

ACT 203

H.B. NO. 1747

A Bill for an Act Relating to Campaigns.

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

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding three¹ new sections to subpart B of part XII to be appropriately designated and to read as follows:

“§11-A Prohibition of fundraising on state or county property. (a) Except as provided in subsection (b), it shall be unlawful for any person to solicit a

donation of money or other thing of value in connection with an election campaign in a government facility that is used for the discharge of official duties by an officer or employee of the State or county.

(b) The prohibition of fundraising on state or county property shall not apply to any government facility that permits use by nongovernmental organizations for a fee or with reservations; provided the governmental facility's use regulations do not prohibit political activities on the premises. Government facilities that permit use for political activities shall be available to a candidate or committee for fundraising activities pursuant to the same terms and conditions that would otherwise apply to use by nongovernmental organizations.

(c) A person who violates the prohibition of fundraising on state or county property shall be guilty of a misdemeanor.

§11-B Limit on contributions from nonresident individuals and persons.

Contributions from any individual or any person as defined in section 11-191, except for a member of the candidate's immediate family, who is not a resident of the State at the time the contributions are made, including a noncandidate committee organized under the laws of another state and whose participants are not residents of the State, shall not exceed twenty per cent of the total contributions received by a candidate or candidate's committee for each reporting period."

SECTION 2. Section 11-191, Hawaii Revised Statutes, is amended as follows:

1. By adding five new definitions to be appropriately inserted and to read:

"Clearly identified" means the name, photograph or other similar image, or other unambiguous identification of the candidate.

"Independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate's committee, a party, or their agents.

"Residual funds" or "surplus funds" means unspent money from contributions held by a candidate or committee after a general or special election and after all campaign expenditures have been paid for the election period.

"Separate segregated fund" means a noncandidate committee that is established by a state or national bank, a corporation, or a labor organization for the purpose of making contributions or expenditures to influence the nomination for election or the election of any candidate to political office, or for or against any issue on the ballot.

"Surplus funds" has the same meaning as "residual funds"."

2. By amending the definitions of "candidate's committee" and "non-candidate committee" to read:

"Candidate's committee" means a committee as defined in this section which makes an expenditure or accepts a contribution in behalf of a candidate with the candidate's authorization. A candidate shall have only one authorized candidate's committee.

"Noncandidate committee" means a committee as defined in this section [and] that has the purpose of making contributions or expenditures to influence the nomination for election, the election of any candidate to political office, or for or against any issue on the ballot, but does not include a candidate's committee."

SECTION 3. Section 11-193, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(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 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)] (16) 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.”

SECTION 4. Section 11-194, Hawaii Revised Statutes, 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[;] or [section] 11-196.5 as applicable[; ~~within ten days from the date a candidate or candidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$100, or, within ten days from the date a noncandidate committee receives any contributions or makes any expenditures, the aggregate amount of which is more than \$1,000.~~]

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

(c) Each candidate who files nomination papers for office with the chief election officer or county clerk shall file an organizational report within ten days of [filing-]:

(1) Filing the nomination papers for office; or

(2) The date the candidate or candidate’s committee receives contributions or makes expenditures that amount to more than \$100 in the aggregate during the applicable election period.

(d) An elected official who is seeking re-election to the same office in successive elections shall not be required to file an organizational report under this section unless the candidate is required to report a change in information pursuant to section 11-196(b); provided that the candidate has not sought election to any other office during the period between elections.

(e) A noncandidate committee shall file an organizational report within ten days of receiving contributions or making expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period.”

SECTION 5. Section 11-195, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

“(d) All reports filed with the county clerk’s office shall be preserved by that office for ~~ten~~ four years[-] from the date of receipt.”

2. By amending subsection (f) to read:

“(f) For purposes of this subpart, whenever a report is required to be filed with the commission, “filed” means received in the office of the commission or county clerk, whichever is applicable, by the date and time specified for the filing of the report; except that a candidate or the committee of a candidate who is seeking election to the [office of]:

(1) [~~Governor;~~] Office of governor;

- (2) [~~Lieutenant governor;~~] Office of lieutenant governor;
- (3) [~~Mayor;~~] Office of mayor;
- (4) [~~Prosecuting attorney; or~~] Office of prosecuting attorney;
- (5) County council;
- (6) Senate;
- (7) House of representatives; or
- (8) Office of Hawaiian affairs.

shall file by electronic means in the manner prescribed by the commission. Candidates for the offices named in this subsection with contributions or expenditures of less than \$5,000 need not file by electronic means. A candidate or candidate committee without access to a computer or the Internet may request a waiver from electronic filing from the commission.”

SECTION 6. Section 11-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate’s committee, as a contribution:

- (1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203;
- (2) May use campaign funds for any ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an elected state or county office, as the term is used in section 11-206(c); and
- (3) May make contributions from its campaign fund to any community service, educational, youth, recreational, charitable, scientific, or literary organization[,-]; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a)[,-]; provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election.”

SECTION 7. Section 11-204, Hawaii Revised Statutes, is amended to read as follows:

“§11-204 Campaign contributions; limits as to persons.

- (a)(1) No person or any other entity shall make contributions to:
 - (A) A candidate seeking nomination or election to a two-year office or to the candidate’s committee in an aggregate amount greater than \$2,000 during an election period;
 - (B) A candidate seeking nomination or election to a four-year state-wide office or to the candidate’s committee in an aggregate amount greater than \$6,000 during an election period; and
 - (C) A candidate seeking nomination or election to a four-year non-statewide office or to the candidate’s committee in an aggregate amount greater than \$4,000 during an election period.

These limits shall not apply to a loan made to a candidate by a financial institution in the ordinary course of business[,-];

- (2) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of

the office the candidate is seeking to be less than the usual length of term of that office.

(b) No person or any other entity shall make contributions to a noncandidate committee, in an aggregate amount greater than \$1,000 in an election[; except that in the case of a corporation or company using funds from its own treasury, there shall be no limit on contributions or expenditures to the corporation or company non-candidate committee].

(c) A candidate's immediate family, in making contributions 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 period. The aggregate amount of \$50,000 shall include any loans made for campaign purposes to the candidate from the candidate's immediate family.

(d) 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.

(e) Any candidate, candidate's committee, or committee that receives in the aggregate more than the applicable limits set forth in this section in any primary, initial special, special, or general election from a person, shall be required to [de-~~one~~ of the following:

- (1) ~~Regardless of whether the excess donation was inadvertently made, to transfer an amount equal to any excess over the limits established in this section to the Hawaii election campaign fund within thirty days of receipt of the contribution, and in any event, no later than thirty days upon the receipt by a candidate, candidate's committee, or committee, of notification from the commission; or~~
- (2) ~~If the excess donation was inadvertently made, to return to the donor any excess over the limits established in this section and to notify the commission within thirty days of receipt of the contribution.]~~

return any excess contribution to the original donor within thirty days of receipt of the excess contribution. Any excess contribution not returned to the original donor within thirty days shall escheat to the Hawaii election campaign fund. A candidate, candidate's committee, or committee who complies with this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228.

(f) All payments made by a person or political party 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, political committees established and maintained by a national political party, or any other person, or by any group of those persons shall be considered to be made by a single person or political party.

~~[(g) 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.~~

~~(h)] (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.~~

~~[(4)] (h) No committee [which] that 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.~~

~~[(j)]~~ (i) No contributions or expenditures shall be made to or on behalf of a candidate or committee by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations [110.4(a) and 110.9(a);] 110.20, as amended. No foreign-owned domestic corporation shall make contributions where:

- (1) Foreign national individuals participate in election-related activities such as decisions concerning the making of contributions or the administration of a political committee; or
- (2) The contribution funds are not domestically-derived.

~~[(k)]~~ (j) No person or any other entity other than political committees established and maintained by a national political party shall make contributions to a political party in an aggregate amount greater than \$25,000 in any two-year election period. No political committee established and maintained by a national political party, shall make contributions to a political party in an aggregate amount greater than \$50,000 in any two-year election period.

~~[(4) Except for subsection (j), this]~~ (k) The contribution limits under this section shall apply for the office sought by the candidate. This section shall not apply to ballot issue committees.

SECTION 8. Section 11-205.5, Hawaii Revised Statutes, is amended to read as follows:

“§11-205.5 Campaign contributions by state and county contractors. (a) ~~[Any person making a contribution to any candidate, committee, or political party, and who has received, in any calendar year, \$50,000 or more through contracts from the State, or county shall register and report that fact to the commission within thirty days of the date of the contribution or within thirty days of the date of the contract, whichever occurs later; provided that this section shall not apply to a person who has received \$50,000 or more through a grant, subsidy, or purchase of service agreement under chapter 42F or 103F.~~

~~(b) The commission shall prescribe forms and procedures for the reporting required in subsection (a) which, at a minimum, shall require the following information:~~

- ~~(1) The name and address of the person making the contribution;~~
- ~~(2) The name of the candidate, committee, or political party receiving the contribution;~~
- ~~(3) The amount of money received from the State or county, the dates, and information identifying each contract and describing the service performed or goods provided; and~~
- ~~(4) If an entity is making the contribution, the names and business addresses of the principals, including officers and directors.~~

~~(c) The commission shall maintain a list of such reports for public inspection both at the commission’s office and through the state FYI electronic bulletin board.]~~

It shall be unlawful for the person who enters into any contract with the State, any of its counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing any material, supplies, or equipment to the State, any of its counties, department or agency thereof, or for selling any land or building to the State, any of its counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or

in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee, or candidate or to any person for any political purpose or use; or
- (2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any state or national bank, corporation, or labor organization for the purpose of influencing the nomination for election or the election of any person to office; provided that the commission shall by rule establish contribution limits for limited liability companies as defined in section 428-101, limited liability partnerships as defined in section 425-101, and limited liability limited partnerships as defined in section 425E-102. Sole proprietors subject to this section shall comply with applicable campaign contribution limits in section 11-204.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final."

SECTION 9. Section 11-205.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any loan to a candidate or candidate's committee in excess of \$100 shall be documented and disclosed as to lender, including the lender's name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the [relevant repayment obligations under this section.] terms of the loan, including the interest and repayment schedule. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter."

SECTION 10. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [~~Such contributions~~] Surplus funds may be used after a general or special election for [~~any fundraising activity, for~~]:

- (1) Any fundraising activity;
- [(4)] (2) Any other politically related activity sponsored by the candidate;
- [(2)] (3) Any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office; or
- [(3)] (4) Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization[;]; provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a)[.]; provided further that no contributions from campaign funds shall be made from the date the candidate files nomination papers to the date of the general election."

SECTION 11. Section 11-207, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Expenditures^[;] or disbursements for electioneering communications as defined in section 11-207.6, or any other coordinated activity 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] the candidate and expenditure by [such] the 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] the candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

(b) ~~[No funds shall be withdrawn or paid from a campaign depository except upon the written authorization of the campaign treasurer.]~~ “Coordinated activity” means:

- (1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding with a candidate, candidate committee, the political party of a candidate, or an agent of a candidate, committee, or the political party of a candidate;
- (2) The payment by any person for the production, dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by a candidate, committee, or an agent of a candidate or committee; or
- (3) Any payment by any person or contract for any electioneering communication, as defined in section 11-207.6, where the payment is coordinated with a candidate, candidate committee, the political party of the candidate, or an agent of a candidate, committee, or the political party of a candidate.”

SECTION 12. Section 11-207.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[§11-207.6]~~ **Electioneering communications.** (a) Every person who makes a disbursement for electioneering communications in an aggregate amount of \$2,000 during any calendar year shall, within twenty-four hours of each disclosure date provided in this section, file with the commission a statement of information described in subsection (b).

(b) Each statement required to be filed under this section shall contain the following information:

- (1) The identification of the person making the disbursement, any entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;
- (2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;
- (3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;
- (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;

- (5) If the disbursements were made by a committee, the names and addresses of all persons who contributed to the committee for the purpose of publishing or broadcasting the electioneering communications;
- (6) If the disbursements were made by an organization other than a committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and
- (7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, political party or agent of any candidate, candidate committee or political party and, if so, the identification of the candidate, candidate committee, political party, or agent involved.

(c) For the purposes of this section:

“Disclosure date” means, for every calendar year, the first date by which a person has made disbursements during that same year of more than \$2,000, in the aggregate, for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

“Electioneering communication” means any ~~paid~~ advertising ~~broadcast~~:

- (1) (A) Broadcast from a cable, satellite, television, or radio broadcast station~~[-or published]~~;
 (B) Published in any periodical or newspaper~~[-or sent]~~; or
 (C) Sent by mail at a bulk rate~~[-which]~~;
- (2) That refers to a clearly identifiable candidate; and [is]
- (3) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election.

“Electioneering communication” shall not include communications ~~in~~:

- (1) In a news story or editorial~~[-communications which]~~ disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by any political party, political committee, or candidate;
- (2) That constitute expenditures by the disbursing organization~~[-or communications in-house]~~;
- (3) In in-house bulletins~~[-]; or~~
- (4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(d) For purposes of this section, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.”

SECTION 13. Section 11-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) From January 1 of the year of any primary, special, or general election, the total expenditures for each election 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 in each respective voting district:

- (1) For the office of governor—\$2.50;
- (2) For the office of lieutenant governor—\$1.40;
- (3) For the office of mayor—\$2.00;

- (4) For the offices of state senator, state representative, and county council member~~[, and prosecuting attorney]~~—\$1.40; and
- (5) For the offices of the board of education and all other offices—20 cents.”

SECTION 14. Section 11-212, Hawaii Revised Statutes, is amended to read as follows:

“§11-212 Preliminary reports.

- (a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report with the commission or appropriate county clerk’s office. Preliminary reports shall be filed on forms provided by the commission no later than 4:30 p.m. on the following dates:
 - (A) July thirtieth of the year of the primary election;
 - (B) Ten calendar days prior to each primary and initial special election; and
 - (C) Ten calendar days prior to a special or general election.
- (2) Each report shall be certified pursuant to section 11-195 and shall contain the following information which shall be current through the thirtieth calendar day prior to the filing of the report filed on the thirtieth of July and fifth calendar day prior to the filing of other preliminary reports:
 - (A) The aggregate sum of all contributions and other campaign receipts received;
 - (B) 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 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
 - (C) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
 - (D) 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
 - (E) A current statement of the balance on hand or deficit.
- (b) Each noncandidate 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 primary election and the tenth calendar day prior to a special or general election. Each report shall be certified pursuant to section 11-195 and shall contain the following information, which shall be current through the fifth calendar day prior to the filing of a preliminary report:
 - (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, address, employer, and occupation of each donor who contributes an aggregate of \$100 or more during an election period, which has not previously been reported; provided that if all the information is not on

file, the contribution shall be returned to the donor within thirty days of deposit;

- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

(c) The candidate's committee and noncandidate committee shall itemize disbursements to consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

~~[(e)]~~ (d) A candidate, party, or committee whose aggregate contributions and aggregate expenditures for the reporting period each total \$2,000 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.

~~[(d)]~~ (e) Notwithstanding this section and section 11-213, a candidate, party, or committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, need not file a preliminary and final primary report, a preliminary and final general report, or a special election report, but shall file only a final election period report."

SECTION 15. Section 11-213, Hawaii Revised Statutes, is amended to read as follows:

"§11-213 Final and supplemental reports. (a) Primary and initial special election. Each candidate whether or not successful in a primary or initial special 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 initial special election. The report shall include the following information which shall be current through the day of the primary election:

- (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 during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (3) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of \$1,000 or more during an election period, which has not previously been reported; provided that if all the information is not on file, the contribution shall be returned to the donor within thirty days of deposit;
- (4) 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
- (5) The cash balance and a statement of surplus or deficit.

(b) Each noncandidate 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 election.

The report shall include the following information, which shall be current through the day of the primary election:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name, address, employer, and occupation of each donor who contributes an aggregate of more than \$100 during an election, which has not previously been reported;
- (3) The amount and date of each disbursement or contribution made to a candidate, party, organization, or committee, including the name and address of each payee, which has not previously been reported;
- (4) The amount and date of each expenditure made or incurred by the committee for or against any candidate, ballot issue, or on behalf of another committee, which has not previously been reported; and
- (5) A current statement of the balance on hand.

(c) The candidate's committee and noncandidate committee shall itemize disbursements to consultants, advertising agencies and similar firms; credit card payments; salaries; and candidate reimbursements, to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose.

~~[(e)]~~ (d) General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period 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 election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.

~~[(d)]~~ (e) Termination. A candidate, party, or committee may terminate registration with the commission with no surplus or no deficit. A termination report approved by the commission shall include information on the disposition of any funds, which has not previously been reported.

~~[(e)]~~ (f) Deficit. In the event of a deficit 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) or subsection (b) in the case of noncandidate committees. 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.

~~[(f)]~~ (g) Surplus. In the event of a surplus 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 files to be on the ballot with the state office of elections, 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) or in the case of a noncandidate committee until they participate in an election again, or file supplemental reports detailing all items prescribed in subsection (b).

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.

~~[(g)]~~ (h) All supplemental reports required by this section shall be filed until a candidate files to be on the ballot with the state elections office. Each party or noncandidate committee shall file a supplemental report for the respective reporting period during a nonelection year. In an election year, each party and noncandidate committee shall file reports as prescribed in this section and section 11-212 for the primary and general election.’’

SECTION 16. Section 11-214, Hawaii Revised Statutes, is amended to read as follows:

“§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 subpart, shall return all residual private contributions to the donors of such contributions within four years 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 or may be donated to a nonprofit organization of the candidate’s choice. In the event of a death of a candidate, the candidate’s committee, if any, shall return all residual private contributions to the donors of such contributions, provided that any residual contributions not returned to the donors within sixty days of the candidate’s death shall escheat to the Hawaii election campaign fund or may be donated to a nonprofit organization of the candidate’s choice.~~

~~(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:~~

- ~~(1) Elected officials;~~
- ~~(2) Candidates who failed to be nominated or elected yet who become a candidate for nomination or election to office within four years thereafter;~~
- ~~(3) Elected officials who resign their office before the end of their term yet who file to become a candidate for reelection within four years after the end of the term from which they resigned; or~~
- ~~(4) Elected officials who do not seek reelection yet who file to become a candidate for election within four years after the end of the term from which they did not seek reelection.]~~

(a) Candidates, committees, and individuals who receive contributions for an election but fail to file a nomination for that election shall return all residual funds to the donors no later than ninety days after the date on which nominations for that election must be filed. Contributions not returned to the donors shall escheat to the Hawaii election campaign fund.

(b) Candidates, committees, and individuals who withdraw or cease to be candidates or committees because of death, term limits, disqualification, resignation, or other personal reasons shall return all residual funds to the donors no later than ninety days after the candidate or committee ceases to be a candidate or committee. Residual funds not returned to the donors shall escheat to the Hawaii election campaign fund. Contributions shall only be used for expenditures directly related to the candidate’s or committee’s activities to influence the outcome of the election or nomination for election.

(c) Candidates, and the committees of a candidate who:

- (1) Are elected to office, may expend surplus funds pursuant to section 11-206, but under no circumstances shall expenditures be made from funds after four years from the date of the election for which the contributions were received; or
- (2) Fail to be nominated or elected to office, may expend surplus funds pursuant to section 11-206 but under no circumstances shall expenditures be made from funds after one year from the date of the election for which the contributions were received.

Contributions not returned to the donors shall escheat to the Hawaii election campaign fund.

(d) Surplus funds may be expended by a candidate for the next subsequent election upon registration for the election pursuant to section 11-194.

(e) Candidates or committees that dispose of funds pursuant to this section shall terminate registration with the commission as provided in section 11-213.

(f) The commission shall adopt rules under chapter 91 for carrying out the purposes of this section.”

SECTION 17. Section 11-218, Hawaii Revised Statutes, is amended to read as follows:

“§11-218 Candidate funding; amounts available. (a) ~~[The maximum amount of public funds available to a candidate for]~~ For the office of governor, lieutenant governor, or mayor, the maximum amount of public funds available to a candidate in any election shall not exceed ten per cent of the total expenditure limit as determined under section 11-209 for each election [as established] for each office listed in this subsection [pursuant to section 11-209].

(b) For the office of state senator, state representative, county council member, and prosecuting attorney, the maximum amount of public funds available to a candidate in any election shall be fifteen per cent of the total expenditure limit as determined under section 11-209 for each election [as established] for each office listed in this subsection [pursuant to section 11-209].

(c) For the office of Hawaiian affairs, the maximum amount of public funds available to a candidate shall not exceed \$1,500 in any election year.

~~[(e)]~~ (d) For the 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.

~~[(d)]~~ (e) 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 apply with the commission to be qualified to receive the maximum amount of public funds as provided in this section for the respective election. For purposes of this section ~~[qualified]~~, “qualified” means meeting the qualifying campaign contribution requirements of section 11-219.”

SECTION 18. Section 11-219, Hawaii Revised Statutes, 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 not be unopposed in any election for which public funds are sought, ~~[and]~~ 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 from individual residents of Hawaii [for the candidate’s respective office for each election]:

- (1) For the office of governor—qualifying contributions that in the aggregate, exceed \$100,000;
- (2) For the office of lieutenant governor—qualifying contributions that in the aggregate, exceed \$50,000;
- (3) For the office of mayor for each respective county:
 - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$50,000;
 - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$15,000;

- (C) County of Maui—qualifying contributions that in the aggregate, exceed \$10,000; and
- (D) County of Kauai—qualifying contributions that in the aggregate, exceed \$5,000; and
- (4) For the office of prosecuting attorney for each respective county:
 - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$30,000;
 - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$10,000; and
 - (C) County of Kauai—qualifying contributions that in the aggregate, exceed \$5,000;
- (5) For the office of county council—for each respective county:
 - (A) County of Honolulu—qualifying contributions that in the aggregate, exceed \$5,000;
 - (B) County of Hawaii—qualifying contributions that in the aggregate, exceed \$1,500;
 - (C) County of Maui—qualifying contributions that in the aggregate, exceed \$5,000; and
 - (D) County of Kauai—qualifying contributions that in the aggregate, exceed \$3,000;
- (6) For the office of state senator—qualifying contributions that, in the aggregate, exceed \$2,500;
- (7) For the office of state representative—qualifying contributions that, in the aggregate, exceed \$1,500; ~~and~~
- (8) For the office of Hawaiian affairs—qualifying contributions that, in the aggregate, exceed \$1,500; and
- ~~(8)~~ (9) For all other offices, qualifying contributions that, in the aggregate, exceed \$500.”

SECTION 19. Section 11-220, Hawaii Revised Statutes, is amended to read as follows:

“**§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]~~ that section.
- (b) To be eligible to receive payments pursuant to section 11-217, a candidate shall certify to the commission that:
- (1) ~~[Such]~~ The candidate and all committees authorized by ~~[such]~~ the candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-209;
 - (2) ~~[Such]~~ The candidate has qualified to be on the election ballot in a primary~~[-special primary,]~~ or general election;
 - (3) ~~[Such]~~ The 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]~~ The candidate or committee authorized by ~~[such]~~ the candidate has received the qualifying sum of private contributions for the office sought by the candidate as set forth in section 11-219; and
- (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]~~ candidate's committee 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]~~ qualifying campaign contribution and the full name and mailing address 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]~~ these contributions ~~[which]~~ that the commission may require."

SECTION 20. Section 11-221, Hawaii Revised Statutes, is amended to read as follows:

~~“§11-221 Entitlement to payments. [Every candidate 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 that candidate or candidate committee during the matching payment period involved. A qualifying contribution shall be attributed to a primary, special or general election.~~

~~A candidate eligible to receive public funds must obtain a minimum amount of qualifying campaign contributions as set forth in section 11-219 in order to be entitled to receive any matching public funds in an election. For the purpose of this section, a] (a) A candidate shall obtain the minimum amount of qualifying contributions set forth in section 11-219, once for the election period. After the candidate obtains the minimum amount of qualifying campaign contributions, the candidate shall be entitled to receive for each election that the candidate's name appears on the ballot:~~

- ~~(1) The minimum payment in an amount equal to the qualifying campaign contributions; and~~
- ~~(2) Payments of \$1 for each \$1 of qualifying contributions in excess of the minimum amount of qualifying contributions;~~

~~provided that the candidate shall not receive more than the maximum amount of public funds available to a candidate pursuant to section 11-218; provided further that the candidate shall not receive public funds for a primary election if the candidate does not obtain the minimum amount of qualifying contributions before the date of the primary election.~~

~~(b) A candidate [must] shall have at least one other qualified candidate as an opponent for the primary[, special,] or general election to receive public funds for that election.”~~

SECTION 21. Section 11-222, Hawaii Revised Statutes, 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.”

SECTION 22. Section 11-223, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Each candidate, on the deadline for filing of a final report for any primary~~[-special primary, special,]~~ or general election, shall return all unexpended public funds to the Hawaii election campaign fund.”

SECTION 23. Section 11-224, Hawaii Revised Statutes, 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 ~~[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]~~ used 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]~~ public funds are returned, they shall be deposited in the Hawaii election campaign fund.”

SECTION 24. Section 11-229, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who knowingly, intentionally, or recklessly violates any provision of this subpart shall be guilty of a misdemeanor. Any person who knowingly or intentionally falsifies any report required by this subpart with the intent to circumvent the law or deceive the commission or who violates section 11-201 or 11-202 shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853. A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.”

SECTION 25. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“**§853-4 Chapter not applicable; when.** This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
 - [(a)] (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
 - [(b)] (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;

- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering;
 - (M) Promoting prostitution in the first degree;
 - (N) Promoting prostitution in the second degree;
 - (O) Promoting prostitution in the third degree;
 - (P) Abuse of family or household members;
 - (Q) Sexual assault in the second degree;
 - (R) Sexual assault in the third degree; or
 - (S) A violation of an order issued pursuant to chapter 586[-]; or
- (14) The defendant has been charged with:
 - (A) Knowingly or intentionally falsifying any report required under chapter 11, subpart B of part XII, with the intent to circumvent the law or deceive the campaign spending commission; or
 - (B) Violating section 11-201 or 11-202.

The court may adopt by rule other criteria in this area.”

SECTION 26. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 27. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, 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 28. In codifying the new sections added by section 1 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 29. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 30. This Act shall take effect on January 1, 2006.

(Approved July 6, 2005.)

Notes

1. Should be "two".
2. Edited pursuant to HRS §23G-16.5.