
13 exercising discretion or control over such person, and  
14 the custodian of the books and accounts of the person  
15 making the [~~disbursement,~~] expenditure;

16 (2) The names and titles of the executives who authorized  
17 the expenditure or board of directors of the entity,  
18 if the expenditure was made by a person other than an  
19 individual;

20 [~~2~~] (3) The state of incorporation and principal [~~place~~  
21 ~~of business~~] address of the entity or, for an  
22 individual, the name, address, occupation, and



- 1           employer of the [~~person~~] individual making the  
2           [~~disbursement,~~] expenditure;
- 3       [+3+] (4) The amount of each [~~disbursement~~] expenditure  
4           during the period covered by the statement and the  
5           identification of the person to whom the disbursement  
6           was made;
- 7       [+4+] (5) The elections to which the electioneering  
8           communications pertain and the ballot issue or names[~~,~~  
9           ~~if known,~~] of [~~the~~] any candidates [~~identified or to~~  
10          ~~be identified,~~] or issues supported or opposed and  
11          whether the communication supported or opposed those  
12          candidates or issues;
- 13       [+5+] (6) If the [~~disbursements~~] expenditures were made by  
14          a candidate committee or noncandidate committee, the  
15          names and addresses of all persons who contributed to  
16          the candidate committee or noncandidate committee for  
17          the purpose of publishing or broadcasting the  
18          electioneering communications;
- 19       [+6+] (7) If the [~~disbursements~~] expenditures were made by  
20          an organization other than a candidate committee or  
21          noncandidate committee, the names and addresses of all  
22          persons who contributed to the organization for the



1 purpose of publishing or broadcasting the  
2 electioneering communications; and

3 ~~(7)~~ (8) Whether or not any electioneering communication  
4 is made in coordination, cooperation, or concert with  
5 or at the request or suggestion of any candidate,  
6 candidate committee, or noncandidate committee, or  
7 agent of any candidate if any, and if so, the  
8 identification of the candidate, a candidate committee  
9 or a noncandidate committee, or agent involved.

10 (c) A statement of information filed pursuant to this  
11 section shall be in addition to any other report required to be  
12 filed by this part.

13 ~~(e)~~ (d) For purposes of this section:

14 "Disclosure date" means, for every calendar year, the first  
15 date by which a person has made ~~[disbursements]~~ expenditures  
16 during that same year of more than \$2,000 in the aggregate for  
17 electioneering communications, and the date of any subsequent  
18 ~~[disbursements]~~ expenditures by that person for electioneering  
19 communications.

20 "Electioneering communication" means any advertisement or  
21 other communication that is broadcast from a cable, satellite,  
22 television, or radio broadcast station; published in any



1 periodical or newspaper; disseminated electronically;  
2 disseminated automatically by telephone; or sent by mail at a  
3 bulk rate, or otherwise made visible to 1,000 or more people,  
4 and that:

- 5 (1) Refers to a clearly identifiable candidate;
- 6 (2) Is made, or scheduled to be made, either within thirty  
7 days prior to a primary or initial special election or  
8 within sixty days prior to a general or special  
9 election; and
- 10 (3) [~~Is not susceptible to any reasonable interpretation~~  
11 ~~other than as an appeal to vote for or against a~~  
12 ~~specific candidate.] Can be reasonably interpreted as  
13 supporting or opposing a candidate or issue.~~

14 "Electioneering communication" shall not include  
15 communications:

- 16 (1) In a news story or editorial disseminated by any  
17 broadcast station or publisher of periodicals or  
18 newspapers, unless the facilities are owned or  
19 controlled by a candidate, candidate committee, or  
20 noncandidate committee;
- 21 [~~(2) That constitute expenditures by the disbursing~~  
22 ~~organization;~~



1       ~~(3)~~ (2) In house bulletins; or  
 2       ~~(4)~~ (3) That constitute a candidate debate or forum, or  
 3               solely promote a debate or forum and are made by or on  
 4               behalf of the person sponsoring the debate or forum.

5       ~~(d)~~ (e) For purposes of this section, a person shall be  
 6 treated as having made ~~[a disbursement]~~ an expenditure if the  
 7 person has executed a contract to make the ~~[disbursement.]~~  
 8 expenditure."

9       SECTION 10. Section 11-391, Hawaii Revised Statutes, is  
 10 amended to read as follows:

11       "~~[+]§11-391[+]~~ **Advertisements.** (a) Any advertisement  
 12 that is broadcast, televised, circulated, or published,  
 13 including disseminated electronically, or otherwise made visible  
 14 to 1,000 or more people, shall contain:

15       (1) The name and address of the candidate, candidate  
 16               committee, noncandidate committee, or other person  
 17               paying for the advertisement; and

18       (2) A notice in a prominent location stating either that:

19               (A) The advertisement ~~[is published, broadcast,~~  
 20                       ~~televised, or circulated with]~~ has the approval  
 21                       and authority of the candidate; provided that an  
 22                       advertisement paid for by a candidate, candidate



1                   committee, or ballot issue committee does not  
2                   need to include the notice; or

3                   (B) The advertisement [~~is published, broadcast,~~  
4                   ~~televised, or circulated without the approval and~~  
5                   ~~authority of]~~ has not been approved by the  
6                   candidate.

7                   (b) If the advertisement is paid for by a person other  
8                   than a candidate or candidate committee, the advertisement shall  
9                   also contain an additional notice in a prominent location  
10                   immediately after or below the notices required in paragraphs  
11                   (1) and (2). This additional notice shall include the following  
12                   phrase: "Top donors for this advertisement are" to be followed  
13                   by the names of the contributors that have made the five largest  
14                   aggregate contributions for the purposes of the advertisement;  
15                   or "Top donors for this entity are" to be followed by the names  
16                   of the contributors that have made the five largest aggregate  
17                   contributions during the two-year election period.

18                   ~~(b)~~ (c) The fine for violation of this section, if  
19                   assessed by the commission, shall not exceed \$25 for each  
20                   advertisement that lacks the information required by this  
21                   section, and shall not exceed an aggregate amount of \$5,000."



1 SECTION 11. Section 11-332, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§11-332] Filing report by corporations. (a) A~~  
4 ~~corporation shall file a report with the commission for~~  
5 ~~contributions from its own treasury that aggregate more than~~  
6 ~~\$1,000 per two year election period made directly to a candidate~~  
7 ~~or candidate committee; provided that this section shall not~~  
8 ~~authorize contributions to a candidate or candidate committee~~  
9 ~~where otherwise prohibited by this part. The reporting shall be~~  
10 ~~made pursuant to the time requirements contained in section~~  
11 ~~11-336 and section 11-338.~~

12 ~~(b) The filing shall include the name of the corporation,~~  
13 ~~business address, a contact individual, and amounts contributed~~  
14 ~~that are more than \$100 to each candidate or candidate~~  
15 ~~committee." ]~~

16 SECTION 12. In codifying the new sections added by section  
17 2 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

20 SECTION 13. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



# S.B. NO. 2953

1 SECTION 14. This Act shall take effect on July 1, 2012, or  
2 upon approval, whichever comes later.

3

INTRODUCED BY:

*[Signature]*  
*Therese Ann Calhoun*

*Paul H. Bell*  
*David J. Lee*  
*John E.*

*Will Egan*





# S.B. NO. 2953

**Report Title:**

Campaign Spending; Reporting; Independent Expenditure

**Description:**

Clarifies reporting requirements in noncandidate committee and electioneering communications reports, ensures disclosure for persons other than individuals, including independent expenditures, requires reporting of late expenditures, improves disclosures in advertisements, and ensures disclosure in cases of transferred funds.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

