

A Bill for an Act Relating to Government.

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

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

- (1) To communicate directly with the legislature and the governor, to make all personnel decisions, and purchase equipment without the approval of the department head; and
- (2) To be exempt from collective bargaining under chapter 89, Hawaii Revised Statutes.

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

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

PART I

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

“§11- Exemptions. The office of elections shall be exempt from section 26-35(1), (4), and (5) and shall:

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

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

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

“(a) ~~[The]~~ Pursuant to section 11- , the chief election officer may employ a staff without regard to ~~[chapter 76,]~~ chapters 76 and 89 and section 28-8.3. The office of elections staff may, but shall not be limited to ~~[supervise]~~ supervising state elections; ~~[maximize]~~ maximizing registration of eligible voters throughout the State; ~~[maintain]~~ maintaining data concerning registered voters, elections, apportionment, and districting; and to ~~[perform]~~ performing other duties as prescribed by law. The chief election officer or county clerk may employ precinct officials and other election employees as the chief election officer or county clerk may find necessary, none of whom shall be subject to ~~[chapter 76,]~~ chapters 76 and 89.”

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

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

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least ten years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
- (5) To ascertain whether any candidate, committee, or party has failed to file a report required by this subpart or has filed a substantially defective or deficient report, and to notify these 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 these persons. The commission shall publish in the newspaper, and on its website, 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 subpart, shall result in a penalty of \$50. Failure to respond after a newspaper notification or website publication 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;
- (6) To hold public hearings;
- (7) To investigate and hold hearings for receiving evidence of any violations;
- (8) To adopt a code of fair campaign practices as a part of its rules;
- (9) To establish rules pursuant to chapter 91;
- (10) To request the initiation of prosecution for the violation of this subpart pursuant to section 11-229;
- (11) To administer and monitor the distribution of public funds under this subpart;
- (12) To suggest accounting methods for candidates, parties, and committees, as the commission may deem advisable, in connection with reports and records required by this subpart;
- (13) To employ or contract, without regard to ~~chapter~~ chapters 76 and 89 and section 28-8.3, and, at pleasure, to dismiss persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation;
- (14) To do random audits, field investigations, as necessary;
- (15) To file for injunctive relief when indicated;
- (16) To censure any candidate who fails to comply with the code of fair campaign practices; and
- (17) To render advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the campaign

spending laws. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the campaign spending laws. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, candidate committee, noncandidate committee, or other person or entity subject to this chapter, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the persons in the request for an advisory opinion.

(b) In performing the functions and duties under this subpart, 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. The 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 chairperson of the commission, or such other person as the chairperson 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.

(c) The commission shall be exempt from section 26-35(1), (4), and (5) and shall:

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

The commission shall follow all applicable personnel laws.”

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

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

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;

- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy; [or]
- (19) By the office of elections;
- (20) By the campaign spending commission; or
- [19] (21) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.”

PART II

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

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

- (1) The president of the senate shall select two elections commission members;
- (2) The speaker of the house of representatives shall select two elections commission members;
- (3) The senators belonging to a party or parties different from the president of the senate shall designate one senator to select two elections commission members;
- (4) The representatives belonging to a party or parties different from the speaker of the house of representatives shall designate one representative to select two elections commission members; and
- (5) One member, who shall serve as chairperson of the elections commission, shall be selected by the members of the elections commission selected pursuant to paragraphs (1) to (4);

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

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

(c) A vacancy in the elections commission shall be filled in the same manner as the original appointment as specified in subsection (a) within fifteen days. A vacancy in the elections commission shall be filled with a person from the same county as the departing elections commission member. Elections commission member vacancies not filled within the times specified shall be filled promptly thereafter by the chief justice of the supreme court.

(d) The elections commission shall act by majority vote of its membership and shall establish its own procedures, except as may be provided by law.

(e) Notwithstanding section 26-34, elections commission member appointments shall not be subject to senatorial confirmation.

(f) The term of the elections commissioners shall be four years, except that with respect to the terms of the initial elections commission members, one member selected from each of subsection (a)(1) to (4) shall serve for a term of two years.

(g) The elections commissioners shall serve without compensation, but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties.

§11-B Duties of the elections commission. The duties of the elections commission are to:

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

§11-C Elections commission; political activities. (a) No elections commission member shall take an active part in political management or in political campaigns.

(b) Each elections commission member shall retain the right to:

- (1) Register and vote as the elections commission member chooses in any election;
- (2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- (4) Make a financial contribution to a political party or organization;
- (5) Serve as an election judge or clerk or in a similar position to perform nonpartisan election duties, as prescribed by law; and
- (6) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the elections commission member's efficiency or integrity as an elections commission member or the neutrality, efficiency, or integrity of the elections commission.

(c) An elections commission member may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics or this section.

§11-D Elections review program. The elections commission shall develop and implement an elections review program to:

- (1) Review the operation and performance of elections;
- (2) Make recommendations to the chief election officer on methods to improve elections;
- (3) Establish policies for the administration of an elections observer program, to include ensuring the validity and reliability of election results;
- (4) Conduct a biennial evaluation of the operation of elections;
- (5) Submit the findings and recommendations from the biennial evaluation to the legislature, not less than twenty days prior to the convening of each regular session held in odd-numbered years; and
- (6) Adopt rules in accordance with chapter 91 to carry out the purposes of this section.

§11-E Exemptions. The elections commission shall be exempt from section 26-35(1), (4), and (5) and shall:

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

The elections commission shall follow all applicable personnel laws.”

SECTION 7. Section 11-1, Hawaii Revised Statutes, is amended by amending the definition of “chief election officer” to read as follows:

““Chief election officer”, the individual appointed by the [~~elections appointment and review panel~~] elections commission pursuant to section 11-1.6 to supervise state elections.”

SECTION 8. Section 11-1.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The office of elections shall provide staff support to the [~~elections appointment and review panel~~] elections commission, as requested by the [~~panel~~] elections commission.”

SECTION 9. Section 11-1.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The chief election officer shall be appointed by the [~~elections appointment and review panel~~] elections commission, without regard to chapter 76. The appointment shall not be subject to the advice and consent of the senate. In the event of a vacancy, the [~~panel~~] elections commission shall meet expeditiously to select and appoint a new chief election officer to serve the remainder of the unexpired term.”

2. By amending subsections (f) and (g) to read:

“(f) The chief election officer may petition the [~~panel~~] elections commission for reappointment. The [~~panel~~] elections commission may reappoint an incumbent chief election officer based on the performance [~~evaluation~~] of the chief election officer [~~conducted by the panel~~]. The [~~panel~~] elections commission may authorize the chief election officer to hold office until a successor is appointed.

(g) The chief election officer may be removed by the [~~panel~~] elections commission at any time for good cause.”

SECTION 10. Section 11-2.5, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 11-2.6, Hawaii Revised Statutes, is repealed.

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

SECTION 13. In codifying the new sections added by section 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 14. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the elections appointment and review panel relating to the functions transferred to the elections commission established

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under section 6 of this Act shall be transferred with the functions to which they relate.

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

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 17. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on May 6, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.