

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 finds that the State has a duty
2	to the residents of Hawaii to ensure that information concerning
3	campaign contributions and expenditures is readily available to
4	and easily accessible by the public. Disclosure is now more
5	important than ever to the election process in light of the
6	dramatic changes in policy regarding corporate contributions as
7	reflected in the recent decision of the United States Supreme
8	Court in Citizens United v. Federal Election Commission, 130 S.
9	Ct. 876 (2010).
10	Accordingly, the purpose of this Act is to:
11	(1) Increase transparency in campaign spending and
12	accessibility to information on campaign contributions
13	and expenditures; and
14	(2) Remove redundancy and eliminate possible confusion
15	with respect to the status of corporations under state
16	campaign finance law.

1	SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended
2	by adding a new section to be appropriately designated and to
3	read as follows:
4	"§11- Identification of certain top contributors in
5	advertisements; noncandidate committee; independent
6	expenditures. (a) An advertisement shall contain an additional
7	notice in a prominent location immediately after or below the
8	notices required by section 11-391, if the advertisement is
9	broadcast, televised, circulated, or published, including posted
10	on the Internet, and is paid for by a noncandidate committee
11	that certifies to the commission that it makes only independent
12	expenditures. This additional notice shall start with the
13	words, "The five top contributors for this advertisement are",
14	followed by the names of the contributors who made the three
15	greatest aggregate contributions to the noncandidate committee
16	for the purpose of funding the advertisement within the twelve-
17	month period prior to the purchase of the advertisement;
18	provided that:
19	(1) If the five top contributors funding the advertisement
20	cannot be identified, the additional notice shall
21	start with the words, "The five top contributors for
22	this noncandidate committee are", followed by the

1		names of the contributors who have made the three
2		greatest aggregate contributions to the noncandidate
3		committee within the twelve-month period prior to the
4		purchase of the advertisement;
5	(2)	If a noncandidate committee identifies fewer than five
6		top contributors for an advertisement, the
7		noncandidate committee shall identify the top
8		contributors pursuant to paragraph (1), and the
9		additional notice shall start with the words, "The
10		five top contributors for this advertisement or to
11		this noncandidate committee are", followed by the
12		names of the five top contributors;
13	(3)	If the noncandidate committee is unable to identify
14		any top contributors for an advertisement, the
15		noncandidate committee shall identify the top
16		contributors pursuant to paragraph (1);
17	(4)	If there are fewer than five top contributors who have
18		contributed an aggregate amount of \$5,000 or more to
19		the noncandidate committee, the noncandidate committee
20		shall only identify those top contributors;
21	(5)	If there are no top contributors who have contributed
22		an aggregate amount of \$5,000 or more to the

1	noncandidate committee, the noncandidate committee
2	shall not be subject to this section; provided further
3	that the noncandidate committee only makes independent
4	expenditures.
5	In no case shall a noncandidate committee be required to
6	identify more than five top contributors under this section.
7	(b) If a noncandidate committee has more than five top
8	contributors, and these top contributors have contributed in
9	equal amounts to the noncandidate committee, the noncandidate
10	committee may select which of the top contributors to identify
11	in the advertisement; provided that the top contributors not
12	identified in the advertisement did not contribute a greater
13	aggregate amount to the noncandidate committee than those top
14	contributors who are identified in the advertisement. For
15	advertisements under this subsection, the advertisement shall
16	include the words "Five of the top contributors for this
17	advertisement are", "Five of the top contributors to this
18	noncandidate committee are", or "Five of the top contributors
19	for this advertisement or to this noncandidate committee are",
20	as appropriate, followed by the names of the three top
21	contributors.

- 1 This section shall not apply to advertisements 2 broadcast by radio or television if including a list of top 3 contributors in the advertisement of a short duration would 4 constitute a hardship to the noncandidate committee paying for 5 the advertisement. The commission shall adopt rules pursuant to 6 chapter 91 to establish criteria to determine whether including 7 a list of top contributors in an advertisement of a certain 8 duration of the advertisement constitutes hardship to a 9 noncandidate committee. A noncandidate committee shall be 10 subject to all other requirements under this chapter regardless 11 if a hardship exists pursuant to this section. 12 (d) Any noncandidate committee that violates this section 13 shall be subject to a fine under section 11-410. 14 (e) For purpose of this section, "top contributor" means a contributor who has contributed an aggregate amount of \$5,000 or 15 16 more to a noncandidate committee within a twelve-month period 17 prior to the purchase of an advertisement." 18 SECTION 3. Section 11-314, Hawaii Revised Statutes, is 19 amended to read as follows: "[+]\$11-314[+] Duties of the commission. The duties of 20 21
 - (1) Develop and adopt forms required by this part; 2013-0788 HB SMA.doc

the commission under this part are to:

22

1	(2)	Adopt and publish a manual for all candidates,
2		candidate committees, and noncandidate committees,
3		describing the requirements of this part, including
4		uniform and simple methods of recordkeeping;
5	(3)	Preserve all reports required by this part for at

- (3) Preserve all reports required by this part for at least ten years from the date of receipt by the commission;
- (4) Permit the inspection, copying, or [duplicating]

 duplication of any report required by this part

 pursuant to rules adopted by the commission under

 chapter 91; provided that this paragraph shall not

 apply to the sale or use of information under section

 11-344;
- (5) Ascertain whether any [candidate, candidate committee, noncandidate committee, or party] person has failed to file a report required by this part or has filed a substantially defective or deficient report. The commission shall notify these persons by first class mail that a fine may be assessed for the failure to file or the filing of a substantially defective or deficient report, and the defective or deficient report shall be corrected and explained. All fines

1		collected under this section as authorized by
2		[section] sections 11-340 and 11-410 shall be
3		deposited in the general fund of the State;
4	(6)	Hold public hearings;
5	(7)	Investigate and hold hearings for receiving evidence
6		of any violations pursuant to subpart I of this part;
7.	(8)	Adopt rules pursuant to chapter 91;
8	(9)	Request the initiation of prosecution for the
9		violation of this part pursuant to section 11-411;
10	(10)	Administer and monitor the distribution of public
11		funds under this part;
12	(11)	Suggest accounting methods for candidates, candidate
13		committees, or noncandidate committees in connection
14		with reports and records required by this part;
15	(12)	Employ or contract with, without regard to chapters
16		76, 78, and 89, persons it finds necessary for the
17		performance of its functions, including a full-time
18		executive director, and to fix their compensation;
19		provided that the commission shall have the authority,
20		at its discretion, to dismiss persons employed by or
21		contracted with the commission;

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- 1 (13) Conduct random audits and field investigations, as
 2 necessary; and
- 3 (14) File for injunctive relief when indicated."
- 4 SECTION 4. Section 11-331, Hawaii Revised Statutes, is
- 5 amended to read as follows:
- 6 "\$11-331 Filing of reports, generally. (a) Every report
- 7 required to be filed by a candidate or candidate committee shall
- 8 be certified as complete and accurate by the candidate and
- 9 treasurer.
- 10 (b) Every report required to be filed by a noncandidate
- 11 committee shall be certified as complete and accurate by the
- 12 chairperson and treasurer.
- 13 (c) All reports required to be filed under this part shall
- 14 be filed on the commission's electronic filing system.
- 15 (d) 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 no	ncandidate committee required to be registered
9		with	the commission pursuant to section 11-323.
10	(e)	To b	e timely filed, a committee's reports shall be
11	filed wit	h 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)	All	reports filed under this part are public
15	records[-] <u>and</u>	shall be made available for public inspection or
16	the commi	ssion	's website in a searchable database.
17	<u>(g)</u>	For	purposes of this section, "searchable database"
18	means an	onlin	e database that allows a person to, among other
19	things:		
20	(1)	Sear	ch any report required under this part by any
21		iden	tifying element required in the report;

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1
         (2) Ascertain through a single search, the total amount of
 2
              contributions or expenditures for a person, party,
 3
              candidate, candidate committee, or noncandidate
 4
              committee for the applicable reporting period or
 5
              election period; and
 6
         (3)
              Download reports and data maintained in the database."
 7
         SECTION 5. Section 11-335, Hawaii Revised Statutes, is
 8
    amended to read as follows:
 9
         "[+]$11-335[+] Noncandidate committee reports. (a)
10
    authorized person in the case of a party, or treasurer in the
11
    case of a noncandidate committee that is not a party, shall file
12
    preliminary, final, and supplemental reports that disclose the
13
    following information:
14
         (1)
              The noncandidate committee's name and address;
15
         (2)
              The cash on hand at the beginning of the reporting
16
              period and election period;
         (3) The reporting period and election period aggregate
17
18
              totals for each of the following categories:
19
              (A) Contributions[+] received;
20
              (B) Contributions made;
21
            [-(B)-] (C) Expenditures; and
22
            [-<del>(-C)</del>-]
                   (D) Other receipts;
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1	(4)	The cash on hand at the end of the reporting period;
2		and
3	(5)	The surplus or deficit at the end of the reporting
4		period.
5	(b)	Schedules filed with the reports shall include the
6	following	additional information:
7	(1)	The amount and date of deposit of each contribution
8		received and the name, address, occupation, and
9		employer of each contributor making a contribution
10		aggregating more than \$100 during an election period,
11		which was not previously reported; provided that if
12		all the information is not on file, the contribution
13		shall be returned to the contributor within thirty
14		days of deposit;
15	(2)	The amount and date of each contribution made and the
16		name and address of the candidate, candidate
17		committee, or noncandidate committee to which the
18		contribution was made;
19	[(2) -]	(3) All expenditures, including the name and address
20		of each payee and the amount, date, and purpose of
21		each expenditure[-]; provided that:

1		(A)	Expenditures for advertisements or electioneering
2			communication shall include the names of the
3			candidates supported, opposed, or identified;
4		(B)	Expenditures for consultants, advertising
5			agencies and similar firms, credit card payments,
6			salaries, and candidate reimbursements shall be
7			itemized to permit a reasonable person to
8			determine the ultimate intended recipient of the
9			expenditure and its purpose; and
10		<u>(C)</u>	Independent expenditures shall include the name
11			of any candidate supported, opposed, or
12			<pre>identified;</pre>
13	(4)	For	noncandidate committees making only independent
14		expe	nditures, certification that no expenditures have
15		been	coordinated with a candidate, candidate
16		comm	ittee, or any agency of a candidate or candidate
17		comm	ittee;
18	[(3)]	<u>(5)</u>	The amount, date of deposit, and description of
19		othe	r receipts and the name and address of the source
20		of e	ach of the other receipts;
21	[(4)]	<u>(6)</u>	A description of each durable asset, the date of
22		acqu	isition, value at the time of acquisition, and the
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1	name and address of the vendor or contributor of the
2	asset; and
3	$[\frac{(5)}{(7)}]$ The date of disposition of a durable asset, value
4	at the time of disposition, method of disposition, and
5	name and address of the person receiving the asset.
6	(c) No loan may be made or received by a noncandidate
7	committee.
8	(d) The authorized person in the case of a party, or
9	treasurer in the case of a noncandidate committee that is not a
10	party, shall file a late contribution report as provided in
11	section 11-338 if the committee receives late contributions from
12	any person aggregating more than \$500 or makes late
13	contributions aggregating more than \$500.
14	(e) For purposes of this section, "electioneering
15	communication" means the same as in section 11-341."
16	SECTION 6. Section 11-337, Hawaii Revised Statutes, is
17	amended to read as follows:
18	"[+]\$11-337[+] Reporting expenditures. (a) For purposes
19	of this part, an expenditure is deemed to be made or incurred
20	when the services are rendered or the product is delivered.
21	Services rendered or products delivered for use during a
22	reporting period are deemed delivered or rendered during the
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- 1 period or periods of use; provided that these expenditures shall
- 2 be reasonably allocated between periods in accordance with the
- 3 time the services or products are actually used.
- 4 (b) Any expenditure that is contracted or paid for and
- 5 that is to be rendered during the last three days prior to an
- 6 election shall also be included in a late expenditure report."
- 7 SECTION 7. Section 11-338, Hawaii Revised Statutes, is
- 8 amended to read as follows:
- 9 "[+]\$11-338[+] Late contributions; late expenditures;
- 10 report. (a) The candidate, authorized person in the case of a
- 11 noncandidate committee that is a party, or treasurer in the case
- 12 of a candidate committee or other noncandidate committee, that,
- 13 within the period of fourteen calendar days through four
- 14 calendar days prior to any election, makes contributions
- 15 aggregating more than \$500, or receives contributions from any
- 16 person aggregating more than \$500, shall file a late
- 17 contribution report by means of the commission's electronic
- 18 filing system on or before the third calendar day prior to the
- 19 election.
- (b) The late contribution report shall include the
- 21 following information:

1	(1)	Name, address, occupation, and employer of the
2		contributor;
3	(2)	Name of the candidate, candidate committee, or
4		noncandidate committee making or receiving the
5		contribution;
6	(3)	The amount of the contribution[+] received;
7	(4)	The amount of the contribution made;
8	[-(4)-]	(5) The contributor's aggregate contributions to the
9		candidate, candidate committee, or noncandidate
10		committee; and
11	[(5)]	(6) The purpose, if any, to which the contribution
12		will be applied [-] , including, for contributions to a
13		noncandidate committee, the name of any candidate
14		supported, opposed, or identified.
15	<u>(c)</u>	A noncandidate committee that makes contributions or
16	independer	nt expenditures in an aggregate amount of more than
17	\$500 with:	in the period between fourteen and four calendar days
18	prior to	any election shall file a late expenditure report by
19	means of	the commission's electronic filing system on or before
20	the third	calendar day prior to the election. The late
21	expenditu:	re report shall include the following information:

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1	<u>(1)</u>	The amount, date, and recipient of each contribution
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 each expenditure; and
7	(4)	The purpose of each expenditure, including the name of
8		any candidate supported, opposed, or identified by the
9		expenditure.
10	[-(c) -	d A late contribution report or late expenditure
11	<u>report</u> fi	led pursuant to this section shall be in addition to
12	any other	report required to be filed by this part."
13	SECT	ION 8. Section 11-340, Hawaii Revised Statutes, is
14	amended b	y amending subsection (a) to read as follows:
15	"(a)	True and accurate reports shall be filed with the
16	commissio	n on or before the due dates specified in this part.
17	The commi	ssion may assess a fine against a [candidate committee
18	or noncan	didate committee] person that is required to file a
19	report un	der this part if the report is not filed by the due
20	date or i	f the report is substantially defective or deficient,
21	as determ	ined 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] the
14	person, and the custodian of the books and accounts of
15	the person making the [disbursement;] expenditure;
16	(2) The names and titles of the executives or board of
17	directors who authorized the expenditure, if the
18	expenditure was made by a noncandidate committee,
19	business entity, or an organization;
20	[-(2)] (3) The state of incorporation or formation and
21	principal [place of business] <u>address of the</u>
22	noncandidate committee, business entity, or

1		organization or $[-]$ for an individual, the name,
2		address, occupation, and employer of the [person]
3		individual making the [disbursement;] expenditure;
4	[-(3) -]	(4) The amount of each [disbursement] expenditure
5		during the period covered by the statement and the
6		identification of the person to whom the
7		[disbursement] expenditure was made;
8	[-(4) -]	(5) The elections to which the electioneering
9		communications pertain and the <u>ballot issue or</u> names[7
10		if known, of the] of any clearly identifiable
11		candidates [identified or to be identified; and
12		whether those candidates are supported or opposed;
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
9		committee, or [a] noncandidate committee, or agent
10		involved[-]; and
11	<u>(9)</u>	The five top contributors as required under section
12		<u>11</u>
13	<u>(c)</u>	An electioneering communication statement of
14	information	on filed pursuant to this section shall be in addition
15	to the fi	ling of any other report required under this part.
16	[-(c)-]	d) For purposes of this section:
17	"Dis	closure date" means, for every calendar year, the first
18	date by wl	nich a person has made [disbursements] <u>expenditures</u>
19	during the	at same year of more than \$2,000 in the aggregate for
20	electione	ering communications, and the date of any subsequent
21	(disburse	ments] expenditures by that person for electioneering
22	communicat	tions.

1	"Ele	ctioneering communication" means any advertisement that
2	is broadc	ast from a cable, satellite, television, or radio
3	broadcast	station; published in any periodical or newspaper[+]
4	or by ele	ctronic means; or sent by mail at a bulk rate, and
5	that:	
6	(1)	Refers to a clearly identifiable candidate;
7	(2)	Is made, or scheduled to be made, either within thirty
8		days prior to a primary or initial special election or
9		within sixty days prior to a general or special
10		election; and
11	(3)	Is not susceptible to any reasonable interpretation
12		other than as an appeal to vote for or against a
13		specific candidate.
14	"Ele	ctioneering communication" shall not include
15	communica	tions:
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		expending organization;

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1	(3) In house bulletins; or
2	(4) That constitute a candidate debate or forum, or solely
3	promote a debate or forum and are made by or on behalf
4	of the person sponsoring the debate or forum.
5	[(d)] <u>(e)</u> 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 by amending subsection (a) to read as follows:
11	"(a) Any advertisement that is broadcast, televised,
12	circulated, or published, including by electronic means, shall
13	contain:
14	(1) The name and address of the candidate, candidate
15	committee, noncandidate committee, or other person
16	paying for the advertisement; and
17	(2) A notice in a prominent location stating either that:
18	(A) The advertisement [is published, broadcast,
19	televised, or circulated with] has the approval
20	and authority of the candidate; provided that an
21	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	SECTION 11. Section 11-332, Hawaii Revised Statutes, is
8	repealed.
9	[" [§11-332] Filing report by corporations. (a) A
10	corporation shall file a report with the commission for
11	contributions from its own treasury that aggregate more than
12	\$1,000 per two year election period made directly to a candidate
13	or candidate committee; provided that this section shall not
14	authorize contributions to a candidate or candidate committee
15	where otherwise prohibited by this part. The reporting shall be
16	made pursuant to the time requirements contained in section 11-
17	336-and section 11-338.
18	(b) The filing shall include the name of the corporation,
19	business address, a contact individual, and amounts contributed
20	that are-more than \$100 to each candidate or candidate
21	committee."]

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- 1 SECTION 12. The campaign spending commission shall enhance
- 2 its website to make all reports required under part XIII,
- 3 chapter 11, Hawaii Revised Statutes, available to the public by
- 4 a searchable database as defined in section 11-331(g), Hawaii
- 5 Revised Statutes.
- 6 SECTION 13. The campaign spending commission shall adopt,
- 7 amend, or repeal rules pursuant to chapter 91, Hawaii Revised
- 8 Statutes, to ensure proper disclosure of contributions and
- 9 expenditures consistent with part XIII, chapter 11, Hawaii
- 10 Revised Statutes, and shall prescribe the methods and
- 11 requirements for a "person", as defined under section 11-302,
- 12 Hawaii Revised Statutes, including noncandidate committees, to
- 13 file a statement of information for each expenditure for
- 14 electioneering communications in an aggregate amount of \$2,000
- 15 or more during any calendar year pursuant to section 11-341,
- 16 Hawaii Revised Statutes, within three hundred sixty days of the
- 17 effective date of this Act.
- 18 SECTION 14. The executive director of the campaign
- 19 spending commission shall promptly notify the legislature in
- 20 writing upon the adoption, amendment, or repeal of the
- 21 administrative rules required by section 13 of this Act. The
- 22 executive director of the campaign spending commission shall



- 1 also provide statewide public notice of the adoption, amendment,
- 2 or repeal of rules pursuant to section 1-28.5, Hawaii Revised
- 3 Statutes.
- 4 SECTION 15. If any provision of this Act, or the
- 5 application thereof to any person or circumstance, is held
- 6 invalid, the invalidity does not affect other provisions or
- 7 applications of the Act that can be given effect without the
- 8 invalid provision or application, and to this end the provisions
- 9 of this Act are severable.
- 10 SECTION 16. This Act does not affect rights and duties
- 11 that matured, penalties that were incurred, and proceedings that
- 12 were begun before its effective date.
- 13 SECTION 17. Statutory material to be repealed is bracketed
- 14 and stricken. New statutory material is underscored.
- 15 SECTION 18. This Act shall take effect upon its approval;
- 16 provided that sections 2 through 11 of this Act shall take
- 17 effect on November 5, 2014.

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INTRODUCED BY:

IAN 2 3 2013

Report Title:

Campaign Finance; Expenditures; Electioneering Communications; Reporting

Description:

Requires noncandidate committees to identify certain top contributors for advertisements. Requires the campaign spending commission to maintain public records in a searchable database. Amends reporting requirements for persons and organizations. Authorizes the commission to monitor and penalize all persons failing to report campaign spending. Mandates the commission to implement rules for campaign spending consistent with campaign spending laws within 360 days of the effective date of this Act. Effective 11/05/14.

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