

JAN 20 2023

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# A BILL FOR AN ACT

RELATING TO CAMPAIGN FINANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the State has a  
2 compelling interest in securing its democratic self-governance  
3 from foreign influence. The State welcomes immigrants,  
4 visitors, and investors from around the world. However, its  
5 elections should be decided by the people of Hawaii and not by  
6 foreign investors or the business entities over which they exert  
7 influence.

8           The legislature further finds that the United States  
9 Securities and Exchange Commission, major capital investors,  
10 corporate managers, and corporate governance experts broadly  
11 agree that ownership or control of one per cent or more of  
12 shares can confer substantial influence on corporate decision-  
13 making. For similar reasons, ownership or control of five per  
14 cent of shares by multiple foreign investors can affect  
15 corporate decision making. Corporations with partial foreign  
16 ownership have been spending money to influence state and local  
17 elections around the country.



1           The legislature also finds that investors are the ultimate  
2 beneficiaries of corporate interests. As the Hawaii supreme  
3 court has explained, after "all other creditors have been  
4 satisfied," shareholders lay claim to a company's "shares and  
5 the residual estate." *Ito v. Investors Equity Life Holding Co.*,  
6 135 Hawaii 49, 346 P 3d 118 (2015). Where part of the  
7 shareholders' equity is attributable to foreign investors,  
8 spending corporate treasury funds on Hawaii elections means  
9 spending the equity of foreign entities on Hawaii elections.

10           Additionally, the legislature finds that corporations and  
11 similar entities have a fiduciary responsibility to their  
12 shareholders, including investors around the world, and  
13 generally prioritize the interests of such shareholders, which  
14 may diverge substantially from the interests of the people of  
15 Hawaii and the United States.

16           Also, the legislature finds that the United States  
17 government has concluded that Russia, China, Iran, and other  
18 foreign actors are engaged in ongoing campaigns to undermine  
19 democratic institutions, as set forth in the joint statement  
20 "Combating Foreign Influence in US Elections," issued by the  
21 Office of the Director of National Intelligence, United States



1 Department of Justice, Federal Bureau of Investigation (FBI),  
2 and Department of Homeland Security on October 19, 2018. The  
3 FBI has concluded that foreign influence activities include  
4 "criminal efforts to suppress voting and provide illegal  
5 campaign financing," as set forth in FBI Director Christopher  
6 Wray's press briefing on election security on August 2, 2018.

7 The legislature further finds that, aside from active  
8 measures by hostile intelligence services, the explicit or  
9 implicit influence of major foreign investors subjects corporate  
10 decision-making to foreign influence as executives consider  
11 interests of foreign investors. Domestic corporate political  
12 spending by such corporations threatens democratic self-  
13 governance.

14 In addition, the legislature finds that the United States  
15 Congress and the United States Supreme Court recognize the need  
16 to protect American elections from foreign influence through the  
17 ban on contributions and expenditures by foreign nationals  
18 imposed by title 52 United States Code section 30121, upheld by  
19 the Supreme Court in *Bluman v. Federal Election Commission*,  
20 800 F. Supp. 2d 281 (D.D.C. 2011), affirmed, 565 U.S. 1104  
21 (2012).



1           The legislature further finds that current law does not  
2 adequately protect against foreign interference through  
3 corporate political spending by United States corporations with  
4 significant foreign ownership, as explained by Federal Election  
5 Commissioner Ellen Weintraub in her May 22, 2019, written  
6 testimony to the United States House of Representatives  
7 Committee on Oversight and Reform's Subcommittee on National  
8 Security.

9           The legislature further finds that political spending by  
10 foreign-influenced business entities can weaken, interfere with,  
11 or disrupt Hawaii's democratic self-government and the trust  
12 that the electorate has in its elected representatives.

13           The legislature further finds that former President Barack  
14 Obama warned of foreign corporate spending in state elections  
15 and that Ellen Weintraub, commissioner of the Federal Election  
16 Commission, and Ann Ravel, former commissioner of the Federal  
17 Election Commission, specifically called on states to enact  
18 legislation to limit the influence of foreign-influenced  
19 corporate spending on American elections.

20           The legislature recognizes that Seattle, Washington has  
21 enacted legislation, and the U.S. Congress and several states



1 and municipalities are considering enacting legislation, to  
2 limit foreign-influenced corporate political spending and to  
3 protect the integrity of their elections from foreign influence  
4 through corporate political spending. Therefore, to protect the  
5 integrity of Hawaii's democratic self-government, it is  
6 necessary to prevent foreign-influenced business entities from  
7 influencing Hawaii's elections through political spending.

8 The purpose of this Act is to protect the State's  
9 democratic self-governance by:

- 10 (1) Prohibiting foreign entities and foreign-influenced  
11 business entities from making independent  
12 expenditures, electioneering communications, or  
13 contributions to candidates or committees, or  
14 contributions or donations to other persons earmarked  
15 for those purposes;
- 16 (2) Requiring every business entity that contributes or  
17 expends funds in a state election to file a statement  
18 of certification regarding its status as a foreign-  
19 influenced business entity or foreign corporation; and
- 20 (3) Requiring noncandidate committees making only  
21 independent expenditures to obtain a statement of



1 certification from each top contributor required to be  
2 listed in an advertisement.

3 SECTION 2. Section 11-302, Hawaii Revised Statutes, is  
4 amended by adding four new definitions to be appropriately  
5 inserted and to read as follows:

6 "Business entity" means a for-profit corporation, company,  
7 limited liability company, limited partnership, business trust,  
8 business association, or other similar for-profit business  
9 entity.

10 "Chief executive officer" means the highest-ranking officer  
11 or individual having authority to make decisions regarding a  
12 corporation's affairs.

13 "Foreign-influenced business entity" means a business  
14 entity that meets at least one of the following conditions:

15 (1) A single foreign investor holds, owns, controls, or  
16 otherwise has direct or indirect beneficial ownership  
17 of one per cent or more of the total equity,  
18 outstanding voting shares, membership units, or other  
19 applicable ownership interests of the business entity;

20 (2) Two or more foreign investors, in aggregate, hold,  
21 own, control, or otherwise have direct or indirect



1 beneficial ownership of five per cent or more of the  
2 total equity, outstanding voting shares, membership  
3 units, or other applicable ownership interests of the  
4 business entity; or

5 (3) A foreign investor participates directly or indirectly  
6 in the corporation's decision-making process with  
7 respect to the business entity's political activities  
8 in the United States.

9 "Foreign investor" means a person or entity that:

10 (1) Holds, owns, controls, or otherwise has direct or  
11 indirect beneficial ownership of equity, outstanding  
12 voting shares, membership units, or other applicable  
13 ownership interests of a business entity; and

14 (2) Is:

15 (A) A government of a foreign country;

16 (B) A foreign political party;

17 (C) An individual outside the United States who is  
18 not a citizen of the United States or a national  
19 of the United States and who is not lawfully

20 admitted for permanent residence; or

21 (D) A business entity that:



- 1            (i) Is organized under the laws of or having its
- 2            principal place of business in a foreign
- 3            country; or
- 4            (ii) In which a person or entity described in
- 5            subparagraph (A), (B), or (C) holds, owns,
- 6            controls, or otherwise has directly or
- 7            indirectly acquired a beneficial ownership
- 8            of equity or voting shares in an amount that
- 9            is equal to or greater than fifty per cent
- 10           of the total equity or outstanding voting
- 11           shares."

12           SECTION 3. Section 11-356, Hawaii Revised Statutes, is  
 13 amended to read as follows:

14           "[~~§~~11-356~~§~~] Contributions and expenditures by a foreign  
 15 national or foreign corporation or foreign-influenced business  
 16 entity; prohibited. (a) [~~Except as provided in subsection (b),~~  
 17 ~~no~~] No contributions or expenditures shall be made to or on  
 18 behalf of a candidate, candidate committee, or noncandidate  
 19 committee, by a foreign national, foreign-influenced business  
 20 entity, or foreign corporation, including a domestic subsidiary  
 21 of a foreign corporation, a domestic corporation that is owned





1 by a foreign national, or a local subsidiary where  
2 administrative control is retained by the foreign corporation,  
3 ~~[and in the same manner prohibited under 2 United States Code~~  
4 ~~section 441e and 11 Code of Federal Regulations section 110.20,~~  
5 ~~as amended.~~

6 ~~(b) A foreign owned domestic corporation may make~~  
7 ~~contributions if:~~

8 ~~(1) Foreign national individuals do not participate in~~  
9 ~~election related activities, including decisions~~  
10 ~~concerning contributions or the administration of a~~  
11 ~~candidate committee or noncandidate committee; or~~

12 ~~(2) The contributions are domestically derived.]~~

13 (b) No independent expenditures or electioneering  
14 communications shall be made by a foreign national, foreign-  
15 influenced business entity, or foreign corporation.

16 (c) No contribution or donation shall be made to any  
17 person by a foreign national, foreign-influenced business  
18 entity, or foreign corporation if the contribution or donation  
19 is earmarked for the recipient to make a contribution,  
20 independent expenditure, or electioneering communication.



1        (d) Every business entity that contributes to or makes an  
2 expenditure on behalf of a candidate, candidate committee, or  
3 noncandidate committee, including an independent expenditure or  
4 electioneering communication, shall, within seven business days  
5 after making the contribution or expenditure, file with the  
6 campaign spending commission a statement of certification signed  
7 by the business entity's chief executive officer avowing under  
8 penalty of perjury that, after due inquiry, the business entity  
9 was not a foreign-influenced business entity or foreign  
10 corporation on the date the expenditure, independent  
11 expenditure, contribution, or expenditure for an electioneering  
12 communication was made. For purposes of this certification, the  
13 business entity shall ascertain beneficial ownership in a manner  
14 consistent with the Hawaii Business Corporation Act or, if it is  
15 registered on a national securities exchange, as set forth in  
16 title 17 Code of Federal Regulations sections 240.13d-3 and  
17 240.13d-5. The business entity shall provide a copy of the  
18 statement of certification to any candidate or committee to  
19 which it contributes, and upon request of the recipient, to any  
20 other person to which it contributes.

21        (e) For the purposes of this section:



1       "Earmarked" means a designation, instruction, whether  
2 direct or indirect, express or implied, oral or written, which  
3 results in all or any part of the contribution or donation being  
4 expended in a manner that would be prohibited by this section if  
5 made by the foreign-influenced business entity.

6       "Electioneering communication" has the meaning defined by  
7 section 11-341."

8       SECTION 4. Section 11-393, Hawaii Revised Statutes, is  
9 amended to read as follows:

10       **"§11-393 Identification of certain top contributors to**  
11 **noncandidate committees making only independent expenditures.**

12       (a) An advertisement shall contain an additional notice in a  
13 prominent location immediately after or below the notices  
14 required by section 11-391, if the advertisement is broadcast,  
15 televised, circulated, or published, including by electronic  
16 means, and is paid for by a noncandidate committee that  
17 certifies to the commission that it makes only independent  
18 expenditures. This additional notice shall start with the  
19 words, "The three top contributors for this advertisement are",  
20 followed by the names of the three top contributors, as defined  
21 in subsection [~~(e)~~,] (f), who made the highest aggregate



1 contributions to the noncandidate committee for the purpose of  
2 funding the advertisement; provided that:

3 (1) If a noncandidate committee is only able to identify  
4 two top contributors who made contributions for the  
5 purpose of funding the advertisement, the additional  
6 notice shall start with the words, "The two top  
7 contributors for this advertisement are", followed by  
8 the names of the two top contributors;

9 (2) If a noncandidate committee is able to identify only  
10 one top contributor who made contributions for the  
11 purpose of funding the advertisement, the additional  
12 notice shall start with the words, "The top  
13 contributor for this advertisement is", followed by  
14 the name of the top contributor;

15 (3) If a noncandidate committee is unable to identify any  
16 top contributors who made contributions for the  
17 purpose of funding the advertisement, the additional  
18 notice shall start with the words, "The three top  
19 contributors for this noncandidate committee are",  
20 followed by the names of the three top contributors



1           who made the highest aggregate contributions to the  
2           noncandidate committee; and

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

6 In no case shall a noncandidate committee be required to  
7 identify more than three top contributors pursuant to this  
8 section.

9           (b) If a noncandidate committee has more than three top  
10          contributors who contributed in equal amounts, the noncandidate  
11          committee may select which of the top contributors to identify  
12          in the advertisement; provided that the top contributors not  
13          identified in the advertisement did not make a higher aggregate  
14          contribution than those top contributors who are identified in  
15          the advertisement. The additional notice required for  
16          noncandidate committees described under this subsection shall  
17          start with the words "Three of the top contributors for this  
18          advertisement are" or "Three of the top contributors to this  
19          noncandidate committee are", as appropriate, followed by the  
20          names of the three top contributors.



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

12           (d) A noncandidate committee shall obtain a statement of  
13 certification from each top contributor required to be listed in  
14 an advertisement pursuant to this section avowing under penalty  
15 of perjury that, after due inquiry, none of the funds  
16 contributed by the top contributor were derived from a foreign  
17 corporation or foreign-influenced business entity. If a  
18 noncandidate committee does not receive a statement of  
19 certification from a top contributor, the advertisement shall  
20 include the following statement: "Some of the funds used to pay  
21 for this message may have been provided by foreign or foreign-



1 influenced businesses." A noncandidate committee shall be  
2 entitled to rely on a statement of certification provided by a  
3 top contributor unless the noncandidate committee has actual  
4 knowledge that the statement of certification is false.

5 [~~d~~] (e) Any noncandidate committee that violates this  
6 section shall be subject to a fine under section 11-410.

7 [~~e~~] (f) For purposes of this section, "top contributor"  
8 means a contributor who has contributed an aggregate amount of  
9 \$10,000 or more to a noncandidate committee within a twelve-  
10 month period before the purchase of an advertisement."

11 SECTION 5. Nothing in this Act shall be construed to  
12 diminish or infringe upon any right protected under the First  
13 Amendment of the Constitution of the United States or conflict  
14 with any federal statute or regulation.

15 SECTION 6. If any provision of this Act, or the  
16 application thereof to any person or circumstance, is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act that can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 of this Act are severable.



1           SECTION 7. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 8. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY:                     *Clem*                    





# S.B. NO. 1179

**Report Title:**

Campaign Finance; Foreign Corporations; Foreign Nationals

**Description:**

Prohibits foreign nationals, foreign-influenced business entities, and foreign corporations from making contributions, independent expenditures, or electioneering communications, or contributions or donations to third parties that are earmarked for such purposes. Requires every business entity that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence. Requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement.

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