

JAN 18 2013

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 (c) 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
15 contributor who has contributed an aggregate amount of \$5,000 or
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:

20 "[~~§~~11-314~~§~~] **Duties of the commission.** The duties of
21 the commission under this part are to:

22 (1) Develop and adopt forms required by this part;



- 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
6 least ten years from the date of receipt by the
7 commission;
- 8 (4) Permit the inspection, copying, or [~~dupliating~~
9 duplication of any report required by this part
10 pursuant to rules adopted by the commission under
11 chapter 91; provided that this paragraph shall not
12 apply to the sale or use of information under section
13 11-344;
- 14 (5) Ascertain whether any [~~candidate, candidate committee,~~
15 ~~noncandidate committee, or party~~] person has failed to
16 file a report required by this part or has filed a
17 substantially defective or deficient report. The
18 commission shall notify these persons by first class
19 mail that a fine may be assessed for the failure to
20 file or the filing of a substantially defective or
21 deficient report, and the defective or deficient
22 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;



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 noncandidate committee required to be registered
9 with the commission pursuant to section 11-323.

10 (e) To be timely filed, a committee's reports shall be
11 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) All reports filed under this part are public
15 records[-] and shall be made available for public inspection on
16 the commission's website in a searchable database.

17 (g) For purposes of this section, "searchable database"
18 means an online database that allows a person to, among other
19 things:

20 (1) Search any report required under this part by any
21 identifying element required in the report;



- 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) The
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;
- 17 (3) The reporting period and election period aggregate
18 totals for each of the following categories:
 - 19 (A) Contributions[+] received;
 - 20 (B) Contributions made;
 - 21 [~~B~~] (C) Expenditures; and
 - 22 [~~C~~] (D) Other receipts;



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

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

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

21 ~~[(4)]~~ (6) A description of each durable asset, the date of
22 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 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



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.

20 (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 (c) A noncandidate committee that makes contributions or
- 16 independent expenditures in an aggregate amount of more than
- 17 \$500 within 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 expenditure report shall include the following information:



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

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

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



1 organization or~~[7]~~ 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 ballot issue or 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 (9) The five top contributors as required under section
12 11- .

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

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

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



1 "Electioneering communication" means any advertisement that
2 is broadcast from a cable, satellite, television, or radio
3 broadcast station; published in any periodical or newspaper[+]
4 or by electronic 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 "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 expending organization;



- 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)~~] (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 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."]~~



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



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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.

18

INTRODUCED BY: *[Signature]*
[Signature]
[Signature]

S.B. NO. 865

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.

