

JAN 24 2024

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 shareholders, which may
14 diverge substantially from the interests of the people of Hawaii
15 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 United States Elections", issued
21 by the Office of the Director of National Intelligence, United



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

8 The legislature further finds that, aside from active
9 measures by hostile intelligence services, the explicit or
10 implicit influence of major foreign investors subjects corporate
11 decision-making to foreign influence as executives consider
12 interests of foreign investors. Domestic corporate political
13 spending by corporations threatens democratic self-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 (2012).



1 The legislature further finds that existing 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 United States Congress and several



1 states and municipalities are considering enacting legislation,
2 to 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 contributions,
12 expenditures, electioneering communications, or
13 donations for election purposes;
- 14 (2) Requiring every business entity that contributes or
15 expends funds in an election to file a statement of
16 certification regarding its status as a foreign
17 corporation or foreign-influenced business entity; and
- 18 (3) Requiring noncandidate committees making only
19 independent expenditures to obtain a statement of
20 certification from each top contributor required to be
21 listed in an advertisement.



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

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

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

- 10 (1) A single foreign investor holds, owns, controls, or
11 otherwise has direct or indirect beneficial ownership
12 of one per cent or more of the total equity,
13 outstanding voting shares, membership units, or other
14 applicable ownership interests of the business entity;
15 (2) Two or more foreign investors, in aggregate, hold,
16 own, control, or otherwise have direct or indirect
17 beneficial ownership of five per cent or more of the
18 total equity, outstanding voting shares, membership
19 units, or other applicable ownership interests of the
20 business entity; or



1 (3) A foreign investor participates directly or indirectly
2 in the business entity's decision-making process with
3 respect to the business entity's political activities
4 in the United States.

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

6 (1) Holds, owns, controls, or otherwise has direct or
7 indirect beneficial ownership of equity, outstanding
8 voting shares, membership units, or other applicable
9 ownership interests of a business entity; and

10 (2) Is:

11 (A) A government of a foreign country;

12 (B) A foreign political party;

13 (C) An individual outside the United States who is
14 not a citizen of the United States or a national
15 of the United States and who is not lawfully
16 admitted for permanent residence; or

17 (D) A business entity that:

18 (i) Is organized under the laws of or having its
19 principal place of business in a foreign
20 country; or



1 (ii) In which a person or entity described in
 2 subparagraph (A), (B), or (C) holds, owns,
 3 controls, or otherwise has directly or
 4 indirectly acquired a beneficial ownership
 5 of equity, voting shares, membership units,
 6 or other applicable ownership interests of
 7 the business entity in an amount that is
 8 equal to or greater than fifty per cent of
 9 the total equity, outstanding voting shares,
 10 membership units, or other applicable
 11 ownership interests of the business entity."

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 ~~[e]~~, foreign corporation, or foreign-influenced
 16 business entity; prohibited. (a) ~~[Except as provided in~~
 17 ~~subsection (b), no]~~ No contributions or expenditures shall be
 18 made to or on behalf of a candidate, candidate committee, or
 19 noncandidate committee~~[7]~~ by a foreign national ~~[e]~~, foreign
 20 corporation, or foreign-influenced business entity, including a
 21 domestic subsidiary of a foreign corporation, ~~[a]~~ domestic



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

16 (c) No contribution or donation shall be made to any
17 person by a foreign national, foreign corporation, or
18 foreign-influenced business entity if the contribution or
19 donation is earmarked for the recipient to make a contribution
20 or expenditure, including independent expenditure or
21 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 commission a statement of certification signed by the business
7 entity's chief executive officer avowing under penalty of
8 perjury that, after due inquiry, the business entity was not a
9 foreign corporation or foreign-influenced business entity on the
10 date the contribution, expenditure, independent expenditure, or
11 expenditure for an electioneering communication was made. For
12 purposes of this certification, the business entity shall
13 ascertain beneficial ownership in a manner consistent with the
14 Hawaii Business Corporation Act or, if it is registered on a
15 national securities exchange, as set forth in title 17 Code of
16 Federal Regulations sections 240.13d-3 and 240.13d-5. The
17 business entity shall provide a copy of the statement of
18 certification to any candidate or committee to which it
19 contributes and, upon request of the recipient, to any other
20 person to which it contributes.

21 (e) For the purposes of this section:



1 "Chief executive officer" means the highest-ranking officer
2 or individual having authority to make decisions regarding a
3 corporation's affairs.

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

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

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

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



1 in subsection [~~(e)~~,] (f), who made the highest aggregate
2 contributions to the noncandidate committee for the purpose of
3 funding the advertisement; provided that:

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

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

16 (3) If a noncandidate committee is unable to identify any
17 top contributors who made contributions for the
18 purpose of funding the advertisement, the additional
19 notice shall start with the words, "The three top
20 contributors for this noncandidate committee are",
21 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 minimum fine of \$1,000 per
7 violation.

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

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

16 SECTION 6. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 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.

7

INTRODUCED BY: 



S.B. NO. 3243

Report Title:

Campaign Finance; Foreign Corporations; Foreign Nationals

Description:

Prohibits foreign entities and foreign-influenced business entities from making contributions, expenditures, electioneering communications, or donations for election 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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