
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 Since *Citizens United*, case law across the country has
11 supported transparency and disclosure provisions in campaign
12 finance laws. See *Human Life of Washington, Inc. v. Brumsickle*,
13 624 F.3d 990 (9th Cir. 2010). Hawaii's disclosure and
14 transparency provisions allow our electorate to "follow the
15 money." It is the intent of the legislature to expand those
16 disclosure and transparency provisions, building on the existing
17 statutory structure.



1 The legislature finds that additional disclosure is needed
2 in light of the advent of noncandidate committees that make only
3 independent expenditures, or political action committees,
4 commonly known as SuperPACs. These are political committees
5 that can operate without a contribution limit because they make
6 independent expenditures only, that is, expenditures that are
7 not coordinated with any candidate for office. SuperPACs came
8 into existence due to case law following *Citizens United*. In
9 Hawaii, as elsewhere, SuperPACs have accumulated significant
10 funds from a single source or from very few sources. The
11 existing disclosure requirements in campaign advertising are
12 insufficient to identify the true source of the funds for an
13 advertisement as it reaches the public. The new provision
14 proposed by this Act specifically requires additional disclosure
15 of the top contributors to SuperPACs in campaign advertisements
16 made by noncandidate committees that certify to the campaign
17 spending commission that they are making only independent
18 expenditures, and is designed to remedy the lack of adequate
19 disclosure in campaign advertisements made by SuperPACs under
20 existing law.

21 It is also the intent of this Act to remove redundancy,
22 eliminate possible confusion, and expand the disclosure



1 requirements applicable to corporations under the state campaign
2 finance law. Under current Hawaii law, any organization,
3 regardless of form, reports as a noncandidate committee if its
4 expenditures or contributions, in the aggregate, exceed the
5 \$1,000 threshold. The legislature finds that the registration
6 and reporting requirements of noncandidate committees, under
7 sections 11-302 and 11-321(g), Hawaii Revised Statutes, overlap
8 and are redundant with those required of corporations under
9 section 11-332, Hawaii Revised Statutes. This Act repeals
10 section 11-332, Hawaii Revised Statutes, to provide that all
11 corporations that make more than \$1,000, in the aggregate, in
12 expenditures or contributions shall report as noncandidate
13 committees, which will require more disclosure than the current
14 reporting requirements for corporations. Accordingly, the
15 purpose of this Act is to increase transparency in campaign
16 spending and to expand the public's access to information about
17 campaign contributions and expenditures.

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

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



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

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

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



- 1 contributor for this advertisement is", followed by
2 the name of the top contributor;
- 3 (3) If a noncandidate committee is unable to identify any
4 top contributors who made contributions for the
5 purpose of funding the advertisement, the additional
6 notice shall start with the words, "The three top
7 contributors for this noncandidate committee are",
8 followed by the names of the three top contributors
9 who made the highest aggregate contributions to the
10 noncandidate committee; and
- 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 pursuant to this
16 section.

- 17 (b) If a noncandidate committee has more than three top
18 contributors who contributed in equal amounts, the noncandidate
19 committee may select which of the top contributors to identify
20 in the advertisement; provided that the top contributors not
21 identified in the advertisement did not make a higher aggregate
22 contribution than those top contributors who are identified in



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

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

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

20 (e) For purposes of this part, "top contributor" means a
21 contributor who has contributed an aggregate amount of \$10,000



1 or more to a noncandidate committee within a twelve-month period
2 prior to the purchase of an advertisement."

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

5 "[+]§11-314[+] **Duties of the commission.** The duties of
6 the commission under this part are to:

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



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

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

- 11 (6) Hold public hearings;
- 12 (7) Investigate and hold hearings for receiving evidence
13 of any violations pursuant to subpart I of this part;
- 14 (8) Adopt rules pursuant to chapter 91;
- 15 (9) Request the initiation of prosecution for the
16 violation of this part pursuant to section 11-411;
- 17 (10) Administer and monitor the distribution of public
18 funds under this part;
- 19 (11) Suggest accounting methods for candidates, candidate
20 committees, or noncandidate committees in connection
21 with reports and records required by this part;



- 1 (12) Employ or contract with, without regard to chapters
2 76, 78, and 89, persons it finds necessary for the
3 performance of its functions, including a full-time
4 executive director, and to fix their compensation;
5 provided that the commission shall have the authority,
6 at its discretion, to dismiss persons employed by or
7 contracted with the commission;
- 8 (13) Conduct random audits and field investigations, as
9 necessary; and
- 10 (14) File for injunctive relief when indicated."

11 SECTION 4. Section 11-331, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsections (a) and (b) to read:

14 "(a) Every report required to be filed by a candidate or
15 candidate committee shall be certified as complete and accurate
16 by the candidate and treasurer.

17 (b) Every report required to be filed by a noncandidate
18 committee shall be certified as complete and accurate by the
19 chairperson and treasurer."

20 2. By amending subsection (f) to read:



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

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

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

- 11 (1) The noncandidate committee's name and address;
- 12 (2) The cash on hand at the beginning of the reporting
13 period and election period;
- 14 (3) The reporting period and election period aggregate
15 totals for each of the following categories:
- 16 (A) Contributions~~+~~ received;
- 17 (B) Contributions made;
- 18 ~~+~~(B) (C) Expenditures; and
- 19 ~~+~~(C) (D) Other receipts;
- 20 (4) The cash on hand at the end of the reporting period;
- 21 and



1 (5) The surplus or deficit at the end of the reporting
2 period.

3 (b) Schedules filed with the reports shall include the
4 following additional information:

5 (1) The amount and date of deposit of each contribution
6 received and the name, address, occupation, and
7 employer of each contributor making a contribution
8 aggregating more than \$100 during an election period,
9 which was not previously reported; provided that if
10 all the information is not on file, the contribution
11 shall be returned to the contributor within thirty
12 days of deposit;

13 (2) The amount and date of each contribution made and the
14 name and address of the candidate, candidate
15 committee, or noncandidate committee to which the
16 contribution was made;

17 ~~[(2)]~~ (3) All expenditures, including the name and address
18 of each payee and the amount, date, and purpose of
19 each expenditure ~~[-]~~; provided that:

20 (A) Expenditures for advertisements or electioneering
21 communications shall include the names of the



1 candidates supported, opposed, or clearly
2 identified;

3 (B) Expenditures for consultants, advertising
4 agencies and similar firms, credit card payments,
5 salaries, and candidate reimbursements shall be
6 itemized to permit a reasonable person to
7 determine the ultimate intended recipient of the
8 expenditure and its purpose; and

9 (C) Independent expenditures shall include the name
10 of any candidate supported, opposed, or clearly
11 identified;

12 (4) For noncandidate committees making only independent
13 expenditures, certification that no expenditures have
14 been coordinated with a candidate, candidate
15 committee, or any agent of a candidate or candidate
16 committee;

17 ~~[(3)]~~ (5) The amount, date of deposit, and description of
18 other receipts and the name and address of the source
19 of each of the other receipts;

20 ~~[(4)]~~ (6) A description of each durable asset, the date of
21 acquisition, value at the time of acquisition, and the



1 name and address of the vendor or contributor of the
2 asset; and

3 ~~[-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 defined in section 11-341."

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

18 "[~~f~~]~~§~~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



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 be included in a late expenditure report as
7 provided in section 11-338."

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

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

21 (b) The late contribution report shall include the
22 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~~[7]~~ 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 clearly identified.
- 15 (c) A noncandidate committee that makes independent
16 expenditures in an aggregate amount of more than \$500 within the
17 period between fourteen and four calendar days prior to any
18 election shall file a late expenditure report by means of the
19 commission's electronic filing system on or before the third
20 calendar day prior to the election. The late expenditure report
21 shall include the following information for each expenditure:
- 22 (1) The amount and date made;



- 1 (2) The vendor name, address, and contact information; and
2 (3) The purpose, including the name of any candidate
3 supported, opposed, or clearly identified by the
4 expenditure.

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

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

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

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

19 "~~[+]§11-341[+]~~ **Electioneering communications; statement of**
20 **information.** (a) Each person who makes ~~[a disbursement]~~ an
21 expenditure for electioneering communications in an aggregate
22 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 [~~7~~] 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 requiring reporting by corporations. Effective 11/05/14. (SD1)

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

