

JAN 20 2023

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# A BILL FOR AN ACT

RELATING TO ELECTIONS.

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

1 SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended  
2 by adding three new sections to be part XII, subpart H, to be  
3 appropriately designated and to read as follows:

4 "§11-A Identification of certain top contributors. (a)  
5 Except as otherwise provided by this section, any expenditure  
6 for a communication funded by a noncandidate committee or  
7 created through any in-kind contribution received by a  
8 noncandidate committee shall include a notice that includes:

9 (1) Any information required by section 11-391; and

10 (2) For any communication that has:

11 (A) A visual component, the communication shall  
12 clearly and conspicuously display the names of  
13 the top three donors who directly or indirectly  
14 donated \$10,000 or more in original funds during  
15 the two-year election period to the noncandidate  
16 committee. This written notice shall start with  
17 the words, "The three top contributors who helped



1                   pay for this message are", followed by the names  
2                   of the three top contributors as determined under  
3                   subsection (d); and

4           (B) An audio component, the communication shall  
5           clearly and conspicuously state the names of the  
6           top three donors who directly or indirectly  
7           donated \$10,000 or more in original funds during  
8           the two-year election period to the noncandidate  
9           committee. This audio notice shall start with  
10           the words, "The three top contributors who helped  
11           pay for this message are", followed by the names  
12           of the three top contributors as determined under  
13           subsection (d).

14           (b) For communications disseminated electronically and for  
15           which it is technologically impossible to include all of the  
16           information required by this section in a clear and conspicuous  
17           manner, the communication shall:

18           (1) State the name of the person that paid for the  
19           communication; and

20           (2) Include an active link for the recipient of the  
21           digital communication to immediately view the



1           remainder of the information required under this  
2           section with minimal effort and without receiving or  
3           viewing any additional material other than the  
4           required information.

5           (c) A communication disseminated by electronic means does  
6 not clearly and conspicuously state or display the information  
7 required under this section if it is difficult to read or hear  
8 or if its placement is easily overlooked. The notice in a  
9 communication disseminated electronically is made clearly and  
10 conspicuously if the notice meets the following requirements:

11           (1) In the case of a text or graphic communication, the  
12 notice:

13           (A) Appears in letters at least as large as the  
14 majority of the text in the communication;

15           (B) Is contained in a printed box set apart from the  
16 other contents of the communication; and

17           (C) Is printed with a reasonable degree of color  
18 contrast between the background and the printed  
19 notice;

20           (2) In the case of an audio communication, the notice is  
21 spoken in a clearly audible and intelligible manner at



1           the beginning or end of the communication and lasts at  
2           least four seconds; and

3           (3) In the case of a video communication that also  
4           includes audio, the notice:

5           (A) Is included at either the beginning or the end of  
6           the communication; and

7           (B) Is made both in a written format that meets the  
8           requirements of paragraph (1) and appears for at  
9           least four seconds, and in an audible format that  
10           meets the requirements of paragraph (2).

11 In the case of any other type of communication, the notice is at  
12 least as clear and conspicuous as required for a notice under  
13 this section. In the case of a video communication that is  
14 shorter than ten seconds, the audible portion of the notice may  
15 be omitted.

16           (d) For the purposes of determining the persons that are  
17 the top three contributors:

18           (1) The top three contributors shall be determined by  
19           calculating the three contributors of traceable funds  
20           that have directly or indirectly contributed to the



- 1           noncandidate committee the highest amounts of original  
2           funds during the two-year election period;
- 3       (2)   Contributions of traceable funds made in prior two-  
4           year election periods shall be considered to have been  
5           contributed in the current two-year election period if  
6           the contributor's aggregate contributions of original  
7           funds to the noncandidate committee constituted the  
8           majority of the noncandidate committee's traceable  
9           funds at the beginning of the two-year election  
10          period;
- 11       (3)   If multiple contributors have contributed identical  
12           amounts to a noncandidate committee so that there is  
13           no difference in the amounts contributed by the third-  
14           highest contributor and the fourth-highest or lower-  
15           level contributor, the contributor that most recently  
16           contributed to the noncandidate committee shall be  
17           deemed a top three contributor;
- 18       (4)   No contributor of traceable funds shall be deemed a  
19           top three contributor if the aggregate amount of the  
20           contributor's contributions of original funds to the



1           noncandidate committee during the two-year election  
2           period is less than \$10,000; and

3           (5) To the extent that fewer than three contributors meet  
4           the \$10,000 threshold, an intermediary that directly  
5           or indirectly transferred at least \$10,000 in  
6           traceable funds to the noncandidate committee during  
7           the two-year election period shall be treated as the  
8           original source of funds for the purposes of the  
9           notice required by this section.

10           §11-B Structured transactions; prohibited. No person  
11 shall structure or assist in structuring, or attempt to  
12 structure or assist in structuring, any solicitation,  
13 contribution, expenditure, disbursement, or other transaction to  
14 evade the requirements of this chapter.

15           §11-C Penalties. Any person who violates this subpart,  
16 any rule adopted by the commission, or the reporting  
17 requirements under section 11-335(b)(8) or section 11-341(b)(9),  
18 shall pay an administrative fine in an amount not less than the  
19 amount contributed or spent in violation of this subpart or the  
20 reporting requirements, nor more than twice the amount  
21 contributed or spent in violation of this subpart or the



1 reporting requirements; provided that if the amount contributed  
2 or spent in violation of this subpart or the reporting  
3 requirements was less than \$5,000, the maximum fine shall be  
4 \$10,000."

5 SECTION 2. Section 11-302, Hawaii Revised Statutes, is  
6 amended as follows:

7 1. By adding seven new definitions to be appropriately  
8 inserted and to read:

9 "Business income" means:

10 (1) Funds received by a person in commercial transactions  
11 in the ordinary course of the person's regular trade,  
12 business, or investments; or

13 (2) Membership or union dues to the extent that they do  
14 not exceed \$5,000 from any person in a calendar year.

15 "Identity" means:

16 (1) In the case of an individual, the name, address,  
17 occupation, and employer of the individual; or

18 (2) In the case of a person other than an individual, the  
19 full name, address, federal tax status, and state in  
20 which the person is registered as a partnership,



1           incorporated, or organized as a limited liability  
2           company, if applicable.

3           "Noncandidate committee making only independent  
4 expenditures" means a noncandidate committee that makes  
5 independent expenditures and does not:

6           (1) Make contributions to any candidate, candidate  
7           committee, or noncandidate committee, other than  
8           contributions to another noncandidate committee making  
9           only independent expenditures or to a ballot issue  
10           committee; or

11           (2) Engage in coordinated activity, as defined in section  
12           11-363, other than coordinated activity with another  
13           noncandidate committee making only independent  
14           expenditures or with a ballot issue committee.

15           "Original funds" means the business income of a person or  
16 an individual's own funds.

17           "Own funds" means:

18           (1) Any asset over which an individual had legal control  
19           and rightful title at the time the individual made  
20           expenditures or transferred funds to another person  
21           for that spending;





- 1        (2) Income received by an individual, including:
- 2            (A) Any salary or other earned income from bona fide
- 3            employment;
- 4            (B) Dividends and proceeds from the individual's
- 5            personal investments; and
- 6            (C) Bequests to the individual, including income from
- 7            trusts established by bequests; and
- 8        (3) Of the assets that are jointly owned by the individual
- 9        and the individual's spouse, the portion that is:
- 10           (A) Equal to the individual's share of the asset
- 11           under the instrument of conveyance or ownership;
- 12           or
- 13           (B) The value of one-half of the property, if no
- 14           specific share is indicated by an instrument of
- 15           conveyance or ownership.

16 "Own funds" does not include any asset or income received from  
17 any person for the purpose of influencing any election.

18 "Traceable funds" means funds that:

- 19        (1) Have been given to a noncandidate committee making
- 20        only independent expenditures and over which the donor



1           has not exercised the option to exclude from the use  
2           or transfer of funds for independent expenditures; or  
3           (2) Are used to finance in-kind contributions to a  
4           noncandidate committee making only independent  
5           expenditures to enable independent expenditures.

6           "Transfer record" means a written record of identity of the  
7 persons who directly or indirectly contributed or transferred  
8 original funds used for independent expenditures, the amounts of  
9 those contributions or transfers, and how those funds are  
10 disbursed."

11           2. By amending the definitions of "donation" and donor" to  
12 read:

13           "\"Donation\" means all transfers of money, credit or debit  
14 card transactions, online payments, payments made through a  
15 third party, paid personal services, or transfers of any other  
16 thing of value [~~to a nonprofit organization.~~] other than through  
17 commercial transactions in the ordinary course of business.

18           "\"Donor\" means a person that makes a donation to a  
19 [~~nonprofit organization subject to this chapter and operating as~~  
20 a] noncandidate committee."



1           3. By amending the definition of "electioneering  
2 communication" to read:

3           ""Electioneering communication":

4           (1) Means any paid advertisement that is broadcast from a  
5 cable, satellite, television, or radio broadcast  
6 station; published in any periodical or newspaper or  
7 by electronic means; or sent by mail, and that:

8           (A) Refers to a clearly identifiable candidate;

9           (B) Is made, or scheduled to be made, either within  
10 thirty days before a primary or initial special  
11 election or within sixty days before a general or  
12 special election[~~;~~] for the office sought by the  
13 candidate; and

14           (C) Is [~~not susceptible to any reasonable~~  
15 ~~interpretation other than as an appeal to vote~~  
16 ~~for or against a specific candidate;~~]  
17 disseminated in the jurisdiction where the  
18 candidate's election is taking place; and

19           (2) Shall not include communications:

20           (A) In a news story or editorial disseminated by any  
21 broadcast station, publisher of periodicals or



1 newspapers, or by electronic means, unless the  
2 facilities are owned or controlled by a  
3 candidate, candidate committee, or noncandidate  
4 committee;

5 (B) In house bulletins; or

6 (C) That constitute a candidate debate or forum, or  
7 solely promote a debate or forum and are made by  
8 or on behalf of the person or organization  
9 sponsoring the debate or forum."

10 4. By amending the definition of "expenditure" to read:

11 ""Expenditure" means:

12 (1) Any purchase or transfer of money or anything of  
13 value, or promise or agreement to purchase or transfer  
14 money or anything of value, or payment incurred or  
15 made, or the use or consumption of a nonmonetary  
16 contribution for the purpose of:

17 (A) Influencing the nomination for election, or the  
18 election, of any person seeking nomination for  
19 election or election to office, whether or not  
20 the person has filed the person's nomination  
21 papers[+] including:



- 1            (i) Communications or activities that constitute  
2            express advocacy or the functional  
3            equivalent of express advocacy;
- 4            (ii) Communications that advocate or support the  
5            nomination, opposition, or election of a  
6            candidate, regardless of whether the  
7            communication expressly advocates the  
8            election or defeat of a candidate; and
- 9            (iii) Partisan voter activity, partisan voter  
10           registration, partisan get-out-the-vote  
11           activity, or other partisan campaign-related  
12           activity;
- 13           (B) Influencing the outcome of any question or issue  
14           that has been certified to appear on the ballot  
15           at the next applicable election~~[; or]~~, including  
16           communications that advocate the passage or  
17           defeat of an issue or question on the ballot;
- 18           (C) Use by any party for the purposes set out in  
19           subparagraph (A) or (B); or
- 20           (D) Research, design, production, polling, data  
21           analytics, mailing or social media list



1                   acquisition, or other activities conducted in  
2                   preparation for or conjunction with  
3                   communications or activities described in this  
4                   paragraph.

5           (2) Any payment, by any person other than a candidate,  
6           candidate committee, or noncandidate committee, of  
7           compensation for the services of another person that  
8           are rendered to the candidate, candidate committee, or  
9           noncandidate committee for any of the purposes  
10          mentioned in paragraph (1) [~~(A)~~]; provided that payment  
11          under this paragraph shall include provision of  
12          services without charge; or

13          (3) The expenditure by a candidate of the candidate's own  
14          funds for the purposes set out in [~~paragraph~~]  
15          paragraphs (1) (A) [~~-~~] and (D) regarding the candidate's  
16          own election.

17          "Expenditure" does not include:

18          (1) Services voluntarily provided without compensation by  
19          individuals to or on behalf of a candidate, candidate  
20          committee, or noncandidate committee;

21          (2) Voter registration efforts that are nonpartisan; or



1           (3) An individual, candidate committee, or noncandidate  
2           committee engaging in internet activities for the  
3           purpose of influencing an election if:  
4           (A) The individual, candidate committee, or  
5           noncandidate committee is uncompensated for  
6           internet activities; or  
7           (B) The individual, candidate committee, or  
8           noncandidate committee uses equipment or services  
9           for uncompensated internet activities, regardless  
10          of who owns the equipment and services;  
11          provided that the internet activity exclusion does not  
12          apply to any payment for an advertisement other than a  
13          nominal fee; the purchase or rental of an electronic  
14          address list made at the direction of a candidate  
15          committee or noncandidate committee; or an electronic  
16          mail address list that is transferred to a candidate  
17          committee or noncandidate committee."

18          5. By amended the definition of "independent expenditure"  
19 to read:

20          ""Independent expenditure" means an expenditure by a person  
21 [~~expressly advocating the election or defeat of a clearly~~



1 ~~identified candidate]~~ that is not made in concert or cooperation  
2 with or at the request or suggestion of the candidate, the  
3 candidate committee, a party, or their agents."

4 SECTION 3. Section 11-335, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) Schedules filed with the reports shall include the  
7 following additional information:

8 (1) The amount and date of deposit of each contribution  
9 received and the name, address, occupation, and  
10 employer of each contributor making a contribution  
11 aggregating more than \$100 during an election period,  
12 which was not previously reported pursuant to this  
13 section; provided that if[+

14 ~~(A) All]~~ all the information is not on file, the  
15 contribution shall be returned to the contributor  
16 within thirty days of deposit; [and

17 ~~(B) A noncandidate committee making only independent~~  
18 ~~expenditures receives a contribution of more than~~  
19 ~~\$10,000 in the aggregate in an election period~~  
20 ~~from an entity other than an individual, for~~





1                   ~~profit business entity, or labor union, then the~~  
2                   ~~schedule shall include:~~

3                   ~~(i) The internet address where the contributing~~  
4                   ~~entity's disclosure report can be publicly~~  
5                   ~~accessed, if the contributing entity is~~  
6                   ~~subject to state or federal disclosure~~  
7                   ~~reporting requirements regarding the source~~  
8                   ~~of the contributing entity's funds;~~

9                   ~~(ii) The name, address, occupation, and employer~~  
10                   ~~of each funding source that contributed \$100~~  
11                   ~~or more in the aggregate in an election~~  
12                   ~~period to that contributing entity; or~~

13                   ~~(iii) An acknowledgment that the contributing~~  
14                   ~~entity is not subject to any state or~~  
15                   ~~federal disclosure reporting requirements~~  
16                   ~~regarding the source of the contributing~~  
17                   ~~entity's funds;]~~

18                   (2) The amount and date of each contribution made and the  
19                   name and address of the candidate, candidate  
20                   committee, or noncandidate committee to which the  
21                   contribution was made;

- 1           (3) All expenditures, including the [~~name and address~~]  
2           identity of each payee, including any subvendors, and  
3           the amount, date, and purpose of each expenditure;  
4           provided that:
- 5           (A) Expenditures for advertisements or disbursements  
6           for electioneering communications shall include  
7           the names of the candidates supported, opposed,  
8           or clearly identified;
- 9           (B) Expenditures for consultants, advertising  
10          agencies and similar firms, credit card payments,  
11          and salaries shall be itemized to permit a  
12          reasonable person to determine the ultimate  
13          intended recipient of the expenditure and its  
14          purpose;
- 15          (C) Independent expenditures shall include the name  
16          of any candidate supported, opposed, or clearly  
17          identified; and
- 18          (D) The purpose of an independent expenditure shall  
19          include the name of the candidate who is  
20          supported or opposed by the expenditure, and



- 1           whether the expenditure supports or opposes the  
2           candidate;
- 3       (4) For noncandidate committees making only independent  
4           expenditures, certification that no expenditures have  
5           been coordinated with a candidate, candidate  
6           committee, [~~or~~] any agent of a candidate or candidate  
7           committee[+], a noncandidate committee other than a  
8           noncandidate committee making only independent  
9           expenditures or a ballot issue committee, or an agent  
10          of a noncandidate committee other than a noncandidate  
11          committee making only independent expenditures or a  
12          ballot issue committee;
- 13       (5) The amount, date of deposit, and description of other  
14           receipts and the name and address of the source of  
15           each of the other receipts;
- 16       (6) A description of each durable asset, the date of  
17           acquisition, value at the time of acquisition, and the  
18           name and address of the vendor or contributor of the  
19           asset;
- 20       (7) The date of disposition of a durable asset, value at  
21           the time of disposition, method of disposition, and



1 name and address of the person receiving the asset;  
2 and  
3 (8) For ~~[donations received by a nonprofit organization~~  
4 ~~subject to this chapter and operating as]~~ a  
5 noncandidate committee, all of the following:  
6 (A) The total amount of traceable funds owned or  
7 controlled by the noncandidate committee on the  
8 date of the report;  
9 (B) Each contributor of original funds that has  
10 directly or indirectly contributed more than  
11 \$5,000 of traceable funds or funds used to enable  
12 in-kind contributions during the two-year  
13 election period to the noncandidate committee,  
14 and the amount and date of deposit of each  
15 ~~[donation received and the name and address of~~  
16 ~~each donor making a donation individually or~~  
17 ~~aggregating more than \$10,000 during an election~~  
18 ~~period, which was not previously reported~~  
19 ~~pursuant to this section; provided that a~~  
20 ~~schedule filed pursuant to this section shall not~~  
21 ~~include a donor if the donor has not provided~~



1                   ~~consent pursuant to section 11-345.]~~ of the  
2                   contributor's contributions;  
3           (C) The identity of each person that acted as an  
4                   intermediary and that transferred traceable funds  
5                   in whole or in part from an original source to  
6                   the noncandidate committee, and the date, amount,  
7                   and original and intermediate sources of the  
8                   transferred funds; and  
9           (D) The identity of any person that was the  
10                   contributor of the majority of the traceable  
11                   funds in the noncandidate committee's custody at  
12                   the beginning of the two-year election period."

13           SECTION 4. Section 11-338, Hawaii Revised Statutes, is  
14 amended by amending subsections (b) and (c) to read as follows:

15           "(b) The late contribution report shall include the  
16 following information:

17           (1) Name, address, occupation, and employer of the  
18 contributor;

19           (2) Name of the candidate, candidate committee, or  
20 noncandidate committee making or receiving the  
21 contribution; ~~[provided that, for noncandidate~~



1 ~~committees making only independent expenditures, if a~~  
2 ~~late contribution greater than \$5,000 in the aggregate~~  
3 ~~is received from an entity other than an individual,~~  
4 ~~for-profit business entity, or labor union, then the~~  
5 ~~report shall include:~~

6 ~~(A) The internet address where the contributing~~  
7 ~~entity's disclosure report can be publicly~~  
8 ~~accessed, if the contributing entity is subject~~  
9 ~~to any state or federal disclosure reporting~~  
10 ~~requirements regarding the source of the~~  
11 ~~contributing entity's funds;~~

12 ~~(B) The name, address, occupation, and employer of~~  
13 ~~each funding source of more than \$100 in the~~  
14 ~~aggregate to that contributing entity; or~~

15 ~~(C) An acknowledgment that the contributing entity is~~  
16 ~~not subject to any state or federal disclosure~~  
17 ~~reporting requirements regarding the source of~~  
18 ~~the contributing entity's funds;]~~

19 (3) The amount of the contribution received;

20 (4) The amount of the contribution made;



1 (5) The contributor's aggregate contributions to the  
2 candidate, candidate committee, or noncandidate  
3 committee; and

4 (6) The purpose, if any, to which the contribution will be  
5 applied, including, for contributions to a  
6 noncandidate committee, the name of any candidate  
7 supported, opposed, or clearly identified[; ~~and~~

8 ~~(7) For a nonprofit organization filing a late~~  
9 ~~contribution report, the amount and date of deposit of~~  
10 ~~each donation received and the name and address of~~  
11 ~~each donor making a donation individually or~~  
12 ~~aggregating more than \$10,000 during an election~~  
13 ~~period, which was not previously reported pursuant to~~  
14 ~~section 11-335; provided that a schedule filed~~  
15 ~~pursuant to this section shall not include a donor if~~  
16 ~~the donor has not provided consent pursuant to section~~  
17 ~~11-345].~~

18 (c) A noncandidate committee that makes independent  
19 expenditures in an aggregate amount of more than \$500 within the  
20 period between fourteen and four calendar days prior to any  
21 election shall file a late expenditure report by means of the



1 commission's electronic filing system on or before the third  
2 calendar day prior to the election. The late expenditure report  
3 shall include the following information for each expenditure:

4 (1) The amount and date made;

5 (2) The vendor name, address, and contact information;

6 [~~and~~]

7 (3) The purpose, including the name of any candidate  
8 supported, opposed, or clearly identified by the  
9 expenditure[-]; and

10 (4) For a noncandidate committee, information regarding  
11 original sources of funds."

12 SECTION 5. Section 11-341, Hawaii Revised Statutes, is  
13 amended as follows:

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

15 "(a) Each person who makes [~~an expenditure~~] a disbursement  
16 for electioneering communications in an aggregate amount of more  
17 than [~~\$1,000~~] \$2,000 during any calendar year shall file with  
18 the commission a statement of information within twenty-four  
19 hours of each disclosure date provided in this section.

20 (b) Each statement of information shall contain the  
21 following:





- 1           (1) The name of the person making the [~~expenditure,~~  
2           disbursement, name of any person or entity sharing or  
3           exercising discretion or control over the person, and  
4           the custodian of the books and accounts of the person  
5           making the [~~expenditure,~~] disbursement;
- 6           (2) The names and titles of the executives or board of  
7           directors who authorized the [~~expenditure,~~  
8           disbursement, if the [~~expenditure~~] disbursement was  
9           made by a noncandidate committee, business entity, or  
10          an organization;
- 11          (3) The state of incorporation or formation and principal  
12          address of the noncandidate committee, business  
13          entity, or organization or for an individual, the  
14          name, address, occupation, and employer of the  
15          individual making the [~~expenditure,~~] disbursement;
- 16          (4) The amount of each [~~expenditure~~] disbursement during  
17          the period covered by the statement of information and  
18          the identification of the person to whom the  
19          [~~expenditure~~] disbursement was made;
- 20          (5) The elections to which the electioneering  
21          communications pertain and the names of any clearly



1 identifiable candidates and whether those candidates  
2 are supported or opposed;

3 (6) If the [~~expenditures~~] disbursement were made by a  
4 noncandidate committee, the names and addresses of all  
5 persons who contributed to the noncandidate committee  
6 for the purpose of publishing or broadcasting the  
7 electioneering communications;

8 (7) If the [~~expenditures~~] disbursement were made by an  
9 organization other than a noncandidate committee, the  
10 names and addresses of all persons who contributed to  
11 the organization for the purpose of publishing or  
12 broadcasting the electioneering communications;

13 [~~(8) If the expenditures were made by a nonprofit~~  
14 ~~organization, the amount and date of the deposit of~~  
15 ~~each donation received and the name and address of~~  
16 ~~each donor making a donation individually or~~  
17 ~~aggregating more than \$10,000 during an election~~  
18 ~~period, which was not previously reported pursuant to~~  
19 ~~section 11-335; provided that a schedule filed~~  
20 ~~pursuant to this section shall not include a donor's~~



1 ~~name or address if the donor has not provided consent~~  
2 ~~pursuant to section 11-345;~~

3 ~~(9)]~~ (8) Whether any electioneering communication is made  
4 in coordination, cooperation, or concert with or at  
5 the request or suggestion of any candidate, candidate  
6 committee, or noncandidate committee, or agent of any  
7 candidate if any, and if so, the identification of the  
8 candidate, candidate committee, or noncandidate  
9 committee, or agent involved; and

10 ~~[(10)]~~ (9) The three top contributors as required under  
11 section ~~[11-393,]~~ 11-A if applicable."

12 2. By amending subsection (e) to read:

13 "(e) For purposes of this section, a person shall be  
14 treated as having made ~~[an expenditure]~~ a disbursement if the  
15 person has executed a contract to make the ~~[expenditure.]~~  
16 disbursement."

17 SECTION 6. Section 11-345, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[~~+~~]§11-345[~~+~~] Donors; consent; notice. (a) A [~~nonprofit~~  
20 ~~organization subject to this chapter and operating as a]~~  
21 noncandidate committee [~~may use a donation for electioneering~~



1 ~~communications, independent expenditures, or contributions only~~  
2 ~~upon receipt of written consent from the donor to use the~~  
3 ~~donation for electioneering communications, independent~~  
4 ~~expenditures, or contributions.] making only independent~~  
5 ~~expenditures and that spends more than \$10,000 in a two-year~~  
6 ~~election period or accepts more than \$10,000 of in-kind~~  
7 ~~contributions in a two-year election period shall maintain~~  
8 ~~transfer records.~~

9 (b) A ~~[nonprofit organization subject to this chapter and~~  
10 ~~operating as a]~~ noncandidate committee subject to subsection (a)  
11 shall provide written notice to donors that the donor's  
12 donations may be used for independent expenditures in the State  
13 and that the donor's name, [and] address, and other information  
14 may be reported pursuant to this chapter in a public document  
15 ~~[if the donor provides written consent to use the donation for~~  
16 ~~electioneering communications, independent expenditures, or~~  
17 ~~contributions]. The notice may be provided before, after, or at~~  
18 the same time the noncandidate committee receives the donation  
19 and shall inform the donor that the donor may exclude the  
20 donation from the intended use or transfer for independent  
21 expenditures or electioneering communications by providing a



1 written request within twenty-one days after the donor's receipt  
2 of the notice. The donor's donations shall not be used or  
3 transferred for independent expenditures or electioneering  
4 communications until the twenty-second day after the donor  
5 receives the notice or after the donor provides written consent  
6 for the intended use or transfer, whichever occurs first.

7 (c) If the donor [~~fails to provide written consent that~~  
8 ~~the donation may be used for electioneering communications,~~]  
9 notifies the noncandidate committee that the donation must be  
10 excluded from use or transfer by the committee for independent  
11 expenditures, or [~~contributions,~~] electioneering communications,  
12 the [~~nonprofit organization]~~ noncandidate committee shall,  
13 within thirty days of receipt of the donation, transmit to the  
14 donor a written [~~confirmation by the nonprofit organization's~~  
15 highest ranking official that the donation will not be used for  
16 electioneering communications, independent expenditures, or  
17 contributions; and the name and address of the donor will not be  
18 reported by the nonprofit organization pursuant to this  
19 chapter.] receipt acknowledging the donor's decision to exclude  
20 the donation from that spending.



1           (d) ~~[Only a nonprofit organization subject to this chapter~~  
2 ~~and operating as a noncandidate committee shall be subject to~~  
3 ~~the reporting requirements of this section.]~~ Any person that  
4 contributes at least \$10,000 in the aggregate in traceable funds  
5 in a two-year election period to a noncandidate committee  
6 subject to subsection (a) shall inform the noncandidate  
7 committee, within ten days of receiving a written request from  
8 the noncandidate committee, of the identity of any person that  
9 directly or indirectly contributed at least \$1,000 in original  
10 funds transferred, the amounts of the person's original funds  
11 transferred, and any person that previously transferred the  
12 original funds. If more than one transfer has previously  
13 occurred, the contributor shall disclose all the previous  
14 transfers and intermediaries. The contributor shall maintain  
15 these records for at least five years and shall provide them to  
16 the commission upon request.

17           (e) Any person that makes an in-kind contribution to a  
18 noncandidate committee subject to subsection (a) of at least  
19 \$10,000 in a two-year election period to enable independent  
20 expenditures shall inform the noncandidate committee, at the  
21 time the in-kind contribution is made or promised to be made, of



1 the identity of any person that directly or indirectly  
2 contributed or provided at least \$1,000 in original funds to  
3 finance the in-kind contribution, the amounts of funds used from  
4 each person's original funds, and any person who had previously  
5 transferred the original funds. If more than one transfer  
6 previously occurred, the in-kind contributor shall disclose all  
7 the previous transfers and intermediaries. The in-kind  
8 contributor shall maintain these records for at least five years  
9 and shall provide them to the commission upon request.

10 (f) A noncandidate committee subject to subsection (a)  
11 that is required to file a late expenditure report under section  
12 11-338 shall include the information required to be reported  
13 pursuant to section 11-335(b) (8); provided that such information  
14 is updated as of the date of the late expenditure report."

15 SECTION 7. Section 11-391, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) Any paid advertisement that is broadcast, televised,  
18 circulated, published, distributed, or otherwise communicated,  
19 including by electronic means, shall:



- 1           (1) Contain the name and address of the candidate,  
2                   candidate committee, noncandidate committee, or other  
3                   person paying for the advertisement;
- 4           (2) Contain a notice in a prominent location stating  
5                   either that:
  - 6                   (A) The advertisement has the approval and authority  
7                           of the candidate; provided that an advertisement  
8                           paid for by a candidate, candidate committee, or  
9                           ballot issue committee does not need to include  
10                           the notice; or
  - 11                   (B) The advertisement has not been approved by the  
12                           candidate; and
- 13           (3) Not contain false information about the time, date,  
14                   place, or means of voting."

15           SECTION 8. Section 11-393, Hawaii Revised Statutes, is  
16 repealed.

17           ~~["§11-393 Identification of certain top contributors to~~  
18 ~~noncandidate committees making only independent expenditures.~~  
19 ~~(a) An advertisement shall contain an additional notice in a~~  
20 ~~prominent location immediately after or below the notices~~  
21 ~~required by section 11-391, if the advertisement is broadcast,~~





1 ~~televised, circulated, or published, including by electronic~~  
2 ~~means, and is paid for by a noncandidate committee that~~  
3 ~~certifies to the commission that it makes only independent~~  
4 ~~expenditures. This additional notice shall start with the~~  
5 ~~words, "The three top contributors for this advertisement are",~~  
6 ~~followed by the names of the three top contributors, as defined~~  
7 ~~in subsection (c), who made the highest aggregate contributions~~  
8 ~~to the noncandidate committee for the purpose of funding the~~  
9 ~~advertisement; provided that:~~

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

16 ~~(2) If a noncandidate committee is able to identify only~~  
17 ~~one top contributor who made contributions for the~~  
18 ~~purpose of funding the advertisement, the additional~~  
19 ~~notice shall start with the words, "The top~~  
20 ~~contributor for this advertisement is", followed by~~  
21 ~~the name of the top contributor;~~



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

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

12       ~~In no case shall a noncandidate committee be required to~~  
13       ~~identify more than three top contributors pursuant to this~~  
14       ~~section.~~

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



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

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

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

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



1 ~~or more to a noncandidate committee within a twelve month period~~  
2 ~~before the purchase of an advertisement."]~~

3 SECTION 9. In codifying the new sections added by section  
4 1 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters used in designating  
6 the new sections in this Act.

7 SECTION 10. If any provision of this Act, or the  
8 application thereof to any person or circumstance, is held  
9 invalid, the invalidity does not affect other provisions or  
10 applications of the Act that can be given effect without the  
11 invalid provision or application, and to this end the provisions  
12 of this Act are severable.

13 SECTION 11. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 12. This Act shall take effect upon its approval.

16

INTRODUCED BY: *Karl Albrecht*



# S.B. NO. 997

**Report Title:**

Elections; Top Contributors; Donors; Noncandidate Committee; Identification

**Description:**

Requires notice and identification of certain top donors who contributed to a noncandidate committee. Changes the requirement of certain information from the schedules filed with the noncandidate committee reports. Removes certain information required for the late contribution report. Increases the amount of disbursement for electioneering communication that is required to be disclosed. Requires noncandidate committees that make only independent expenditures and spend over \$10,000 to maintain transfer records and provide certain notice to donors. Repeals the top contribution identification requirement.

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

