

ACT 369

S.B. NO. 769

A Bill for an Act Relating to Campaign Spending.

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

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended as follows:

1. Section 11-191 is amended by amending the following definitions to read as follows:

“(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 the candidate’s 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.

- (3) "Candidate" means an individual who seeks nomination for election, or election, to office. An individual is a candidate if the individual does any of the following:
 - (A) Files nomination papers for an office for oneself with the county clerk's office or with the chief election officer's office whichever is applicable; or
 - (B) Receives contributions in an aggregate amount of more than \$100, or makes or incurs any expenditures of more than \$100 to bring about the individual's 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 this subparagraph and subparagraph (C) until January 1 of the year that person runs for election; [or]
 - (C) Gives the individual's consent for any other person to receive contributions or make expenditures to aid the individual's nomination for election, or election, to office[.]; or
 - (D) Is certified to be a candidate by the lieutenant governor or county clerk.¹
- (6) "Committee" means:
 - (A) Any organization or association which, or any individual who, accepts a contribution or makes an expenditure for or against any candidate[,], or 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[,], or 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] on behalf of, a candidate[,], or 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 individual making a contribution or expenditure of the individual's own funds or anything of value which the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this subpart;
 - (D) Any committee as defined in subparagraph (A), which makes contributions or expenditures in aggregate of more than \$1,000 per election to influence the nomination and election of individuals to public office or the outcome of ballot questions or issues, shall register with the campaign spending commission and file reports as required by this chapter[.];
 - (E) Any committee as defined in subparagraph (A), whose sole activity consists of direct contributions in aggregate of more than \$1,000 per election to influence the nomination

and election of individuals to public office or the outcome of ballot questions or issues, shall submit a statement of contributions to the campaign spending commission in lieu of filing reports as required by this chapter.

(7) "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 fundraisers 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 subparagraph (A);] above; or
- (C) A contract, promise, or agreement to make a contribution; provided that notwithstanding this subparagraph and subparagraphs (A) and (B), 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 subparagraphs (A), (B), and (C), a candidate's expenditure of the candidate's own funds or the making of a loan or advance in the pursuit of the candidate's campaign shall not be a contribution for the purpose of this subpart but shall nevertheless be reportable as a campaign receipt.

(14) "Loan" means an advance of money, goods, or services, or a guarantee, endorsement, or any other form of security, with an absolute promise to repay.

[(14)] (15) "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.

[(15)] (16) "Newspaper" means a publication of general distribution in the State issued once or more per month which is written and published in the State.

[(16)] (17) "Office" means any elective public or constitutional office excluding federal elective offices.

[(17)] (18) "Person" means an individual, partnership, committee, association, corporation, or labor union and its auxiliary committees.

[(18)] (19) "Political party" means any party which satisfies the requirements of section 11-61.

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- [(19)] (20) "Private contribution" means a monetary contribution other than from a candidate's own funds or from the Hawaii election campaign fund.
- [(20)] (21) "Qualifying campaign contribution" means a monetary contribution of \$100 or less, and not more than \$100 of a person's total aggregate monetary contribution. Qualifying contributions do not include loans or in-kind contributions."

2. Section 11-194 is amended to read as follows:

"§11-194 Registration. (a) Each candidate, committee, or party shall file an organizational report as set forth in section 11-196, [no later than 4:30 p.m. on or before the day of filing for nomination or election; provided that any committee organized after the last day for filing for nomination or election shall file an organizational report] within ten days from the date the committee receives any contribution, the aggregate amount of which is more than \$100[.] or makes any expenditure.

(b) Committees that form within ten days of an election and expend in the aggregate more than \$1,000 shall register and fully disclose such expenditure by 4:30 p.m. the last calendar day prior to the expenditure.

(c) Each candidate who is certified to be a candidate by the lieutenant governor or county clerk by way of the "write-in" ballot shall file an organizational report within five days of being certified as a candidate."

3. Section 11-196 is amended by amending subsection (a) to read as follows:

"(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, district, 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, and 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."

4. Section 11-199 is amended by amending subsection (c) to read as follows:

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

5. Section 11-200 is amended to read as follows:

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

- (1) For any purpose other than that directly related:
 - (A) In the case of the candidate, to the candidate’s own campaign; or
 - (B) In the case of a campaign treasurer or candidate’s committee, to the campaign of the candidate, question, or issue with which they are directly associated; or
- (2) To support the campaigns of candidates other than the candidate,¹ for whom the funds were collected or with whom the campaign treasurer or candidate’s 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 candidate’s committee is directly associated.

Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate’s committee, as a contribution, may purchase from its campaign fund not more than two tickets for each fundraiser 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.

(c) This section shall not be construed to prohibit a candidate for the office of governor or lieutenant governor from supporting a co-candidate in the general election.

(d) This section shall not be construed to prohibit a candidate from making contributions to the candidate’s party so long as that contribution is not earmarked for another candidate.”

6. Section 11-203 is amended to read as follows:

“§11-203 Fundraisers and fundraising activities. (a) As used in this subpart, “fundraiser” 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 fundraiser held for a person prior to a general or special 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 fundraiser in each county prior to a general or special election.]

Within 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 fundraiser.

(c) No fundraiser shall be held unless a notice of intent to hold the function is filed by the person in charge of the function with the commission 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 affair¹ and the method thereof.

(d) Fundraisers sponsored by a candidate for a statewide office are exempt from the \$25 limit of subsection (a) and the restrictions of subsection (b), and fundraisers sponsored by a party for a political purpose for the general benefit of the party are exempt from the restrictions of subsection (b).¹

(e) The following expenses incident to a fundraiser and to all other political fundraising activities held for the benefit of a [person] candidate for which there is a charge for attending or participating in the fundraiser or fundraising activity¹ 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;
- (4) Printing and postage related to a function; and
- (5) All other direct costs incurred in solicitation of the fundraiser or fundraising activity."

7. Section 11-204 is amended to read as follows:

"§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 or committee in an aggregate amount greater than \$2,000 in any primary, special primary, special, or general election[.] in which the candidate or party participates.

(b) A candidate or the candidate's 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.

(d) Any candidate or committee who knowingly receives in the aggregate more than \$2,000 in any primary, special primary, special, or general election from a person, shall be required to return any excess over \$2,000 to such person. If the contributor cannot be found, the excess over the contribution limit shall be deposited with the Hawaii election campaign fund. A candidate or committee who complies with the provisions of this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228.

(e) All payments made by a person or political action committee whose contributions or expenditure activity is financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons shall be considered to be made by a single person or committee.

(f) A contribution made by two or more corporations shall be treated as one person when such corporations:

- (1) Share the majority of members of their boards of directors;
- (2) Share two or more corporate officers;
- (3) Are owned or controlled by the same majority shareholder or shareholders; or
- (4) Are in a parent-subsidiary relationship.

(g) An individual and any general partnership in which the individual is a partner, or an individual and any corporation in which the individual owns a controlling interest, shall be treated as one person.

(h) No committee which supports or opposes a candidate for public office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee."

8. Section 11-206 is amended to read as follows:

“§11-206 Campaign contributions; restrictions as to excess. (a) Every candidate in a primary, special primary, special, 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 the candidate’s respective office shall reserve use of such contributions until after a general or special election.

(b) Campaign contributions [received in excess of the candidate’s expenditure limit] shall not be used for personal expenses or to qualify for public funding in any subsequent election, and shall not be transferred to another candidate as prohibited in section 11-200.

Where such contributions are used for the purchase or lease of consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate, they shall be reported to the commission pursuant to sections 11-212 and 11-213.

(c) Such contributions may be used after a general or special election for any fundraising activity, for any other politically related activity sponsored by the candidate, for any ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an elected state or county office, or for any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization, or any other organization which the commission, by rules adopted pursuant to chapter 91, deems appropriate.

(d) All contributions collected pursuant to this section shall be reportable under section 11-213.”

9. Section 11-209 is amended to read as follows:

“§11-209 Campaign expenditures; limits as to amounts. (a) From January 1 of the year of a primary, special primary, special, or general election through the day of the special or 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 alone and all campaign treasurers and committees in the candidate’s behalf, shall not exceed the following amounts expressed respectively multiplied by the number of voters in the last preceding general election registered to vote [for] in each respective [class of offices] voting districts:

- (1) For the office of governor—\$1.25;
- (2) For the office of lieutenant governor—70 cents;
- (3) For the office of mayor—\$1;
- (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 additional ten per cent increase shall be added to the base amounts allowable under subsection (a) and compounded annually starting in 1979 and each year thereafter.

(c) A candidate or committee who exceeds the expenditure limitations set for any respective office shall notify all opponents and the commission by telephone and in writing the day the expenditure limits are exceeded.”

10. Section 11-212 is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding this section, a candidate, party, or committee whose aggregate contributions or expenditures for the reporting period total \$500 or less may file a short form report with the commission or appropriate county clerk’s office in lieu of the reports required by this section and section 11-213.”

11. Section 11-213 is amended to read as follows:

“§11-213 **Final and supplemental reports.** (a) Primary and special primary. Each candidate whether or not successful in a primary or special¹ 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 calendar 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) General, special general, or special election. 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 thirtieth calendar 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 covering all items prescribed in subsection (a). The first report shall be due no later than 4:30 p.m. on the thirtieth 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 the candidate becomes a candidate again, or in the case of a party or committee until they participate in an election again, file supplemental reports detailing all items prescribed in subsection (a).

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

(e) Short form reporting. A candidate, party, or committee who receives no contributions, makes no expenditures, or has a deficit or surplus of \$250 or less in any prescribed reporting period shall nevertheless be required to file preliminary, final, and supplemental reports on the respective dates pursuant to this subpart. Such reports may be filed on a short form as provided by the commission.

(f) Supplemental reporting. All supplemental reports required by this section are 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."

12. Section 11-215 is amended by amending subsection (b) to read as follows:

"(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.
- (3) The penalty for violating this section shall be no less than \$25 for each day the advertisement lacks the required disclaimer and no more than \$2,000 aggregate."

13. Section 11-216 is amended by amending subsections (c) and (f) to read as follows:

"(c) Upon hearing the response of the person cited, if the person 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,¹ shall receive reimbursements¹ 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 the person's own behalf or file a written statement for incorporation into the record of the proceeding.
- (2) The commission shall conduct a public hearing and 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)¹ 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 findings¹ 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] an order that may require the violator to:

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

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

14. Section 11-219 is amended to read as follows:

"§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 the candidate's campaign expenditures and shall be in receipt of the following sum of qualifying campaign contributions for the candidate's 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;] \$5,000; and
- (5) For all other offices—qualifying contributions which in the aggregate exceed \$500."

15. Section 11-220 is amended by amending subsection (c) to read as follows:

"(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[, and 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."

16. Section 11-222 is amended by amending subsection (b) to read as follows:

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

17. Section 11-223 is amended to read as follows:

"§11-223 Candidate funding; restrictions. (a) Each candidate who accepts public campaign funds under this subpart shall be required to abide by the campaign spending limits for the candidate's respective office as set forth in section 11-209. Any candidate who exceeds the spending limits for the candidate's respective office as set forth in section 11-209 shall return all of the public campaign funds the candidate has received to the Hawaii election campaign fund.

(b) Public campaign funds provided under this subpart 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)] this subpart unless the candidate and at least one other candidate for the same elective seat have qualified to have their names on the election ballot in the same election.

[(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) [(d)] 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, special, or general election campaign.

[(f)] (e) All public funds received under this subpart shall be deposited in a financial institution designated to do business in the State. No expenditures of any public funds received under this subpart 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)] (f) Upon the filing of a final report for any primary, special primary, special, or general election, each candidate who has spent an amount below the expenditure limit set for the candidate's respective office, but who has received the maximum amount of public funds allowable for the candidate's respective office, shall return all unexpended public funds to the Hawaii election campaign fund."

18. Section 11-224 is amended to read as follows:

"§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,] or special primary[, election; and no later than thirty days after a special or general election that all public funds paid to the candidate have been utilized as required by this subpart.

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, special, or general election. When such funds are returned, they shall be deposited in the Hawaii election campaign fund."

19. Section 11-227 is amended by amending subsection (a) to read as follows:

"(a) Forty-five days before each primary, special primary, special, 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 the candidate's respective office as imposed by this subpart;
- (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 subpart, 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

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

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

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 1987.)

Note

1. So in original.