

ACT 185

H. B. NO. 22

A Bill for an Act Relating to Candidate Expenses.

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

SECTION 1. The Hawaii Revised Statutes is amended by repealing chapter 11, part XII, subpart B and substituting a new subpart B to read as follows:

“B. ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

Sec. 11-191 Definitions. When used in this part:

- (1) ‘Campaign treasurer’ means a person appointed under section 11-198, and, unless expressly indicated otherwise, includes deputy campaign treasurers.
- (2) ‘Candidate’ means an individual who seeks nomination for election, or election, to office, and, for the purposes of this chapter, an individual shall be deemed to seek nomination for election, or election, if he has done any of the following:
 - (a) taken the action necessary under the law of the State to qualify

- himself for nomination for election, or election, to office, or
- (b) received any contributions in an aggregate amount of more than \$100, or make or incur any expenditure to bring about his nomination for election or election to office reportable under sections 11-207 or 11-208; or
 - (c) has given his consent for any other person to receive contributions or make expenditures with a view to bring about his nomination for election, or election, to office.
- (3) 'Committee' means:
- (a) Any organization or association which, or any individual who, accepts contributions or makes expenditures for or against, with or without the consent or knowledge of any candidate, candidates, individual who files for nomination at a later date and becomes a candidate, or party, or for or against any question or issue;
 - (b) Any organization or association which, or any individual who, raises or holds money or anything of value, with or without the consent or knowledge of any candidate, candidates, individual who files for nomination at a later date and becomes a candidate, or any party, and which subsequently contributes the money or anything of value to, or makes expenditures in behalf of, a candidate, candidates, individual who files for nomination at a later date and becomes a candidate, or party.
 - (c) Notwithstanding any of the foregoing, the term 'committee' shall not include an individual who contributes funds or anything of value owned by him.
- (4) 'Commission' means the campaign spending commission.
- (5) 'Contribution' means:
- (a) an offer, promise, agreement, or tender of money or anything of value by way of gift, subscription, loan, advance, or the purchase of tickets to testimonial dinners or fund raisings, for the purpose of:
 - (i) influencing the nomination or election of any candidate or any individual who files for nomination at a later date and becomes a candidate; or
 - (ii) influencing the outcome of any question or issue at any election; or
 - (iii) use of any party; or
 - (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 such candidate or committee without charge.
 - (c) Notwithstanding the foregoing, "contribution" shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate or committee.
- (6) 'Election' means any election for office provided by law.
- (7) '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, incurred or made for the purpose of:

- (i) influencing the nomination or election of any candidate or of any individual who files for nomination at a later date and becomes a candidate;
 - (ii) influencing the outcome of any question or issue at any election; or
 - (iii) use by any party; or
 - (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 such candidate or committee.
- (8) 'Newspaper' means a publication of general distribution issued once or more per week that is written and published in the State of Hawaii.
- (9) 'Office' means any public or constitutional office including but not limited to the following: U.S. president, U.S. vice-president, U.S. senator, U.S. representative, governor, lieutenant governor, state senator and representative, board of education official, delegates to the constitutional convention, and county officers.
- (10) 'Party' means any qualified political party.
- (11) 'Person' means an individual, partnership, committee, association, corporation, or labor union and its auxiliary committees."

Sec. 11-192 Campaign spending commission. There is established a campaign spending commission, consisting of five members appointed by the governor as under Sec. 26-34 as follows:

The judicial council shall select a panel of ten persons, five persons each from two political parties which polled the largest vote in the last preceding general election. From this panel the governor shall appoint two members from each such political party and a chairman. Notwithstanding sec. 26-34, the governor's appointment shall not be subject to senatorial confirmation. The term of such members should be four years, except that this term of members first appointed 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.

Sec. 11-193 Challenges, investigation and notice. Challenges to a candidate's compliance with this subpart B, shall be filed with the commission. The commission shall investigate such challenges and shall advise the chief election officer of its findings. If, in the opinion of the commission, a violation has occurred, the state legislature in the case of a state office, or the respective county legislative body in the case of a county office, shall also be advised as to its findings.

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

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under this subpart his duties are:

- (1) Develop prescribed and simple forms for the making of all reports required by this subpart;
 - (2) Prepare and publish a manual for all candidates and committees, describing the requirements of the law, including uniform and simple methods of bookkeeping and reporting;
 - (3) Preserve all required reports for at least five years from the date of receipt; and
 - (4) Permit copying of any required report as requested by any person.
- (b) The commission's principal duty is to supervise campaign contributions and expenditures, and under this subpart its duties are:
- (1) Ascertain whether candidates, committees, or others have failed to file required reports or have filed defective reports, give notice to delinquents to correct or explain deficiencies, and make available for public inspection a list of such delinquents;
 - (2) Hold public hearings;
 - (3) Investigate any violations in reporting and issue subpoenas for the production of documents and the attendance of witnesses;
 - (4) Adopt a code of fair campaign practices;
 - (5) Establish rules and regulations pursuant to chapter 91; and
 - (6) Initiate the prosecution for the violation of this subpart pursuant to section 11-212.

Sec. 11-195 Registration. (a) Each candidate, committee or party shall file an organizational report on the earliest of the following applicable days:

- (1) on or before the day of filing for nomination or election;
- (2) at least 45 days before the primary election;
- (3) at least 45 days before the general, special general or special election, when there is no primary election; or
- (4) by the tenth day after (A) receiving any contributions in an aggregate amount of more than \$100, or (B) making or incurring any expenditure which is reportable under sections 11-207 or 11-208.

Sec. 11-196 Filing of reports, generally. All reports required to be filed under this subpart by a candidate or those committees directly associated with his candidacy shall be sworn to by the candidate. Reports required to be filed under this subpart by a party or committee that supports more than one candidate shall be sworn to by a person authorized to sign such reports. All reports required to be filed shall be open for public inspection.

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

- (1) The name, address, office sought if known, and party affiliation of each candidate or individual whom the committee or party is supporting;
- (2) The names and addresses of the 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

(5) The amount, 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 to the issue in question.

(b) Any change in information submitted in the organizational report shall be reported not later than 4:30 p.m. on the tenth calendar day after such change is brought to the attention of the candidate, committee, party or campaign treasurer.

Sec. 11-198 Campaign treasurer. (a) Every committee, party, or candidate shall appoint a campaign treasurer on or before the day for filing an organizational report. Up to three deputy campaign treasurers may be appointed, provided such appointments are appropriately filed. A candidate may appoint himself as campaign treasurer.

(b) A campaign treasurer may be removed at any time. In case of death, resignation or removal of the campaign treasurer, the committee, party, or candidate shall appoint a successor and shall file his name and address with the commission not later than 4:30 p.m. on the day after the appointment.

(c) Each campaign treasurer shall be deemed to be authorized to receive contributions or make expenditures in behalf of the person or body appointing him.

Sec. 11-199. Campaign contributions, generally. (a) All funds contributed shall be deposited in a financial depository reported under section 11-197.

(b) Every candidate shall keep a record of every contribution received in the amount or value of more than \$10. Every candidate and campaign treasurer shall report every contribution received which is more than \$100.

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

- (1) for any purpose other than those directly related, in the case of the candidate, to his own campaign, and in the case of a campaign treasurer or committee, to the campaign of the candidate 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;
- (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.

(b) A committee, party, candidate or campaign treasurer shall not receive any contribution from a committee or party not registered with the chief election officer.

(c) This section shall not be construed to prohibit a party from supporting more than one candidate, or joint expenditure by two or more candidates seeking election to multiple offices from the same district whether such expenditures are equally or unequally incurred among such candidates.

Sec. 11-201 Candidates expenditures of own funds, not a contribution. A candidate's expenditure of his own funds in the pursuit of his campaign shall not be deemed a contribution for purpose of this subpart.

Sec. 11-202 Anonymous contributions; unlawful. No person shall make a payment of his own money or of another person's money to any candidate, party, or committee in connection with a nomination or election in any other name than that of the person who in truth supplies such money; nor shall any candidate, party, or committee knowingly receive such payment or enter or cause the same to be entered in his accounts in another name than that of the person by whom it was actually furnished.

This section shall not apply to amounts that aggregate less than \$250. Any anonymous contribution received by a candidate, party, or committee shall not be used or expended, but shall be returned to the donor. If the donor cannot be identified, the contribution shall escheat to the State.

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 \$15 per person.

(b) Any person for whom a testimonial affair has been held may not hold a successive testimonial affair until after an election in which he was a nominee or candidate for public office; provided that an additional testimonial affair may be held within six months after a general, special general or special election, in the case of a candidate having a deficit. No testimonial affair may be held unless a notice of intent to hold such an affair is filed with the chief election officer prior to the date of the affair setting forth the name and address of the person in charge.

(c) The following expenses incident to a testimonial affair held during the times specified in section 11-206 shall not be considered expenditures within the limitations set by that section.

- (1) The cost of food and beverages consumed at the affair;
- (2) Rent and utilities for the premises where the affair is held;
- (3) The cost of printing tickets; and
- (4) The amount paid for guest speakers and entertainment.

Sec. 11-204 Campaign expenditures: authority required. (a) A candidate may draw on the campaign treasurer for his political expenses for postage, telegrams, telephone calls, stationery, expressage, travel, meals, and lodging. The candidate shall make a detailed accounting of such political expenses and the accounting shall be made a part of the report as required in sections 11-207 and 11-208. The authorization shall state the amount and purpose of the proposed expenditures and shall be signed by the campaign treasurer.

(b) No funds shall be withdrawn for or paid by a campaign depository from any campaign fund account except upon the presentation of written authorization from a campaign treasurer.

(c) No expenditure on behalf of a candidate shall be made or incurred by any committee without specific written authorization of the candidate or his authorized representative. Every expenditure so authorized and made or in-

curred shall be attributed to the candidate with whom the committee is directly associated for purpose of imposing the expenditure limitations imposed by section 11-206.

Sec. 11-205 Campaign expenditures, restriction as to items. The following expenses, and no other, may be authorized by a campaign treasurer:

- (1) Hiring public halls for political meetings, furnishing music, costumes, banners, fireworks and the like, and reasonable refreshments, food, and entertainment for political meetings or public parades, and advertising the meetings or parades;
- (2) Printing and circulating political newspapers, pamphlets, and books;
- (3) Renting rooms for political committees;
- (4) Compensating campaign employees and furnishing reasonable entertainment to the employees and members of political committees;
- (5) Traveling expenses of campaign employees and committees and public speakers and reasonable compensation to public speakers;
- (6) Postage, telegram, telephone, printing, and express charges;
- (7) Preparing, circulating, and filing nomination papers;
- (8) Conveying voters to the polls;
- (9) Purchasing radio and television time, advertisements in newspapers and other communications media, and advertising materials;
- (10) Sundry items to be distributed to the general public in connection with a campaign or for the purpose of influencing a nomination for election or election; and
- (11) Donations to community organizations or other social groups including but not limited to youth athletics, clubs, scouting and recreation groups.

Sec. 11-206 Campaign expenditure, limits as to amounts. (a) The total expenditures for candidates, inclusive of all expenditures made or incurred by the candidate himself and all campaign treasurers and committees in his behalf, shall not exceed the following amounts expressed respectively as the product of the number of voters in the last preceding general election eligible to vote for the respective class of offices:

- (1) From January 1 of the year of a general election through the day of the primary election, or nine months prior to a special primary or special election through the day of special primary or special election:
 - (A) for the office of governor—50 cents;
 - (B) for the office of lieutenant governor—40 cents;
 - (C) for the offices of mayor and prosecuting attorneys—40 cents;
 - (D) for the offices of state senators and county council members—25 cents;
 - (E) for the offices of state representatives and all other offices—25 cents; and
- (2) From the day after a primary or special primary election through the day of the general or special general election:
 - (A) for the office of governor—50 cents;

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- (B) for the office of lieutenant governor—25 cents;
- (C) for the offices of mayor and prosecuting attorneys—40 cents;
- (D) for the offices of state senators and county council members—25 cents;
- (E) for the offices of state representatives and all other offices—25 cents; and

(3) In no event shall any portion of the amount allowable under subsections (a)(1) and (a)(2) be shifted from one period to another so as to increase the amount subsequently allowable under subsection (a)(1) or (a)(2).

(b) That part of expenditures in subsection (a) expended for time and space for advertising in newspaper, magazines, or radio, or television for nomination for election, and election, for the following classes of offices shall not exceed in the aggregate the following limits expressed respectively as the product of the number of voters in the last preceding general election eligible to vote for the respective class of offices:

(1) From January 1 of the year of a general election through the day of the primary election, or nine months prior to a special primary or special election through the day of special primary or special election:

- (A) for the office of governor—15.5 cents;
- (B) for the office of lieutenant governor—12 cents;
- (C) for the offices of mayor and prosecuting attorneys—12 cents;
- (D) for the offices of state senators and county council members—10.5 cents;
- (E) for the offices of state representatives and all other offices—7.5 cents; and

(2) From the day after a primary or special primary election through the day of the general or special general election:

- (A) for the office of governor—15.5 cents;
- (B) for the office of lieutenant governor—12 cents;
- (C) for the offices of mayors and prosecuting attorneys—12 cents;
- (D) for the offices of state senators and county council members—10.5 cents;
- (E) for the offices of state representatives and all other offices—7.5 cents; and

(c) The aggregate expenditures for all preparation, talent and other costs attributable to the production of advertising in newspapers, magazines, and on radio and on television shall be limited to seventy-five percent of the total cost of advertising attributable to radio and television time and newspaper space.

Sec. 11-207 Preliminary reports. (a) Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a preliminary report with the commission not later than 4:30 p.m. of the tenth calendar day prior to each election. The report shall be certified pursuant to section 11-196 and shall contain the current statement of the following:

- (1) The aggregate sum of all contributions received;
- (2) A list of the names and addresses of all identified or identifiable persons or groups contributing in the aggregate of more than \$100;
- (3) All expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount and purpose of each expenditure; and
- (4) A current statement of the balance on hand or deficit.

Sec. 11-208 Final and supplemental reports. (a) Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file with the commission not later than 4:30 p.m. of the twentieth calendar day after a general election, special election or special general election, a final report, certified pursuant to section 11-196 which shall include where applicable:

- (1) A statement of the total contributions received;
- (2) A list of the names and addresses of all persons contributing in an aggregate amount of more than \$100;
- (3) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name of each payee and the amount and purpose of each expenditure; and
- (4) A statement of the balance on hand or deficit.

(b) A candidate who is not successful in a primary election shall file his final report not later than 4:30 p.m. of the twentieth calendar day after the primary election. A candidate who is successful in a primary election need not file a final report after the primary election although he is required to file one after the general election.

(c) **Deficit.** In the event of a deficit, the candidate shall, every ninety days until the deficit is eliminated, file supplemental reports identifying in accordance with section 11-199 all further contributions received subsequent to the previous report.

(d) **Surplus.** In the event of a surplus, the candidate shall:

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

(e) A candidate who receives no contributions or makes no expenditures shall so report on the dates designated.

Sec. 11-209 Disposition of funds. (a) All candidates who withdraw or cease to be candidates, and individuals who have received contributions but fail to file for nomination, or committees or parties that discontinue, shall return any residual fund proportionately to the donors if their identities are known. This does not apply to elected officials or candidates who failed to be nominated or elected.

(b) If no donors are found, the residual shall be contributed to the campaign fund of any candidate, to a party, or charities, or escheated to the State General Fund.

(c) Upon such disposition, the candidate and campaign treasurer shall file a report with the commission indicating the amounts distributed under subsection (b), and the manner of disposition.

Sec. 11-210 Advertising. (a) All advertising published or circulated prior to or on the day of election shall state who paid for the advertisement and the address of such person, party, or committee.

(b) No newspaper, magazines, or radio, or television broadcasting station shall publish or broadcast any advertisement promoting any candidate unless such publication or broadcast is approved in writing by the candidate, his authorized representative or party chairman.

Sec. 11-211 Penalties; relief. Any person or corporation knowingly violating any provision of this subpart shall, unless otherwise expressly stated, be punishable in the manner prescribed as follows:

(a) If a natural person, he shall be guilty of a petty misdemeanor.

(b) If the person is a corporation, organization, or association, it shall be punished by a fine not exceeding \$1,000.

(c) Whenever a corporation, organization, or association violates this subpart, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, or association, who have knowingly authorized, ordered, or done any of the acts constituting such violation.

(d) Any registered voter may sue for injunctive relief to compel compliance with this subpart.

Sec. 11-212 Prosecution. (a) For purposes of prosecution for violations of this subpart, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

(1) No prosecution shall be commenced without the prior written request of the commission or upon the issuance of an appropriate order of the court;

(2) In the case of statewide offices, parties or issues, the attorney general or the prosecuting attorney for the City and County of Honolulu shall prosecute any violation.

(3) In the case of all other offices, parties or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

(4) In the commission's choice of prosecuting agency, it shall be guided by whether there will be any conflicting interest between such agency and its appointive authority.

(b) The court will give priority to the expeditious processing of suits under this section.

(c) Prosecution for violation of any provision of this subpart shall not be commenced after one year has elapsed from the date of the violation."

SECTION 2. Severability. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the validity of such provision to other persons and circumstances shall not be affected thereby.

SECTION 3. This Act shall take effect on January 1, 1974.

(Approved May 24, 1973.)