

ACT 127

H.B. NO. 2782-76

A Bill for an Act Relating to Campaign Contributions and Expenditures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Subpart B, Election Campaign Contributions and Expenditures, of chapter 11, part XII, Hawaii Revised Statutes, is amended in the following respects:

(a) Section 11-191, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 11-191 Definitions. When used in this subpart:

- (1) “Advertisement” means:
 - (A) Any communication exclusive of bumper stickers or other sundry items paid for by or on behalf of a candidate which identifies a candidate directly or by implication or which advocates or supports the nomination for election, or election, of the candidate or advocates or supports his defeat; and
 - (B) Any communication exclusive of bumper stickers or other sundry items paid for by or on behalf of a committee which identifies an issue or question which appears or is reasonably certain to appear on the ballot at the next applicable election or which advocates or supports the passage or defeat of the question or issue.
- (2) “Campaign treasurer” means a person appointed under section 11-198, and, unless expressly indicated otherwise, includes deputy campaign treasurers.
- (3) “Candidate” means an individual who seeks nomination for election, or election, to office. An individual is a candidate if he does any of the following:
 - (A) Files nomination papers for an office for himself with the county clerk’s office or with the chief election officer’s office, whichever is applicable; or
 - (B) Receives contributions in an aggregate amount of more than \$100, or makes or incurs any expenditure to bring about his nomination for election, or election, to office provided that in no event shall a person be deemed a candidate by reason of the provisions set forth in subparagraphs (B) and (C) of this paragraph prior to January 1 of the year that person runs for election; or
 - (C) Gives his consent for any other person to receive contributions or make expenditures to aid his nomination for election, or election, to office.
- (4) “Commission” means the campaign spending commission.
- (5) “Committee” means:
 - (A) Any person who accepts a contribution or makes an expenditure for or against any candidate, person seeking nomination for election, or election, to office, or party, with or without the authorization of the candidate, person, or party, or who accepts a contribution or makes an expenditure for or against any question or issue which appears or is reasonably certain to appear on the ballot at the next applicable election;
 - (B) Any person who raises or holds money or anything of value and who subsequently contributes the money or thing of value to, or makes expenditures in behalf of a candidate, person, or party; provided that the term “committee” shall not include any person making a contribution or expenditure of his own funds or thing of value, which he originally acquired for his own use and not for the purpose of evading any provision of this subpart;

(6) "Contribution" means:

- (A) A gift, subscription, loan, advance, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to testimonial or fund raising affairs, for the purpose of:
 - (i) Influencing the nomination for election, or election, of any person to office; or
 - (ii) Influencing the outcome of any question or issue which appears or is reasonably certain to appear on the ballot at the next applicable election; or
 - (iii) Use by any party for the purposes set out in clause (i) or (ii) above;
- (B) The payment, by any person other than a candidate or committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge or at an unreasonably low charge for the purposes set out in clause (i), (ii), or (iii) in paragraph (A) above; or
- (C) A contract, promise, or agreement to make a contribution; provided that notwithstanding subparagraphs (A), (B), and (C) of this paragraph, the term shall not include services or portions thereof voluntarily provided without reasonable compensation by individuals to or in behalf of a candidate or committee; or
- (D) Notwithstanding the above, a candidate's expenditure of his own funds in the pursuit of his campaign shall not be a contribution for the purpose of this subpart but shall nevertheless be reportable as a campaign receipt.

(7) "Election" means any election for office or for determining a question or issue provided by law or ordinance.

(8) "Expenditure" means:

- (A) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a non-monetary contribution for the purpose of:
 - (i) Influencing the nomination for election, or election, of any person seeking nomination for election, or election, to office whether or not the person has filed his nomination papers; or
 - (ii) Influencing the outcome of any question or issue which appears or is reasonably certain to appear on the ballot at the next applicable election; or
 - (iii) Use by any party for the purposes set out in clause (i) or (ii) above;
- (B) The payment, by any other person other than a candidate or committee, of compensation for the personal services of another person which are rendered to the candidate or committee for any of the purposes mentioned in clause (i), (ii), or (iii) of this paragraph; or

(C) The expenditure by a candidate of his own funds for the purposes set out in clauses (i), (ii), and (iii) above.

- (9) "House bulletin" means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.
- (10) "Newspaper" means a publication of general distribution in the State issued once or more per month which is written and published in the State.
- (11) "Office" means any elective public or constitutional office excluding federal elective offices.
- (12) "Person" means an individual, partnership, committee, association, corporation, or labor union and its auxiliary committees."
- (b) Section 11-192, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 11-192 Campaign spending commission. There is established a campaign spending commission, consisting of five members appointed by the governor as follows:

The judicial council shall select a panel of ten persons, consisting of five persons from the membership of each of the two political parties for which the greatest number of voters cast party ballots in the last preceding primary election. From this panel the governor shall appoint two members from each political party and a chairman. Any vacancies in the commission shall be filled by the governor with a member from the panel or by reappointment of a member whose term has expired, subject to the limit on length of service imposed by section 26-34; provided the replacement member is from the same political party as the member being replaced; and provided further that the party is then one of the two political parties as determined above; otherwise, the replacement member shall be from one of the two parties not represented on the commission.

The judicial council shall meet and expeditiously select additional persons for the panel whenever the number of the eligible panel members falls below five, or whenever a political party, being one of the two parties for which the greatest number of voters cast party ballots in the last primary election, is not represented. In either event, the judicial council shall select additional panel members so that there will be five from each of the two parties. A person shall no longer remain eligible to be on the panel when he is not from one of the two parties for which the greater number of voters cast party ballots in the last preceding primary election. The requirement of being from the same party is not applicable to the replacement chairman.

Notwithstanding section 26-34, these appointments shall not be subject to senatorial confirmation. The term of the members shall be four years, except that the terms of the initial members shall be two years for two members, three years for two other members, and four years for the chairman.

The members of the commission shall serve without compensation but they shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties. For administrative purposes the commission shall be in the office of the lieutenant governor."

- (c) Section 11-194, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 11-194 Duties of the chief election officer; commission. (a) The chief election officer’s principal duty is to regulate the election process, and under this subpart his duties are:

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart B, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least five years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(b) The commission’s principal duty is to supervise campaign contributions and expenditures, and under this subpart its duties are:

- (1) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify the persons that their failure to file or filing of a substantially defective or deficient report must be corrected and explained, the correction or explanation to be submitted in writing to the commission within a reasonable time after the notification of the failure to file or deficiency. The commission shall make available a list of candidates, committees, and parties who have failed to correct their deficiency within the time allowed by the commission. Failure to respond to the notification shall constitute a violation of this subpart.
- (2) To hold public hearings;
- (3) To investigate and hold hearings for receiving evidence of any violations;
- (4) To adopt a code of fair campaign practices;
- (5) To establish rules pursuant to chapter 91;
- (6) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-213;
- (7) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart; and
- (8) To employ or contract, without regard to chapters 76 and 77 and section 103-3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions and to fix their compensation.”

(d) Section 11-195, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 11-195 Filing of reports, generally. (a) All reports required to be filed under this subpart by a candidate or committees supporting a candidate with his consent shall be certified by the candidate. All reports required to be filed under this subpart by a party or committee which supports more than one candidate shall be certified by the party or committee treasurer, or the deputy treasurer, or the chairman thereof, in that order. All reports required to be filed shall be open

for public inspection.

(b) All reports required by this subpart shall be filed as follows: The original and one copy shall be filed at the commission office. In the case of counties having less than 100,000 voters, the filing shall be accomplished by filing an original and two copies of the required report with either the commission or the clerk of the county in which the candidate resides. The clerk shall then immediately mail the necessary copies to the commission by certified mail.

(c) The commission or county clerk shall give each person filing a report a receipt showing the type of report and date and time of filing.

(d) The reports filed with the county clerk's office shall be preserved by that office for five years.

(e) All reports required to be filed shall at all times be available to the chief election officer."

(e) Section 11-197, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 11-197 Organizational reports. (a) The organizational report shall include:

- (1) The name, address, office sought when known, and party affiliation of each candidate or individual whom the committee or party is supporting and the name and address of the committee or party;
- (2) The names and addresses of the designated campaign treasurer and deputies;
- (3) The names and addresses of the campaign chairman and deputy campaign chairman;
- (4) A list of all banks, safety deposit boxes, or other depositories used and the applicable account number;
- (5) The amount and date of deposit of the contribution and the name and address of each individual donor who has contributed an aggregate amount of more than \$100 since the last election applicable to the office being sought or in which the issue or question was on the ballot; provided that this paragraph shall not apply to contributions made prior to January 1, 1974; and
- (6) In the case of a report by a committee or party supporting or opposing a ballot question or issue, all of the information described in paragraphs (2) to (5) and a description of the question or issue.

(b) Any change in information submitted in the organizational report, other than paragraph (5) above, shall be reported not later than 4:30 p.m. on the tenth calendar day after the change or when the candidate, committee, party, or campaign treasurer becomes aware of the change."

(f) Section 11-199, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 11-199 Campaign contributions, generally. (a) All monetary contributions shall be promptly deposited in a financial depository duly authorized to do business in the State of Hawaii, such as a bank, savings and loan institution, industrial loan company, or similar financial institution, in the name of the candidate, committee, or party, whichever is applicable.

(b) Each candidate, committee, or party shall establish and maintain an itemized record showing the amount of each monetary contribution, the

description and value of each nonmonetary contribution, and the name and address of each donor making a contribution of more than \$10 in value.

(c) Each candidate and campaign treasurer shall report the amount and date of deposit of each contribution and the name and address of each donor who makes a contribution or contributions whose aggregate value is more than \$100.

(d) No candidate, committee, or party may accept a contribution of more than \$250 in cash from a single person without issuing a receipt to the donor and keeping a record of the transaction.

(e) Each committee and party shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked.

(f) For the purposes of this section, "earmarked funds" means contributions received by a committee or party on the condition that the funds be contributed to or expended only on certain candidates, issues, or questions."

(g) Section 11-200, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 11-200 Campaign contributions, restrictions against transfer. (a) A candidate, campaign treasurer, or committee shall not receive any contributions or receive or make any transfer of money or anything of value:

(1) For any purpose other than those directly related:

(A) In the case of the candidate, to his own campaign, or

(B) In the case of a campaign treasurer or committee, to the campaign of the candidate, question, or issue with which they are directly associated; or

(2) To support the campaigns of candidates other than the candidate, for whom the funds were collected or with whom the campaign treasurer or committee is directly associated; or

(3) To campaign against any other candidate not directly opposing the candidate for whom the funds were collected or with whom the campaign treasurer or committee is directly associated;

Provided that a candidate, campaign treasurer, or committee may as a contribution purchase from its campaign fund not more than two tickets for each testimonial or fund raising affair as defined in section 11-203 of this subpart held by another candidate, committee, or party.

(b) This section shall not be construed to prohibit a party from supporting more than one candidate."

(h) Section 11-203, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 11-203 Testimonial affairs. (a) As used in this section "testimonial affair" means any function held for the benefit of a person and designed to raise funds for political purposes for which the total cost for attending the affair is more than \$25 per person.

(b) No person or committee directly associated with the person shall hold more than one testimonial affair until after an election in which that person was either elected or defeated unless that person seeks election to statewide office, in which case he or his directly associated committee may hold not more than one testimonial affair in each county. An additional testimonial affair may be held within six months after a general, special general, or special election, in the case of a candidate or committee directly associated with that person having a deficit.

No testimonial affair may be held unless a notice of intent to hold the affair is filed by the person in charge of the affair with the commission prior to the date of the affair setting forth the name and address of the person in charge, the charge per person, the date, hour, and place of the affair, and whether contributions will be solicited at the affair and method thereof. Testimonial affairs sponsored by a party for a political purpose for the general benefit of the party are exempt from the limits of this subsection.”

(i) Section 11-203.1, Hawaii Revised Statutes, is repealed.

(j) Section 11-204, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 11-204 Campaign expenditures, generally. (a) A candidate may draw on the campaign treasurer for his political expenditures for postage, telegrams, telephone calls, stationery, expressage, travel, meals, and lodging. The candidate shall make a detailed accounting of his political expenditures and the accounting shall be made a part of the reports required in sections 11-207 and 11-208. The account shall state the amount and purpose of the expenditures and other information required by the commission and shall be signed and certified by the campaign treasurer.

(b) No funds shall be withdrawn or paid from a campaign depository except upon the written authorization of the campaign treasurer.

(c) No expenditure for a candidate shall be made or incurred by any committee controlled by a candidate without specific written authorization of the candidate or his authorized representative.

(d) For the purposes of this subpart, an expenditure shall be deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period covered by this subpart shall be deemed delivered or rendered during the period or periods of use, provided that these expenditures may be reasonably allocated between periods in accordance with the time the services or products are actually used.”

(k) Section 11-206, Hawaii Revised Statutes, is repealed.

(l) Section 11-208, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 11-208 Final and supplemental reports. (a) Each candidate whether or not successful in a primary or special primary election, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final primary report with the commission on forms provided by the commission not later than 4:30 p.m. on the twentieth day after the primary or special primary election certified pursuant to section 11-195. The report shall include:

(1) A statement of the total contributions received;

(2) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100;

(3) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and

(4) A statement of the current balance on hand or deficit.

(b) Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final general report with the

commission on forms provided by the commission not later than 4:30 p.m. on the twentieth day after a general, special general, or special election certified pursuant to section 11-195 and reporting all items prescribed in subsection (a). A candidate who is unsuccessful in a primary or special primary election need not file a final general report.

(c) Deficit. In the event of a deficit, the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every three months until the deficit is eliminated, file supplemental reports reporting all items prescribed in subsection (a). The first report shall be due not later than 4:30 p.m. on the fifth day after the last day of the election year.

(d) Surplus. In the event of a surplus, the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall:

- (1) Maintain the cash surplus in a financial depository; and
- (2) Every six months, until he becomes a candidate again, file supplemental reports reporting all items prescribed in subsection (a).

The first report shall be due not later than 4:30 p.m. on the fifth day after the last day of the election year.

(e) A candidate, party, or committee who receives no contributions or makes no expenditures shall nevertheless file preliminary, final, and supplemental reports as required by law.”

(m) Section 11-210, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 11-210 Advertising.** (a) All advertisements shall contain the name and address of the candidate, committee, party, or person paying for same.

(b) In addition to subsection (a) above, no person shall cause or submit any advertisement in support for a candidate or against a candidate’s opponent, to be published, broadcast, televised or otherwise circulated and distributed except under the following conditions:

- (1) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate, provided that in the event that the literature or advertisement is paid for by a candidate or committee directly associated with a candidate, the notice of approval and authority need not be included; or
- (2) The advertisement shall contain a notice in a prominent location that the literature or advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.”

SECTION 2. Severability. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the provision to other persons and circumstances shall not be affected thereby and further, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the

brackets, the bracketed material, or the underscoring.*

SECTION 4. This Act shall take effect on approval.

(Approved May 17, 1976.)

*Edited accordingly.