

# A BILL FOR AN ACT

RELATING TO GOVERNMENT.

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

1 SECTION 1. The purpose of this Act is to amend laws  
2 relating to the office of elections and campaign spending  
3 commission. Part I of this Act allows the campaign spending  
4 commission and the office of elections:

5 (1) To communicate directly with the legislature and the  
6 governor, to make all personnel decisions, and  
7 purchase equipment without the approval of the  
8 department head; and

9 (2) To be exempt from collective bargaining under chapter  
10 89, Hawaii Revised Statutes.

11 Part I also allows the office of elections to hire its own  
12 private attorney.

13 Part II of this Act establishes a commission to oversee the  
14 office of elections.

## PART I

15  
16 SECTION 2. Part I of chapter 11, Hawaii Revised Statutes,  
17 is amended by adding a new section to be appropriately  
18 designated and to read as follows:

The office of elections shall follow all applicable personnel laws."

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

"(a) ~~[The]~~ Pursuant to section 11- , the chief election officer may employ a staff without regard to ~~[chapter 76,]~~ chapters 76 and 89 and section 28-8.3. The office of elections staff may, but shall not be limited to ~~[supervise]~~ supervising state elections; ~~[maximize]~~ maximizing registration of eligible voters throughout the State; ~~[maintain]~~ maintaining data concerning registered voters, elections, apportionment, and

1 districting; and to [~~perform~~] performing other duties as  
2 prescribed by law. The chief election officer or county clerk  
3 may employ precinct officials and other election employees as  
4 the chief election officer or county clerk may find necessary,  
5 none of whom shall be subject to [~~chapter 76.~~] chapters 76 and  
6 89."

7 SECTION 4. Section 11-193, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§11-193 Duties of the commission. (a) The duties of the  
10 commission under this subpart are:

- 11 (1) To develop and adopt reporting forms required by this  
12 subpart;
- 13 (2) To adopt and publish a manual for all candidates and  
14 committees, describing the requirements of this  
15 subpart, including uniform and simple methods of  
16 recordkeeping;
- 17 (3) To preserve all reports required by this subpart for  
18 at least ten years from the date of receipt;
- 19 (4) To permit the inspection, copying, or duplicating of  
20 any report required by this subpart pursuant to rules  
21 adopted by the commission; provided that no  
22 information or copies from the reports shall be sold



1 or used by any person for the purpose of soliciting  
2 contributions or for any commercial purpose;  
3 (5) To ascertain whether any candidate, committee, or  
4 party has failed to file a report required by this  
5 subpart or has filed a substantially defective or  
6 deficient report, and to notify these persons by first  
7 class mail that their failure to file or filing of a  
8 substantially defective or deficient report must be  
9 corrected and explained. The correction or  
10 explanation shall be submitted in writing to the  
11 commission not later than 4:30 p.m. on the fifth day  
12 after notification of the failure to file or  
13 deficiency has been mailed to these persons. The  
14 commission shall publish in the newspaper, and on its  
15 website, the names of all candidates, committees, and  
16 parties who have failed to file a report or to correct  
17 their deficiency within the time allowed by the  
18 commission. Failure to file or correct a report when  
19 due, as required by this subpart, shall result in a  
20 penalty of \$50. Failure to respond after a newspaper  
21 notification or website publication shall result in an  
22 additional penalty of \$50 for each day a report

1 remains overdue or uncorrected. All penalties  
2 collected under this section shall be deposited in the  
3 Hawaii election campaign fund;

4 (6) To hold public hearings;

5 (7) To investigate and hold hearings for receiving  
6 evidence of any violations;

7 (8) To adopt a code of fair campaign practices as a part  
8 of its rules;

9 (9) To establish rules pursuant to chapter 91;

10 (10) To request the initiation of prosecution for the  
11 violation of this subpart pursuant to section 11-229;

12 (11) To administer and monitor the distribution of public  
13 funds under this subpart;

14 (12) To suggest accounting methods for candidates, parties,  
15 and committees, as the commission may deem advisable,  
16 in connection with reports and records required by  
17 this subpart;

18 (13) To employ or contract, without regard to [~~chapter~~]  
19 chapters 76 and 89 and section 28-8.3, and, at  
20 pleasure, to dismiss persons it finds necessary for  
21 the performance of its functions, including a full-

time executive director, and to fix their compensation;

To do random audits, field investigations, as necessary;

To file for injunctive relief when indicated;

To censure any candidate who fails to comply with the code of fair campaign practices; and

To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee,

1 noncandidate committee, or other person or entity  
2 subject to this chapter, who sought the opinion and  
3 acted in reliance on it in good faith, unless material  
4 facts were omitted or misstated by the persons in the  
5 request for an advisory opinion.

6 (b) In performing the functions and duties under this  
7 subpart, the commission may subpoena witnesses, examine them  
8 under oath, and require the production of books, papers,  
9 documents, or objects, to the commission office at any place in  
10 the State whether or not the subpoena is in connection with any  
11 hearing; provided that the person or documents subpoenaed shall  
12 be relevant to a matter under study or investigation by the  
13 commission. The books, papers, documents, or objects may be  
14 retained by the commission for a reasonable period of time for  
15 the purpose of examination, audit, copying, testing, and  
16 photographing. The subpoena power shall be exercised by the  
17 chairperson of the commission, or such other person as the  
18 chairperson may designate. Upon application of the commission,  
19 obedience to the subpoena shall be enforced by the circuit court  
20 in the county where the person subpoenaed resides or is found in  
21 the same manner as a subpoena issued by a circuit court.

3        (1) Make direct communications with the governor and  
4        legislature;

5        (2) Make all decisions regarding employment, appointment,  
6        promotion, transfer, demotion, discharge, and job  
7        descriptions of all officers and employees of or under  
8        the jurisdiction of the commission without the  
9        approval of the comptroller; and

10       (3) Purchase all supplies, equipment, or furniture without  
11       the approval of the comptroller.

12 The commission shall follow all applicable personnel laws."

13           SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15           "(a) No department of the State other than the attorney  
16   general may employ or retain any attorney, by contract or  
17   otherwise, for the purpose of representing the State or the  
18   department in any litigation, rendering legal counsel to the  
19   department, or drafting legal documents for the department;  
20   provided that the foregoing provision shall not apply to the  
21   employment or retention of attorneys:



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1 (13) By the auditor;

2 (14) By the office of ombudsman;

3 (15) By the insurance division;

4 (16) By the University of Hawaii;

5 (17) By the Kahoolawe island reserve commission;

6 (18) By the division of consumer advocacy; [ex]

7 (19) By the office of elections;

8 (20) By the campaign spending commission; or

9 ~~[-(19)-]~~ (21) By a department, in the event the attorney  
10 general, for reasons deemed by the attorney general  
11 good and sufficient, declines, to employ or retain an  
12 attorney for a department; provided that the governor  
13 thereupon waives the provision of this section."

14 PART II

15 SECTION 6. Part I of chapter 11, Hawaii Revised Statutes,  
16 is amended by adding five new sections to be appropriately  
17 designated and to read as follows:

18 "§11-A Elections commission. (a) There is established an  
19 elections commission within the department of accounting and  
20 general services for administrative purposes. The elections  
21 commission shall consist of nine members who shall be selected  
22 as follows:



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- (5) One member, who shall serve as chairperson of the elections commission, shall be selected by the members of the elections commission selected pursuant to paragraphs (1) to (4);

provided that each group of four elections commission members selected by each house shall include one elections commission member from each of the four counties.

(b) The chairperson of the elections commission under subsection (a) (5) shall be selected by a two-thirds vote.

(c) A vacancy in the elections commission shall be filled in the same manner as the original appointment as specified in



- 1        (1) Hold public hearings;
- 2        (2) Investigate and hold hearings for receiving evidence
- 3            of any violations and complaints;
- 4        (3) Adopt rules pursuant to chapter 91;
- 5        (4) Employ, without regard to chapter 76, a full-time
- 6            chief election officer, pursuant to section 11-1.6;
- 7            and
- 8        (5) Advise the chief election officer on matters relating
- 9            to elections.

10        **\$11-C Elections commission; political activities.**    (a) No

11        elections commission member shall take an active part in

12        political management or in political campaigns.

13        (b) Each elections commission member shall retain the

14        right to:

- 15        (1) Register and vote as the elections commission member
- 16            chooses in any election;
- 17        (2) Participate in the nonpartisan activities of a civic,
- 18            community, social, labor, or professional
- 19            organization, or of a similar organization;
- 20        (3) Be a member of a political party or other political
- 21            organization and participate in its activities to the
- 22            extent consistent with law;



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- §11-E Exemptions.** The elections commission shall be  
not from section 26-35(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the elections commission without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.













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SECTION 12. Section 11-2.7, Hawaii Revised Statutes, is repealed.

~~["§11-2.7] Elections review program. The elections  
appointment and review panel shall develop and implement an  
elections review program, the purposes of which shall be to:~~

~~(1) Establish performance standards for the operation of elections and the performance of the chief election officer. The performance standards shall provide the criteria by which the operation of elections and the performance of the chief election officer will be evaluated;~~

~~(2) Review the operation of elections and the performance of the chief election officer;~~

~~(3) Make recommendations to the chief election officer on  
methods to improve the operation of elections;~~

~~(4) Establish policies for the administration of an elections observer program, to include ensuring the validity and reliability of election results;~~

~~(5) Conduct a biennial performance evaluation of the operation of elections and the performance of the chief election officer;~~



SECTION 15. All rules, policies, and procedures adopted and enforced by the elections appointment and review panel shall remain in full force and effect until such time that the elections commission established under to section 6 of this Act may adopt, amend, or repeal such rules, policies, or procedures.

- 1        SECTION 16. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.
- 3        SECTION 17. This Act shall take effect upon its approval.





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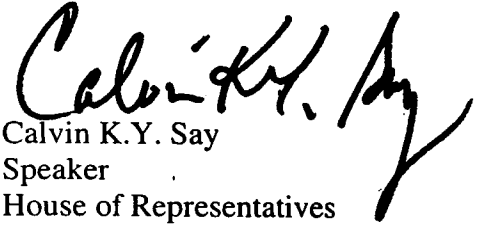
APPROVED this            day of            ,2004

GOVERNOR OF THE STATE OF HAWAII


**THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII**

Date: April 16, 2004  
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the House of Representatives of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004.



Calvin K.Y. Say  
Speaker  
House of Representatives




Patricia Mau-Shimizu  
Chief Clerk  
House of Representatives


**THE SENATE OF THE STATE OF HAWAII**

Date: April 13, 2004  
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Third Reading in the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004.



Robert Bunda  
President of the Senate



Paul Kawaguchi  
Clerk of the Senate