

STAND. COM. REP. NO. 3198

Honolulu, Hawaii

APR 05 2012

RE: H.B. No. 2174
H.D. 1
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 2174, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CAMPAIGN SPENDING,"

begs leave to report as follows:

The purpose and intent of this measure is to make various
amendments to the campaign spending laws by:

- (1) Adding a definition for the word "entity";
- (2) Clarifying that any person, as defined in section
11-302, Hawaii Revised Statutes, who fails to file or
files a substantially defective or deficient report is
subject to monitoring and penalties;
- (3) Requiring that every report to be filed by an individual
or entity must be certified as complete and accurate by
that individual or entity;
- (4) Making all reports available for public inspection on
the Campaign Spending Commission's website in a
searchable database;
- (5) Adding additional disclosure requirements for
noncandidate committee reports;



- (6) Requiring that any expenditure that is contracted or paid for and that will be rendered during the last three days of an election period also be included in a late expenditure report;
- (7) Requiring late reports from entities that make contributions or independent expenditures in an aggregate amount of more than \$500 within fourteen through four calendar days prior to any election;
- (8) Authorizing the Commission to assess a fine against any person, as defined in section 11-302, Hawaii Revised Statutes, for failure to file required reports;
- (9) Mandating additional information to be contained in each statement of information;
- (10) Establishing certain requirements for advertisements;
- (11) Mandating the Campaign Spending Commission to adopt, amend, or repeal rules to ensure the proper disclosure of contributions and expenditures in accordance with part XIII of chapter 11, Hawaii Revised Statutes, along with other requirements; and
- (12) Requiring the Executive Director of the Campaign Spending Commission to notify the Legislature and public regarding the adoption, amendments, or repeal of rules concerning disclosure of contributions and expenditures.

Your Committee received testimony in support of this measure from Common Cause Hawaii, Americans for Democratic Action/Hawaii, League of Women Voters of Hawaii, Open Law Alliance, and thirty-seven private individuals. The Campaign Spending Commission and the Department of the Attorney General submitted comments.

Your Committee finds that disclosure is an important issue in the election process in light of the dramatic changes in policy regarding corporate contributions as reflected in the recent decision of the United States Supreme Court in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010). These policy changes have paved the way for unlimited spending by corporations and unions to influence elections. New super political action committees and other entities are established at the federal and state levels to take advantage of these new pathways for campaign



money contributions. This measure strengthens the State's disclosure requirements under campaign finance laws.

The Department of the Attorney General indicated that the addition of a new reporting requirement in this measure to apply to an "entity" is unnecessary because according to *Yamada v. Weaver*, any organization, regardless of form, that accepts contributions or makes expenditures in excess of \$1,000, in the aggregate, is already required to file disclosure reports with the Campaign Spending Commission under existing law. Thus, such organization would file reports as a noncandidate committee, which is a term used to describe a political action committee, or PAC, in other jurisdictions. Existing law does not require an organization to form a separate legal entity to serve as a noncandidate committee because the organization is a noncandidate committee. Your Committee notes that the testifier representing the Department of the Attorney General and author of the suggested amendments to this measure litigated the *Yamada* case.

Furthermore, the Campaign Spending Commission raised concerns regarding its ability to timely implement a searchable database for the public. The Commission needs additional time to consult with the Information and Communication Services Division of the Department of Accounting and General Services to upgrade the Commission's existing electronic filing system. As such, the Commission suggested that this measure take effect three hundred sixty days after November 7, 2012, the day after the general election, except for the section of this measure that repeals section 11-332, Hawaii Revised Statutes.

Your Committee has amended this measure by:

- (1) Adopting the language proposed by the Department of the Attorney General to:
 - (A) Delete the definition of the word "entity" and any references to this term, as applicable;
 - (B) Add a reference to section 11-340, Hawaii Revised Statutes, under section 11-314, Hawaii Revised Statutes, which delineates the duties of the Campaign Spending Commission;
 - (C) Add an additional requirement for a statement of information for electioneering communications to



include top donors for the advertisement or the top donors for the noncandidate committee, business entity, or organization; and

- (D) Clarify that advertisements that are paid for by a person other than the candidate or candidate committee are required under the list of top donors for the business entity, noncandidate committee, or organization to include the names of the contributors that have made the five greatest aggregate contributions during the election period, as determined by records of contributions made within the last twelve months prior to the date of the advertisement;
- (2) Adopting the suggestion made by the Campaign Spending Commission to change the effective date to three hundred sixty days after November 7, 2012, except for the section of this measure that repeals section 11-332, Hawaii Revised Statutes, which will take effect on November 7, 2012; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2174, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2174, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



