
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 independent
7 expenditures as reflected in the recent decision of the United
8 States Supreme Court in *Citizens United v. Federal Election*
9 *Commission*, 558 U.S. 310 (2010).

10 Accordingly, the purpose of this Act is to increase
11 transparency in campaign spending and to expand the public's
12 access to information about campaign contributions and
13 expenditures. Since *Citizens United*, case law across the
14 country has supported transparency and disclosure provisions in
15 campaign finance laws. See *Human Life of Washington v.*
16 *Brumsickle*, 624 F.3d 990 (9th Cir. 2010). Hawaii's disclosure
17 and transparency provisions allow our electorate to "follow the
18 money." It is the intent of the legislature to expand those



1 disclosure and transparency provisions, building on the existing
2 statutory structure.

3 The legislature finds that additional disclosure is needed
4 in light of the advent of noncandidate committees that make only
5 independent expenditures, or SuperPACs. These are political
6 committees that can operate without a contribution limit because
7 they make independent expenditures only, that is, expenditures
8 that are not coordinated with any candidate for office.

9 SuperPACs came into existence due to case law following *Citizens*
10 *United*. In Hawaii, as elsewhere, SuperPACs have accumulated
11 significant funds from a single source or from very few sources.
12 The existing disclosure requirements in campaign advertising are
13 insufficient to identify the true source of the funds in the
14 advertisement as it reaches the public. The new provision
15 proposed by this Act specifically requires additional disclosure
16 of the top contributors to SuperPACs in campaign advertisements
17 made by noncandidate committees that certify to the campaign
18 spending commission that they are making only independent
19 expenditures, and is designed to remedy the lack of adequate
20 disclosure in campaign advertisements made by SuperPACs under
21 existing law.

1 It is also the intent of this Act to remove redundancy,
2 eliminate possible confusion, and expand the disclosure
3 requirements applicable to corporations under the state campaign
4 finance law. Under current Hawaii law, any organization,
5 regardless of form, reports as a noncandidate committee if its
6 expenditures or contributions, in the aggregate, exceed the
7 \$1,000 threshold. The legislature finds that the registration
8 and reporting requirements of noncandidate committees, under
9 sections 11-302 and 11-321(g), Hawaii Revised Statutes, overlap
10 and are redundant with those required of corporations and other
11 business entities under section 11-332, Hawaii Revised Statutes.
12 This Act makes clear that all corporations that make more than
13 \$1,000, in the aggregate, in expenditures or contributions shall
14 report as noncandidate committees, which will require more
15 disclosure than the current corporation reporting status by
16 repealing section 11-332, Hawaii Revised Statutes.

17 SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended
18 by adding a new section to subpart H of part XIII to be
19 appropriately designated and to read as follows:

20 "§11- Identification of certain top contributors to
21 noncandidate committees making only independent expenditures.

22 (a) An advertisement shall contain an additional notice in a



1 prominent location immediately after or below the notices
2 required by section 11-391, if the advertisement is broadcast,
3 televised, circulated, or published, including by electronic
4 means, and is paid for by a noncandidate committee that
5 certifies to the commission that it makes only independent
6 expenditures. This additional notice shall start with the
7 words, "The three top contributors for this advertisement are",
8 followed by the names of the three greatest top contributors, as
9 defined in subsection (e), who contributed the greatest
10 aggregate contributions to the noncandidate committee for the
11 purpose of funding the advertisement; provided that:

12 (1) If a noncandidate committee is only able to identify
13 two top contributors who contributed for the purpose
14 of funding the advertisement, the additional notice
15 shall start with the words, "The two top contributors
16 for this advertisement are", followed by the names of
17 the two top contributors;

18 (2) If a noncandidate committee is only able to identify
19 one top contributor who contributed for the purpose of
20 funding the advertisement, the additional notice shall
21 start with the words, "The top contributor for this



1 advertisement is", followed by the name of the top
2 contributor;

3 (3) If a noncandidate committee is unable to identify any
4 top contributors who contributed for the purpose of
5 funding the advertisement, the additional notice shall
6 start with the words, "The three top contributors for
7 this noncandidate committee are", followed by the
8 names of the three top contributors who contributed
9 the greatest aggregate amount to the noncandidate
10 committee;

11 (4) If there are no top contributors to the noncandidate
12 committee, the noncandidate committee shall not be
13 subject to this section.

14 In no case shall a noncandidate committee be required to
15 identify more than three top contributors under this section.

16 (b) If a noncandidate committee has more than three top
17 contributors who contributed in equal amounts, the noncandidate
18 committee may select which of the top contributors to identify
19 in the advertisement; provided that the top contributors not
20 identified in the advertisement did not contribute a greater
21 aggregate amount than those top contributors who are identified
22 in the advertisement. The additional notice under this



1 subsection shall start with the words "Three of the top
2 contributors for this advertisement are" or "Three of the top
3 contributors to this noncandidate committee are", as
4 appropriate, followed by the names of the three top
5 contributors.

6 (c) This section shall not apply to advertisements
7 broadcast by radio or television of such short duration that
8 including a list of top contributors in the advertisement would
9 constitute a hardship to the noncandidate committee paying for
10 the advertisement. A noncandidate committee shall be subject to
11 all other requirements under this part regardless of whether a
12 hardship exists pursuant to this subsection. The commission
13 shall adopt rules pursuant to chapter 91 to establish criteria
14 to determine when including a list of top contributors in an
15 advertisement of short duration constitutes a hardship to a
16 noncandidate committee under this subsection.

17 (d) Any noncandidate committee that violates this section
18 shall be subject to a fine under section 11-410.

19 (e) For purposes of this part, "top contributor" means a
20 contributor who has contributed an aggregate amount of \$10,000
21 or more to a noncandidate committee within a twelve-month period
22 prior to the purchase of an advertisement."



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

3 "[~~+~~]**\$11-314**[~~+~~] **Duties of the commission.** The duties of
4 the commission under this part are to:

- 5 (1) Develop and adopt forms required by this part;
- 6 (2) Adopt and publish a manual for all candidates,
7 candidate committees, and noncandidate committees,
8 describing the requirements of this part, including
9 uniform and simple methods of recordkeeping;
- 10 (3) Preserve all reports required by this part for at
11 least ten years from the date of receipt by the
12 commission;
- 13 (4) Permit the inspection, copying, or [~~duplicate~~]
14 duplication of any report required by this part
15 pursuant to rules adopted by the commission under
16 chapter 91; provided that this paragraph shall not
17 apply to the sale or use of information under section
18 11-344;
- 19 (5) Ascertain whether any [~~candidate, candidate committee,~~
20 ~~noncandidate committee, or party~~] person has failed to
21 file a report required by this part or has filed a
22 substantially defective or deficient report. The



1 commission shall notify [~~these persons~~] the person by
2 first class mail that a fine may be assessed for the
3 failure to file or the filing of a substantially
4 defective or deficient report, and the defective or
5 deficient report shall be corrected and explained.

6 All fines collected under this section as authorized
7 by [~~section~~] sections 11-340 and 11-410 shall be
8 deposited in the general fund of the State;

9 (6) Hold public hearings;

10 (7) Investigate and hold hearings for receiving evidence
11 of any violations pursuant to subpart I of this part;

12 (8) Adopt rules pursuant to chapter 91;

13 (9) Request the initiation of prosecution for the
14 violation of this part pursuant to section 11-411;

15 (10) Administer and monitor the distribution of public
16 funds under this part;

17 (11) Suggest accounting methods for candidates, candidate
18 committees, or noncandidate committees in connection
19 with reports and records required by this part;

20 (12) Employ or contract with, without regard to chapters
21 76, 78, and 89, persons it finds necessary for the
22 performance of its functions, including a full-time



1 executive director, and to fix their compensation;
2 provided that the commission shall have the authority,
3 at its discretion, to dismiss persons employed by or
4 contracted with the commission;

5 (13) Conduct random audits and field investigations, as
6 necessary; and

7 (14) File for injunctive relief when indicated."

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

10 "**§11-331 Filing of reports, generally.** (a) Every report
11 required to be filed by a candidate or candidate committee shall
12 be certified as complete and accurate by the candidate and
13 treasurer.

14 (b) Every report required to be filed by a noncandidate
15 committee shall be certified as complete and accurate by the
16 chairperson and treasurer.

17 (c) All reports required to be filed under this part shall
18 be filed on the commission's electronic filing system.

19 (d) For purposes of this part, whenever a report is
20 required to be filed with the commission, "filed" means that a
21 report shall be filed with the commission's electronic filing



1 system by the date and time specified for the filing of the
2 report by:

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

5 (A) Office of governor;

6 (B) Office of lieutenant governor;

7 (C) Office of mayor;

8 (D) Office of prosecuting attorney;

9 (E) County council;

10 (F) Senate;

11 (G) House of representatives; or

12 (H) Office of Hawaiian affairs; or

13 (2) A noncandidate committee required to be registered
14 with the commission pursuant to section 11-323.

15 (e) To be timely filed, a committee's reports shall be
16 filed with the commission's electronic filing system on or
17 before 11:59 p.m. Hawaiian standard time on the filing date
18 specified.

19 (f) All reports filed under this part are public
20 records[-] and shall be made available for public inspection on
21 the commission's website in a searchable database.



1 SECTION 5. Section 11-335, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~§11-335[~~§~~] **Noncandidate committee reports.** (a) The
4 authorized person in the case of a party, or treasurer in the
5 case of a noncandidate committee that is not a party, shall file
6 preliminary, final, and supplemental reports that disclose the
7 following information:

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

9 (2) The cash on hand at the beginning of the reporting
10 period and election period;

11 (3) The reporting period and election period aggregate
12 totals for each of the following categories:

13 (A) Contributions[~~+~~] received;

14 (B) Contributions made;

15 [~~(B)~~] (C) Expenditures; and

16 [~~(C)~~] (D) Other receipts;

17 (4) The cash on hand at the end of the reporting period;
18 and

19 (5) The surplus or deficit at the end of the reporting
20 period.

21 (b) Schedules filed with the reports shall include the
22 following additional information:



- 1 (1) The amount and date of deposit of each contribution
2 received and the name, address, occupation, and
3 employer of each contributor making a contribution
4 aggregating more than \$100 during an election period,
5 which was not previously reported; provided that if
6 all the information is not on file, the contribution
7 shall be returned to the contributor within thirty
8 days of deposit;
- 9 (2) The amount and date of each contribution made and the
10 name and address of the candidate, candidate
11 committee, or noncandidate committee to which the
12 contribution was made;
- 13 [+2+] (3) All expenditures, including the name and address
14 of each payee and the amount, date, and purpose of
15 each expenditure[-]; provided that:
- 16 (A) Expenditures for advertisements or electioneering
17 communications shall include the names of the
18 candidates supported, opposed, or clearly
19 identified;
- 20 (B) Expenditures for consultants, advertising
21 agencies and similar firms, credit card payments,
22 salaries, and candidate reimbursements shall be



1 itemized to permit a reasonable person to
2 determine the ultimate intended recipient of the
3 expenditure and its purpose; and

4 (C) Independent expenditures shall include the name
5 of any candidate supported, opposed, or clearly
6 identified;

7 (4) For noncandidate committees making only independent
8 expenditures, certification that no expenditures have
9 been coordinated with a candidate, candidate
10 committee, or any agent of a candidate or candidate
11 committee;

12 [~~+3~~] (5) The amount, date of deposit, and description of
13 other receipts and the name and address of the source
14 of each of the other receipts;

15 [~~+4~~] (6) A description of each durable asset, the date of
16 acquisition, value at the time of acquisition, and the
17 name and address of the vendor or contributor of the
18 asset; and

19 [~~+5~~] (7) The date of disposition of a durable asset, value
20 at the time of disposition, method of disposition, and
21 name and address of the person receiving the asset.



1 (c) No loan may be made or received by a noncandidate
2 committee.

3 (d) The authorized person in the case of a party, or
4 treasurer in the case of a noncandidate committee that is not a
5 party, shall file a late contribution report as provided in
6 section 11-338 if the committee receives late contributions from
7 any person aggregating more than \$500 or makes late
8 contributions aggregating more than \$500.

9 (e) For purposes of this section, "electioneering
10 communication" means the same as in section 11-341."

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

13 "[~~§~~11-337~~]~~ **Reporting expenditures.** (a) For purposes
14 of this part, an expenditure is deemed to be made or incurred
15 when the services are rendered or the product is delivered.
16 Services rendered or products delivered for use during a
17 reporting period are deemed delivered or rendered during the
18 period or periods of use; provided that these expenditures shall
19 be reasonably allocated between periods in accordance with the
20 time the services or products are actually used.



1 (b) Any expenditure that is contracted or paid for and
2 that is to be rendered during the last three days prior to an
3 election shall also be included in a late expenditure report."

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

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

17 (b) The late contribution report shall include the
18 following information:

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



1 (3) The purpose, including the name of any candidate
2 supported, opposed, or clearly identified by the
3 expenditure.

4 ~~[(e)]~~ (d) A late contribution report or late expenditure
5 report filed pursuant to this section shall be in addition to
6 any other report required to be filed by this part."

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

9 "(a) True and accurate reports shall be filed with the
10 commission on or before the due dates specified in this part.
11 The commission may assess a fine against a ~~[candidate committee~~
12 ~~or noncandidate committee]~~ person that is required to file a
13 report under this part if the report is not filed by the due
14 date or if the report is substantially defective or deficient,
15 as determined by the commission."

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

18 "~~[[§11-341]]~~ **Electioneering communications; statement of**
19 **information.** (a) Each person who makes ~~[a disbursement]~~ an
20 expenditure for electioneering communications in an aggregate
21 amount of more than \$2,000 during any calendar year shall file



1 with the commission a statement of information within twenty-
2 four hours of each disclosure date provided in this section.

3 (b) Each statement of information shall contain the
4 following:

5 (1) The name of the person making the [~~disbursement,~~
6 expenditure, name of any person or entity sharing or
7 exercising discretion or control over [~~such~~] the
8 person, and the custodian of the books and accounts of
9 the person making the [~~disbursement;~~] expenditure;

10 (2) The names and titles of the executives or board of
11 directors who authorized the expenditure, if the
12 expenditure was made by a noncandidate committee,
13 business entity, or an organization;

14 [~~(2)~~] (3) The state of incorporation or formation and
15 principal [~~place of business~~] address of the
16 noncandidate committee, business entity, or
17 organization or[~~]~~ for an individual, the name,
18 address, occupation, and employer of the [~~person~~]
19 individual making the [~~disbursement;~~] expenditure;

20 [~~(3)~~] (4) The amount of each [~~disbursement~~] expenditure
21 during the period covered by the statement and the



1 identification of the person to whom the

2 [~~disbursement~~] expenditure was made;

3 [~~(4)~~] (5) The elections to which the electioneering

4 communications pertain and the names [~~, if known, of~~

5 the] of any clearly identifiable candidates

6 [~~identified or to be identified;~~] and whether those

7 candidates are supported or opposed;

8 [~~(5)~~] (6) If the [~~disbursements~~] expenditures were made by

9 a candidate committee or noncandidate committee, the

10 names and addresses of all persons who contributed to

11 the candidate committee or noncandidate committee for

12 the purpose of publishing or broadcasting the

13 electioneering communications;

14 [~~(6)~~] (7) If the [~~disbursements~~] expenditures were made by

15 an organization other than a candidate committee or

16 noncandidate committee, the names and addresses of all

17 persons who contributed to the organization for the

18 purpose of publishing or broadcasting the

19 electioneering communications; [~~and~~]

20 [~~(7)~~] (8) Whether or not any electioneering communication

21 is made in coordination, cooperation, or concert with

22 or at the request or suggestion of any candidate,



1 candidate committee, or noncandidate committee, or
2 agent of any candidate if any, and if so, the
3 identification of the candidate, [a] candidate
4 committee, or [a] noncandidate committee, or agent
5 involved[~~;~~]; and

6 (9) The three top contributors as required under section
7 11- , if applicable.

8 (c) An electioneering communication statement of
9 information filed pursuant to this section shall be in addition
10 to the filing of any other report required under this part.

11 [~~e~~] (d) For purposes of this section:

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

18 "Electioneering communication" means any advertisement that
19 is broadcast from a cable, satellite, television, or radio
20 broadcast station; published in any periodical or newspaper[~~;~~]
21 or by electronic means; or sent by mail at a bulk rate, and
22 that:



- 1 (1) Refers to a clearly identifiable candidate;
- 2 (2) Is made, or scheduled to be made, either within thirty
- 3 days prior to a primary or initial special election or
- 4 within sixty days prior to a general or special
- 5 election; and
- 6 (3) Is not susceptible to any reasonable interpretation
- 7 other than as an appeal to vote for or against a
- 8 specific candidate.

9 "Electioneering communication" shall not include

10 communications:

- 11 (1) In a news story or editorial disseminated by any
- 12 broadcast station or publisher of periodicals or
- 13 newspapers, unless the facilities are owned or
- 14 controlled by a candidate, candidate committee, or
- 15 noncandidate committee;
- 16 (2) That constitute expenditures by the [~~disbursing~~]
- 17 expending organization;
- 18 (3) In house bulletins; or
- 19 (4) That constitute a candidate debate or forum, or solely
- 20 promote a debate or forum and are made by or on behalf
- 21 of the person sponsoring the debate or forum.



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

5 SECTION 10. Section 11-391, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Any advertisement that is broadcast, televised,
8 circulated, or published, including by electronic means, shall
9 contain:

10 (1) The name and address of the candidate, candidate
11 committee, noncandidate committee, or other person
12 paying for the advertisement; and

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

14 (A) The advertisement ~~[is published, broadcast,~~
15 ~~televised, or circulated with]~~ has the approval
16 and authority of the candidate; provided that an
17 advertisement paid for by a candidate, candidate
18 committee, or ballot issue committee does not
19 need to include the notice; or

20 (B) The advertisement ~~[is published, broadcast,~~
21 ~~televised, or circulated without the approval and~~



1 ~~authority of~~ has not been approved by the
2 candidate."

3 SECTION 11. Section 11-332, Hawaii Revised Statutes, is
4 repealed.

5 [~~["§11-332] Filing report by corporations. (a) A~~
6 ~~corporation shall file a report with the commission for~~
7 ~~contributions from its own treasury that aggregate more than~~
8 ~~\$1,000 per two year election period made directly to a candidate~~
9 ~~or candidate committee; provided that this section shall not~~
10 ~~authorize contributions to a candidate or candidate committee~~
11 ~~where otherwise prohibited by this part. The reporting shall be~~
12 ~~made pursuant to the time requirements contained in section 11-~~
13 ~~336 and section 11-338.~~

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

18 SECTION 12. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 13. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun before its effective date.

6 SECTION 14. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 15. This Act shall take effect on November 5,
9 2014.



Report Title:

Campaign Finance; Electioneering Communications; Reporting

Description:

Requires noncandidate committees to identify certain top contributors in advertisements. Amends reporting requirements for persons and organizations. Repeals section specific to reporting by corporations. Effective November 5, 2014. (HB1147 HD1)

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

