

A Bill for an Act Relating to Campaign Spending.

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

**SECTION 1. Purpose.** The purpose of this bill is to implement Article II of the Constitution of the State of Hawaii pertaining to campaign spending as amended by the Hawaii Constitutional Convention of 1978 and ratified by the voters on November 7, 1978.

**SECTION 2.** 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 chapter:

- (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 lieutenant governor’s office, whichever is applicable; or
  - (B) Receives contributions in an aggregate amount of more than \$100, or makes or incurs any expenditures 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 until 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 organization or association which, or any individual who, accepts a contribution or makes an expenditure for or against any candidate, individual who files for nomination at a later date and becomes a

- candidate, or party, with or without the authorization of the candidate, individual, 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 organization or association which, or any individual who, raises or holds money or anything of value for a political purpose, with or without the consent or knowledge of any candidate, 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, 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 any person making a contribution or expenditure of his own funds or anything of value which he originally acquired for his own use and not for the purpose of evading any provision of this chapter.
- (6) "Contribution" means:
- (A) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fund raisers 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 or the making of a loan or advance in the pursuit of his campaign shall not be a contribution for the purpose of this chapter but shall nevertheless be reportable as a campaign receipt.
- (7) "Earmarked funds" means contributions received by a committee or party on the condition that the funds be contributed to or expended on certain candidates, issues, or questions.
- (8) "Election" means any election for office or for determining a question or issue provided by law or ordinance.
- (9) "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 nonmonetary 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 paper; 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 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.
- (10) "House bulletin" means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.
- (11) "Immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.
- (12) "Individual" means a natural person.
- (13) "Matching payment period" means:
- (A) For a primary election, 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 a special primary or special election; and
  - (B) For a general election, from the day after a primary or special primary election through the day of the general or special general election.
- (14) "Newspaper" means a publication of general distribution in the State issued once or more per month which is written and published in the State.
- (15) "Office" means any elective public or constitutional office excluding federal elective offices.
- (16) "Person" means an individual, partnership, committee, association, corporation, or labor union and its auxiliary committees.
- (17) "Political party" means any party which satisfies the requirements of section 11-61.
- (18) "Private contribution" means a monetary contribution other than from a candidate's own funds or from the Hawaii election campaign fund.
- (19) "Qualifying campaign contribution" means a contribution of \$100 or less, and not more than \$100 of a person's total aggregate contribution. Qualifying contributions do not include loans or in-kind contributions.

**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 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, as determined by the governor.

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 under the office of the lieutenant governor.

**Sec. 11-193 Duties of the lieutenant governor; commission.** (a) The principal duty of the lieutenant governor as the chief election officer is to regulate the election process. Under this chapter the lieutenant governor's duties are:

- (1) To develop and adopt reporting forms required by this chapter;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this chapter, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this chapter for at least five years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this chapter 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. Under this chapter its duties are:

- (1) To ascertain whether any candidate, committee, or party has failed to file a report required by this chapter or has filed a substantially defective or deficient report, and to notify such persons by first class mail that their

failure to file or filing of a substantially defective or deficient report must be corrected and explained. The correction or explanation shall be submitted in writing to the commission not later than 4:30 p.m. on the fifth day after notification of the failure to file or deficiency has been mailed to such persons. The commission shall publish in the newspaper the names of all candidates, committees, and parties who have failed to file a report or to correct their deficiency within the time allowed by the commission. Failure to file or correct a report when due, as required by this chapter shall result in a penalty of \$50. Failure to respond after a newspaper notification shall result in an additional penalty of \$50 for each day a report remains overdue or uncorrected. All penalties collected under this section shall be deposited in the Hawaii election campaign fund;

- (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 as a part of its rules and regulations;
- (5) To establish rules pursuant to chapter 91;
- (6) To request the initiation of prosecution for the violation of this chapter pursuant to section 11-229;
- (7) To administer and monitor the distribution of public funds under this chapter;
- (8) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this chapter; and
- (9) 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.

(c) In performing the functions and duties under this chapter, the commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects, to the commission office at any place in the State whether or not the subpoena is in connection with any hearing; provided that the person or documents subpoenaed shall be relevant to a matter under study or investigation by the commission. Such books, papers, documents, or objects may be retained by the commission for a reasonable period of time for the purpose of examination, audit, copying, testing, and photographing. The subpoena power shall be exercised by the chairman of the commission, or such other person as he may designate. Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by a circuit court.

**Sec. 11-194 Registration.** Each candidate, committee, or party shall file an organizational report no later than 4:30 p.m. on the earliest of the following applicable days:

- (1) On or before the day of filing for nomination or election;
- (2) At least forty-five days before the primary election or special primary election;
- (3) At least forty-five 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 section 11-212 or 11-213.

**Sec. 11-195 Filing of reports, generally.** (a) All reports required to be filed under this chapter by a candidate or those committees directly associated with his candidacy shall be certified by the candidate. Reports required to be filed under this chapter by a party or committee which supports more than one candidate shall be certified by a person authorized to sign such reports. All reports required to be filed under this chapter shall be open for public inspection in the office of the commission.

(b) The original and one copy of all reports required under this chapter shall be filed at the office of the commission. In the case of counties having less than 200,000 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 original and one copy of the report to the commission by certified mail.

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

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

(e) All reports required to be filed under this chapter shall at all times be available to the lieutenant governor.

**Sec. 11-196 Organizational report.** (a) The organizational report shall include:

- (1) The name and address of the candidate or individual, committee, or party filing the report;
- (2) The name, address, office sought, and party affiliation, of each candidate or individual whom the committee or party is supporting;
- (3) The names and addresses of the campaign treasurer and deputies;
- (4) The names and addresses of the campaign chairman and deputy campaign chairman;
- (5) A list of all banks, safety deposit boxes, or other depositories used with each applicable account number;
- (6) The amount, name, address, and occupation of each donor who has contributed an aggregate amount of more than \$100 since the last election applicable to the office being sought or to the ballot issue or question and the amount and date of deposit of each such contribution; and
- (7) 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 (6) and a description of the question or issue.

(b) Any change in information submitted in the organizational report with the exception of subsection (a)(6) shall be reported no 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. 11-197 Designated central committee.** Each candidate for a statewide or county office who is supported by more than one committee shall designate a central

committee which shall be responsible for aggregating the total contributions and expenditures of all committees directly associated with the candidate and for filing composite reports indicating this information pursuant to sections 11-212 and 11-213.

**Sec. 11-198 Campaign treasurer.** (a) Every committee, party, and candidate shall appoint a campaign treasurer on or before the day for filing an organizational report. Up to five deputy campaign treasurers may be appointed. A candidate may appoint himself a 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 promptly appoint a successor. During the period the office of campaign treasurer is vacant, the candidate, committee chairman, or party chairman, whichever is applicable, shall serve as campaign treasurer.

(c) Only the campaign treasurer and deputy campaign treasurers shall be authorized to receive contributions or make expenditures on behalf of the candidate, committee, or party appointing him.

**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, 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 \$25 in value.

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

(d) No candidate, committee, or party shall accept a contribution of more than \$100 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.

**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 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.

Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or committee, as a contribution, may purchase from its campaign fund not more than two tickets for each fund raiser as defined in section 11-203, held by another candidate, committee, or party.

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

**Sec. 11-201 Anonymous contributions; unlawful.** (a) No person shall make an anonymous contribution of his own money or property, or money of another person, to any candidate, party, or committee in connection with a nomination for election, or election. No candidate, party, or committee shall knowingly receive, accept, or retain an anonymous contribution, or enter or cause such contribution to be entered in its accounts as an anonymous contribution or in a name other than the true name of the person who actually furnished the contribution.

(b) No anonymous contribution received by a candidate, party, or committee shall be used or expended, but shall be returned to the donor. If the donor cannot be identified, the contribution shall escheat to the Hawaii election campaign fund.

(c) This section shall not apply to amounts that aggregate less than \$500 when obtained through multiple contributions made by ten or more persons at the same political function. Each such aggregate contribution shall be reported accompanied by a description of the means, method, place, and date of receipt.

**Sec. 11-202 False name.** No person shall make a contribution of his own money or property, or money or property of another person to any candidate, party, or committee in connection with a nomination for election, or election, in any name other than the true name of the person who owns the money or who supplied the money or property.

All contributions made in the name of a person other than the true or established name of the actual owner of the money or property shall escheat to the Hawaii election campaign fund.

**Sec. 11-203 Fund raisers.** (a) As used in this chapter, "fund raiser" means any function held for the benefit of a person which is designed to raise funds for political purposes for which the total price of attending the function is more than \$25 per person.

(b) There shall be no more than one fund raiser held for a person prior to an election in which that person is either elected or defeated. Where a person seeks election to statewide office, he or his directly associated committee may hold not more than one fund raiser in each county prior to an election.

Six months after a general, special general, or special election, however, a candidate or committee directly associated with a candidate who has a deficit may hold an additional fund raiser.

(c) No fund raiser may be held unless a notice of intent to hold the function is filed by the person in charge of the function with the commission at least ten days prior to the date of the function setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the affair, and whether contributions will be solicited at the affair and the method thereof.

(d) Fund raisers sponsored by a party for a political purpose for the general



benefit of the party are exempt from the restrictions of subsection (b).

(e) The following expenses incident to a fund raiser and to any other function held for the benefit of a person to raise funds for political purposes for which there is a charge for attending the function, shall not be considered expenditures within the limitations set by section 11-209.

- (1) The cost of food and beverages consumed at the function;
- (2) Rent and utilities for the premises where the function is held;
- (3) The amount paid for guest speakers and entertainment; and
- (4) Printing, postage, and other direct costs incurred in solicitation of the fund raiser.

**Sec. 11-204 Campaign contributions; limits as to persons.** (a) No person or any other entity other than a political party shall make contributions to a candidate in an aggregate amount greater than \$2,000 in any primary, special primary, or general election.

(b) A candidate or his immediate family in making a contribution to the candidate's campaign shall be exempt from the above limitation, but shall be limited in the aggregate to \$50,000 in any election year.

(c) A contribution by a dependent minor shall be reported in the name of the minor but shall be counted against the contribution of the minor's parent or guardian.

**Sec. 11-205 Campaign contributions; limits as to political parties.** (a) No political party shall make contributions to a candidate in any calendar year in an aggregate amount greater than the following percentages of the expenditure limit for each respective office:

- (1) For the office of governor—twenty per cent of the expenditure limit;
- (2) For the office of lieutenant governor—twenty per cent of the expenditure limit;
- (3) For the offices of mayor and prosecuting attorney—twenty per cent of the expenditure limit;
- (4) For the offices of state senator and county council member—thirty per cent of the expenditure limit;
- (5) For the office of state representative—forty per cent of the expenditure limit; and
- (6) For the offices of the board of education and all other offices—forty per cent of the expenditure limit.

(b) For purposes of this section, a contribution to a political party which is earmarked for a particular candidate or candidates shall be promptly distributed to such candidate and shall be reported by the candidate upon receipt as an individual contribution. Earmarked funds contributed pursuant to this section shall be counted:

- (1) Toward the contribution limit of the political party donating such funds to a candidate or candidates; and
- (2) Toward the contribution limit of the person or persons contributing such earmarked funds.

**Sec. 11-206 Campaign contributions; restrictions.** Every candidate in a primary, special primary, or general election who has voluntarily agreed to abide by spending limits and who subsequently receives campaign contributions in excess of the expenditure limit set for his respective office shall reserve use of such contribu-

tions until after a general election. Such contributions shall not be used for personal expenses or to qualify for public funding in any subsequent election. All contributions collected pursuant to this section shall be reportable under section 11-213.

**Sec. 11-207 Other contributions and expenditures.** (a) Expenditures made by any person or political party for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's political committee, or their agents, shall be considered to be a contribution to such candidate.

The financing by any person or political party of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees, or agents shall be considered to be a contribution to such candidate.

(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. Every expenditure so authorized and made or incurred shall be attributed to the candidate with whom the committee is directly associated for the purpose of imposing the expenditure limitations set forth in section 11-209.

(d) For the purposes of this chapter, 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 chapter shall be deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used.

**Sec. 11-208 Voluntary campaign expenditure limitation.** (a) Any candidate may voluntarily agree to limit his campaign expenditures and those of his committee or committees and his party in his behalf by filing an affidavit with the campaign spending commission.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in section 11-209 and that he is voluntarily agreeing to limit his expenditures and those made on his behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized.

(c) Affidavits in compliance with this section shall be filed on the date set for filing the candidate's organizational report as provided in section 11-196.

**Sec. 11-209 Campaign expenditures; limits as to amounts.** (a) From January 1 of the year of a primary, special primary, or general election through the day of the general election, the total expenditures for candidates who voluntarily agree to limit their campaign expenditures, inclusive of all expenditures made or authorized 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 votes in the last preceding general election registered to vote for the respective class of offices:

- (1) For the office of governor—\$1.25;
- (2) For the office of lieutenant governor—70 cents;
- (3) For the office of mayor—\$1.00;

- (4) For the offices of state senator, state representative, county council member, and prosecuting attorney—70 cents; and
  - (5) For the offices of the board of education and all other offices—10 cents.
- (b) An increase of five per cent shall be added to the amounts allowed under subsection (a) from 1979 and each year thereafter.

**Sec. 11-210 Study and recommendation.** At least one year prior to a primary, special primary, or general election, the commission shall submit to the legislature:

- (1) A study and recommendation of reasonable campaign expenditure and contribution limits and the factors which may be relevant in their establishment; and
- (2) A report concerning the status of the Hawaii election campaign fund, and shall request an appropriation if the total amount of revenues comprising the fund is insufficient to partially finance all candidates for a particular primary, special primary, or general election as set forth in section 11-218.

**Sec. 11-211 House bulletins.** The costs of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid political advertisements, shall be exempt from the provisions of this chapter.

**Sec. 11-212 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 on forms provided by the commission no later than 4:30 p.m. on the tenth calendar day prior to each election. The report shall be certified pursuant to section 11-195 and shall contain the following information which is current through the fifteenth calendar day prior to the election:

- (1) The aggregate sum of all contributions and other campaign receipts 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) 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 current statement of the balance on hand or deficit.

(b) Notwithstanding this section, a candidate or committee which makes expenditures of \$500 or less may file a short form report with the commission in lieu of the reports required by this section and section 11-213.

**Sec. 11-213 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 certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth day after a primary or special primary election. The report shall include:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each 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) The cash balance and a statement of surplus 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 no later than 4:30 p.m. on the twentieth day after a general, special general, or special election. The final general report shall be certified pursuant to section 11-195 and shall report 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 over \$250, the candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall, every six months until the deficit is eliminated, file supplemental reports reporting all items prescribed in subsection (a). The first report shall be due no 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 over \$250, 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, or in the case of a party or committee until they participate in an election 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 on the respective dates pursuant to this chapter.

(f) All supplemental reports pursuant to this section are required to be filed until a candidate, party, or committee:

(1) Re-registers with the commission for a new election period; or

(2) Terminates registration with the commission.

**Sec. 11-214 Disposition of funds.** (a) All candidates who withdraw or cease to be candidates, or committees directly associated with such candidates, individuals who receive contributions but fail to file for nomination, or committees or parties which discontinue their activities covered in this chapter, shall return all residual private contributions to the donors of such contributions if their identities are known, provided that if the identity of any donor is not known, or the donor cannot be found, such contribution shall escheat to the Hawaii election campaign fund.

(b) All residual public funds shall be returned to the Hawaii election campaign fund.

(c) Upon disposition of all residual funds, the candidate or campaign treasurer shall file a report with the commission, reporting the amounts distributed under this section and the manner of disposition.

(d) This section shall not apply to elected officials or candidates who failed to be nominated or elected.

**Sec. 11-215 Advertising.** (a) All advertisements shall contain the name and

address of the candidate, committee, party, or person paying for the advertisement.

(b) In addition to subsection (a) above, no person shall cause or submit any advertisement in support of 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.

**Sec. 11-216 Complaints, investigation, and notice.** (a) Complaints of violations of this chapter against any person shall be filed with the commission. The complaint shall be in writing and shall be signed under oath by the complainant. Complaints initiated by the commission shall be in writing and signed by the chairman.

(b) The commission shall give notice of receipt of the complaint together with a copy of the complaint to the person cited and shall afford him an opportunity to explain or otherwise respond to the complaint. The commission may also cause an investigation to be made of the complaint.

(c) Upon hearing the response of the person cited, if he elects to respond to the complaint, and upon completion of any investigation, the commission shall make a prompt determination as to whether probable cause exists that a violation has been committed.

- (1) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission shall receive reimbursement as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby, may appear personally before the commission on his own behalf or file a written statement for incorporation into the record of the proceeding.
- (2) The commission shall cause a record to be made of all proceedings pursuant to this subsection. At the conclusion of proceedings concerning an alleged violation, the commission shall immediately begin deliberations on the evidence and then proceed to determine by majority vote of the members whether probable cause exists that a violation has been committed.

(d) Until a determination of probable cause is made by the commission, all proceedings, including the filing of the complaint, investigation, and hearing shall be confidential unless the person complained of requests an open hearing. In the event the commission determines that probable cause does not exist, the complaint shall be dismissed and the entire record of the proceedings shall be kept confidential at the option of the person complained of.

(e) The commission shall give written notice to the person complained of and to the complainant as to whether probable cause of a violation exists or whether the complaint has been dismissed.

(f) In the event a determination is made that probable cause of a wilful violation exists, the commission shall promptly advise the lieutenant governor of its findings and also the applicable clerk of the state legislature in the case of a state office, or the clerk of the respective county legislative body in the case of a county office. In the event a determination is made that probable cause of an unintentional violation exists, the commission shall issue a confidential order that may require the violator to:

(1) Temporarily cease and desist violation of this chapter; or

(2) File any report, statement, or other information as required by this chapter.

(g) The commission may only initiate prosecution as provided in section 11-229 when it finds that probable cause of a wilful violation exists.

**Sec. 11-217 Hawaii election campaign fund; creation.** The Hawaii election campaign fund is created within the state treasury. The fund shall consist of all moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235- , any general fund revenues appropriated, as well as all other moneys collected pursuant to this chapter. Payment to each candidate from the fund shall be by the comptroller in the manner prescribed in section 11-222.

**Sec. 11-218 Candidate funding; amounts available.** (a) The maximum amount of public funds available to a candidate for the office of governor, lieutenant governor or mayor in any election year shall not exceed one-fifth or twenty per cent of the total expenditure limit established for each office above pursuant to section 11-209.

(b) For the office of state senator, state representative, county council member, prosecuting attorney, board of education, and all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

**Sec. 11-219 Qualifying campaign contributions; amounts.** As a condition of receiving public funds for a primary, special primary, or general election, a candidate shall have filed an affidavit with the commission pursuant to section 11-208 to voluntarily limit his campaign expenditures and shall be in receipt of the following sum of qualifying campaign contributions for his respective office:

(1) For the office of governor—qualifying contributions which in the aggregate exceed \$25,000;

(2) For the office of lieutenant governor—qualifying contributions which in the aggregate exceed \$20,000;

(3) For the office of mayor in a county having more than 100,000 registered voters—qualifying contributions which in the aggregate exceed \$15,000;

(4) For the office of mayor in a county having less than 100,000 registered voters—qualifying contributions which in the aggregate exceed \$2,000; and

(5) For all other offices—qualifying contributions which in the aggregate exceed \$500.

**Sec. 11-220 Eligibility for payments.** (a) To be eligible to receive payments under section 11-217, a candidate shall in writing:

- (1) Agree to obtain and furnish to the commission any evidence of the campaign expenses of such candidate which the commission may request;
- (2) Agree to keep and furnish records, books, and other information which the commission may request; and
- (3) Agree to an audit and examination by the commission under section 11-225 and to pay any amounts required to be paid pursuant to such section.

(b) To be eligible to receive payments pursuant to section 11-217, a candidate shall certify to the commission that:

- (1) Such candidate and all committees authorized by such candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-209;
- (2) Such candidate has qualified to be on the election ballot in a primary, special primary, or general election;
- (3) Such candidate has filed a statement of intent to seek qualifying contributions. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;
- (4) Such candidate or committee authorized by such candidate has received the qualifying sum of private contributions for the office sought by the candidate as set forth in section 11-219.
- (5) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100.

(c) Each candidate and all committees authorized by such candidate in receipt of qualifying campaign contributions which may be taken into account for purposes of public funding shall maintain, on a form prescribed by the commission, records which show the date and amount of each such contribution and the full name, mailing address, and occupation of the person making the contribution. The candidate and all committees authorized by the candidate shall transmit to the commission all reports with respect to such contributions which the commission may require.

**Sec. 11-221 Entitlement to payments.** (a) Every candidate for the office of governor, lieutenant governor, or mayor who is eligible to receive public funds pursuant to section 11-220 is entitled to payments pursuant to section 11-217 in an amount equal to each qualifying contribution received by such candidate or candidate committee during the matching payment period involved.

(b) The total amount of public funds for a primary, special primary, or general election to which a candidate for the office of governor, lieutenant governor, or mayor is entitled to receive under subsection (a) shall not exceed fifty per cent of the maximum amount of public funds available to the candidate for his respective office pursuant to section 11-218.

(c) The maximum amount of public funds available to candidates for the offices of state senator, state representative, county council member, prosecuting attorney, board of education, and all other offices shall not exceed \$50 for any primary, special primary, or general election.

(d) Each candidate who qualified for the maximum amount of public funding in any primary or special primary election and who is a candidate for a subsequent

general election shall upon application with the commission be entitled to receive up to fifty per cent of the balance of public funds available to such candidate.

**Sec. 11-222 Candidate funding; application.** (a) Application forms for public funds shall be adopted by the commission and shall provide for a sworn statement by the candidate that he has established eligibility under section 11-220 to receive payments under section 11-217. Each application shall be accompanied by a qualifying campaign contribution statement or statements, and shall be filed with the commission. Upon approval by the commission of the application and qualifying contribution statement, the commission shall direct the comptroller to distribute matching public funds up to a total of fifty per cent of the maximum amount of public funds to which the candidate is entitled for either a primary or special primary, or general election.

Public funds shall be distributed by the comptroller to each eligible candidate within ten days from the date of his initial application with the commission.

(b) Each candidate in receipt of the qualifying sum of contributions established for his office may apply to the commission for public funding after he has become a candidate in a primary, special primary, or general election, but no later than ten days prior to a primary, special primary, or general election.

(c) The commission shall make additional certifications within two weeks after receiving an application and supplemental contribution statement from an eligible candidate who requests additional public funding pursuant to section 11-221.

(d) Initial certification by the commission under subsection (a) and all determinations made by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 11-225.

**Sec. 11-223 Candidate funding; restrictions.** (a) Each candidate who accepts public campaign funds under this chapter shall be required to abide by the campaign spending limits for his respective office as set forth in section 11-209.

(b) Public campaign funds provided under this chapter shall only be used to:

(1) Defray campaign expenses incurred by and paid for an eligible candidate or all committees authorized by such candidate; and

(2) Repay loans, the proceeds of which were used to defray campaign expenses.

(c) No candidate or committee authorized by a candidate shall be entitled to receive any public funds under subsection (a) unless the candidate and at least one other candidate for the same office have qualified to have their names on the election ballot in the election involved.

(d) In no event shall any portion of the total sum of public campaign funds allowable for primary or special primary election expenditures be shifted to the total amount allowable for general election expenditures pursuant to section 11-221.

(e) In no event shall any candidate or campaign treasurer in receipt of public campaign funds transfer any portion of such funds to another candidate for any primary, special primary, or general election campaign.

(f) All public funds received under this chapter shall be deposited in a financial institution designated to do business in the State of Hawaii. No expenditures of any public funds received under this chapter shall be made except by checks drawn on



such checking account. The commission may require such reports relating to the expenditure of such funds as it considers appropriate.

(g) Upon the filing of a final report for any primary, special primary, or general election, each candidate who has spent an amount below the expenditure limit set for his respective office, but who has received the maximum amount of public funds allowable for his respective office, shall return a pro rata share of twenty per cent of any residual campaign contributions to the Hawaii election campaign fund.

**Sec. 11-224 Public funds; report required; return of funds.** The campaign treasurer of the candidate shall produce evidence to the commission no later than twenty days after a primary election, special primary, or general election that all public funds paid to the candidate have been utilized as required by this chapter.

Should the commission determine that any part of the public funds have been used for noncampaign or improper expenses, it shall report such finding to the attorney general and shall order the candidate to return all or part of the total funds paid to that candidate for a primary, special primary, or general election. When such funds are returned, they shall be deposited in the Hawaii election campaign fund.

**Sec. 11-225 Public funds; examination and audit; payments.** (a) Within sixty days after each general election, the commission shall conduct an examination and audit of all public funds received by the candidate and of the campaign contributions used for purposes of qualifying for public funding under this chapter, and the campaign expenses incurred by all candidates who received payments pursuant to section 11-217.

(b) The campaign spending commission shall issue, prior to the payment of any public money, rules which detail which expenses and evidence thereof qualify as acceptable campaign expenses for purposes of this section.

(c) Should the commission determine that any payment of public funds made to an eligible candidate pursuant to section 11-221 was in excess of the aggregate amount of payments to which such candidate was entitled, the commission shall notify such candidate and such candidate shall pay to the Hawaii election campaign fund a sum equal to the amount of excess payment.

(d) If the commission determines that any amount of any public funds made to a candidate under section 11-217 was used for any improper purpose, the commission shall so notify the candidate, and the candidate shall pay to the fund an amount equal to three hundred per cent of such amount.

(e) Any candidate who has received public funds under section 11-217 and who is convicted of violating any provision of this chapter shall, upon notification by the commission, pay to the Hawaii election campaign fund the full amount of public funds received by such candidate.

(f) No notification shall be made by the commission under subsection (c) with respect to the payment of excess public funds more than two years after the payment of such funds.

**Sec. 11-226 Tax deductions.** (a) As a condition of allowing an individual to take a tax deduction for campaign contributions to a candidate pursuant to section 235-7(g) (2), a candidate shall have filed an affidavit with the commission prior to or simultaneous with the filing of his organizational report stating that he shall not exceed the expenditure limit for his respective office as set forth in section 11-209.

(b) The affidavit shall remain effective until the termination of the central committee of the candidate or the opening of filing for the next succeeding election for the office held or sought at the time of filing of the affidavit whichever occurs first. An affidavit filed under this section may not be rescinded.

(c) The director of taxation shall not allow any individual or married couple filing jointly to take a deduction against any tax due, pursuant to section 235-7(g) (2), for any contribution to a candidate for statewide or county office, who has not filed an affidavit as provided in this section.

(d) The commission shall forward a certified copy of any affidavit filed under this section to the director of taxation.

(e) The director of taxation shall only distribute to candidates who have filed an affidavit with the commission pursuant to this section a supply of official tax deduction receipt forms which state in bold face type that:

(1) A contributor who is given a receipt form is eligible to receive an income tax deduction in an aggregate amount not greater than \$500 for any election year; and

(2) That the candidate to whom he has contributed has agreed to abide by campaign expenditure limits.

(f) The director of taxation shall only allow an individual or married couple filing jointly to take an income tax deduction, pursuant to section 235-7(g) (2), for any contribution to a candidate for a statewide or county office, if an official tax deduction receipt form is attached to the state income tax return.

(g) A candidate who does not file an affidavit with the commission pursuant to this section shall not issue an official tax deduction report form, or any facsimile thereof, to any of his contributors.

(h) If a candidate has not filed an affidavit pursuant to this section, he shall inform all contributors to his campaign in writing that they are not entitled to count their contributions to him for purposes of taking a tax deduction under this section.

**Sec. 11-227 Public notices.** (a) Forty-five days before each primary, special primary, or general election, and at such other times as may be appropriate, the commission may publish public notices in the newspaper as well as other media to communicate to the public the following:

(1) A candidate's failure to sign an affidavit pursuant to section 11-208 to abide by the expenditure limits for his respective office as imposed by this chapter;

(2) A candidate who has filed an affidavit to abide by spending limits, but who has exceeded the expenditure limits pursuant to section 11-209;

(3) A candidate who has failed to file a report required under this chapter, or who has failed to correct a deficient report after notice of such deficiency or failure to file has been mailed to the candidate pursuant to section 11-193(b) (1); and

(4) Any flagrant violation of any other provision of this chapter.

(b) In publishing a public notice under this section, the commission shall endeavor to bring fair public light to the incident or violation involved.

**Sec. 11-228 Penalties; relief.** (a) Any person violating any provision of this chapter other than in section 11-193(b) (1), shall be punishable in the manner

prescribed as follows:

- (1) If a natural person, he shall be guilty of a petty misdemeanor and shall be subject to the penalties specified therefor; or
- (2) If a corporation, organization, association, or labor union, it shall be punished by a fine not exceeding \$1,000; and
- (3) Whenever a corporation, organization, association, or labor union violates this chapter, the violation shall be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any person may sue for injunctive relief to compel compliance with this chapter.

(c) The provisions of this section shall not be construed to prohibit prosecution under any appropriate provision of the Hawaii Penal Code, including, but not limited to, sections 708-852 and 708-853 (forgery); section 708-855 (criminal simulation); section 708-856 (obtaining signature by deception); section 708-872 (falsifying business records); and section 708-874 (misapplication of entrusted property).

**Sec. 11-229 Prosecution.** (a) For purposes of prosecution for violation of this chapter, 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) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court;
- (2) In the case of state offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and
- (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.

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

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

(c) Prosecution for violation of any provision of this chapter shall not be commenced after two years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later."

**SECTION 3.** Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) In computing taxable income there shall be allowed as a deduction:

- (1) Political contributions by any taxpayer not in excess of \$100 in any year; provided that such contributions are made to a central or county committee of a political party whose candidates shall have qualified by law to be voted for at the immediately previous general election; or
- (2) Political contributions by any individual taxpayer in an aggregate amount

not to exceed \$500 in any year; provided that such contributions are made to candidates as defined in section 11-191(3), who have agreed to abide by the campaign expenditure limits as set forth in section 11-209; and provided further that not more than \$100 of an individual's total contribution to any single candidate shall be deductible for purposes of this section."

SECTION 4. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"Sec. 235- Income check-off authorized.** Any individual whose state income tax liability for any taxable year is \$2 or more may designate \$2 of such liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax liability of \$4 or more, each spouse may designate that \$2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability."

SECTION 5. Section 12-6, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 12-6 Nomination papers: time for filing; fees.** Nomination papers shall be filed as follows:

- (1) For members of Congress, State, and county offices, with the chief election officer or clerk in case of county offices not later than 4:30 p.m. on the sixtieth calendar day prior to the primary, special primary, or special election (but if such day is a Saturday, Sunday or holiday then not later than 4:30 p.m. on the first working day immediately preceding); provided that any state candidate from the counties of Hawaii, Maui, and Kauai may file his declaration of candidacy with his respective clerk. The clerk shall transmit to the office of the chief election officer the State candidate's declaration of candidacy without delay. However, if a special primary or special election is to be held by a county and the county charter requires that the council shall issue a proclamation calling for the election to be held within a specified period of time, and if that requirement would not allow the filing of nomination papers with the appropriate office by the sixtieth calendar day prior to the day for holding such primary or special election, the council shall establish the deadline for the filing of nomination papers in the proclamation calling for the election.
- (2) There shall be deposited with each nomination a fee on account of the expenses attending the holding of the primary, special primary, or special election which shall be paid into the treasury of the State, or the county, as the case may be, as a realization:
  - (A) For United States senators and United States representatives — \$75;
  - (B) For governor and lieutenant governor — \$750;
  - (C) For mayor — \$500; and
  - (D) For all other offices — \$250.

- (3) Upon the receipt by the chief election officer or the clerk of the nomination paper of a candidate, the day, hour, and minute when it was received shall be endorsed thereon.
- (4) Upon the showing of a certified copy of an affidavit which has been filed with the campaign spending commission pursuant to section 11-208 by a candidate who has voluntarily agreed to abide by spending limits, the chief election officer or clerk shall discount the filing fee of the candidate by the following amounts:
  - (A) For the office of governor and lieutenant governor — \$675;
  - (B) For the office of mayor — \$450; and
  - (C) For all other offices — \$225.
- (5) The chief election officer or clerk shall waive the filing fee in the case of a person who declares himself, by affidavit, to be indigent and who has filed a petition signed by at least one-half of one per cent of the total voters registered at the time of filing in the respective district or districts which correspond to the specific office for which the indigent person is a candidate. This petition shall be submitted on the form prescribed and provided by the chief election officer together with the nomination paper required by this chapter.’

**SECTION 6. 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 7.** Statutory material to be repealed is bracketed. New material is underscored.\*

**SECTION 8.** This Act shall take effect upon its approval.

(Approved June 21, 1979.)

---

\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.