

**ACT 112**

H.B. NO. 1147

A Bill for an Act Relating to Campaign Spending.

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

SECTION 1. The legislature finds that the State has a duty to the residents of Hawaii to ensure that information concerning campaign contributions and expenditures is readily available to and easily accessible by the public. Disclosure is now more important than ever to the election process in light of the dramatic changes in policy regarding corporate independent expenditures as reflected in the recent decision of the United States Supreme Court in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

Since *Citizens United*, case law across the country has supported transparency and disclosure provisions in campaign finance laws. See *Human Life of Washington, Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010). Hawaii's disclosure and transparency provisions allow our electorate to "follow the money." It is the intent of the legislature to expand those disclosure and transparency provisions, building on the existing statutory structure.

The legislature finds that additional disclosure is needed in light of the advent of noncandidate committees, or political action committees, that make only independent expenditures commonly known as SuperPACs. These are political committees that can operate without a contribution limit because they make independent expenditures only, that is, expenditures that are not coordinated with any candidate for office. SuperPACs came into existence due to case law following *Citizens United*. In Hawaii, as elsewhere, SuperPACs have accumulated significant funds from a single source or from very few sources. The existing disclosure requirements in campaign advertising are insufficient to identify the true source of the funds for an advertisement as it reaches the public. The new provision proposed by this Act specifically requires additional disclosure of the top contributors to SuperPACs in campaign advertisements made by noncandidate committees that certify to the campaign spending commission that they are making only independent expenditures, and is designed to remedy the lack of adequate disclosure in campaign advertisements made by SuperPACs under existing law.

It is also the intent of the legislature to remove redundancy, eliminate possible confusion, and expand the disclosure requirements applicable to corporations under the state campaign finance law. Under current Hawaii law, any organization, regardless of form, reports as a noncandidate committee if its expenditures or contributions, in the aggregate, exceed the \$1,000 threshold. The legislature finds that the registration and reporting requirements of noncandidate committees, under sections 11-323 and 11-321(g), Hawaii Revised Statutes, overlap and are redundant with those required of corporations under section 11-332, Hawaii Revised Statutes. This Act repeals section 11-332, Hawaii Revised Statutes, to provide that all corporations that make more than \$1,000, in the aggregate, in expenditures or contributions shall report as noncandidate committees, which will require more disclosure than the current reporting requirements for corporations.

Accordingly, the purpose of this Act is to increase transparency in campaign spending and to expand the public's access to information about campaign contributions and expenditures.

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to subpart H of part XIII to be appropriately designated and to read as follows:

**“§11- Identification of certain top contributors to noncandidate committees making only independent expenditures.** (a) An advertisement shall contain an additional notice in a prominent location immediately after or below the notices required by section 11-391, if the advertisement is broadcast, televised, circulated, or published, including by electronic means, and is paid for by a noncandidate committee that certifies to the commission that it makes only independent expenditures. This additional notice shall start with the words, “The three top contributors for this advertisement are”, followed by the names of the three top contributors, as defined in subsection (e), who made the highest aggregate contributions to the noncandidate committee for the purpose of funding the advertisement; provided that:

- (1) If a noncandidate committee is only able to identify two top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The two top contributors for this advertisement are", followed by the names of the two top contributors;
- (2) If a noncandidate committee is able to identify only one top contributor who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The top contributor for this advertisement is", followed by the name of the top contributor;
- (3) If a noncandidate committee is unable to identify any top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, "The three top contributors for this noncandidate committee are", followed by the names of the three top contributors who made the highest aggregate contributions to the noncandidate committee; and
- (4) If there are no top contributors to the noncandidate committee, the noncandidate committee shall not be subject to this section.

In no case shall a noncandidate committee be required to identify more than three top contributors pursuant to this section.

(b) If a noncandidate committee has more than three top contributors who contributed in equal amounts, the noncandidate committee may select which of the top contributors to identify in the advertisement; provided that the top contributors not identified in the advertisement did not make a higher aggregate contribution than those top contributors who are identified in the advertisement. The additional notice required for noncandidate committees described under this subsection shall start with the words "Three of the top contributors for this advertisement are" or "Three of the top contributors to this noncandidate committee are", as appropriate, followed by the names of the three top contributors.

(c) This section shall not apply to advertisements broadcast by radio or television of such short duration that including a list of top contributors in the advertisement would constitute a hardship to the noncandidate committee paying for the advertisement. A noncandidate committee shall be subject to all other requirements under this part regardless of whether a hardship exists pursuant to this subsection. The commission shall adopt rules pursuant to chapter 91 to establish criteria to determine when including a list of top contributors in an advertisement of short duration constitutes a hardship to a noncandidate committee under this subsection.

(d) Any noncandidate committee that violates this section shall be subject to a fine under section 11-410.

(e) For purposes of this part, "top contributor" means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement."

SECTION 3. Section 11-314, Hawaii Revised Statutes, is amended to read as follows:

**“§11-314 Duties of the commission.** The duties of the commission under this part are to:

- (1) Develop and adopt forms required by this part;

- (2) Adopt and publish a manual for all candidates, candidate committees, and noncandidate committees, describing the requirements of this part, including uniform and simple methods of recordkeeping;
- (3) Preserve all reports required by this part for at least ten years from the date of receipt by the commission;
- (4) Permit the inspection, copying, or ~~[duplicating]~~ duplication of any report required by this part pursuant to rules adopted by the commission under chapter 91; provided that this paragraph shall not apply to the sale or use of information under section 11-344;
- (5) Ascertain whether any ~~[candidate, candidate committee, noncandidate committee, or party]~~ person has failed to file a report required by this part or has filed a substantially defective or deficient report. The commission shall notify ~~[these persons]~~ the person by first class mail that a fine may be assessed for the failure to file or the filing of a substantially defective or deficient report, and the defective or deficient report shall be corrected and explained. All fines collected under this section as authorized by ~~[section]~~ sections 11-340 and 11-410 shall be deposited in the general fund of the State;
- (6) Hold public hearings;
- (7) Investigate and hold hearings for receiving evidence of any violations pursuant to subpart I of this part;
- (8) Adopt rules pursuant to chapter 91;
- (9) Request the initiation of prosecution for the violation of this part pursuant to section 11-411;
- (10) Administer and monitor the distribution of public funds under this part;
- (11) Suggest accounting methods for candidates, candidate committees, or noncandidate committees in connection with reports and records required by this part;
- (12) Employ or contract with, without regard to chapters 76, 78, and 89, persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation; provided that the commission shall have the authority, at its discretion, to dismiss persons employed by or contracted with the commission;
- (13) Conduct random audits and field investigations, as necessary; and
- (14) File for injunctive relief when indicated.”

SECTION 4. Section 11-331, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:
  - “(a) Every report required to be filed by a candidate or candidate committee shall be certified as complete and accurate by the candidate and treasurer.
  - (b) Every report required to be filed by a noncandidate committee shall be certified as complete and accurate by the chairperson and treasurer.”
2. By amending subsection (f) to read:
  - “(f) All reports filed under this part are public records[-] and shall be made available for public inspection on the commission’s website in a searchable database.”

SECTION 5. Section 11-335, Hawaii Revised Statutes, is amended to read as follows:

~~[[§11-335]]~~ **Noncandidate committee reports.** (a) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file preliminary, final, and supplemental reports that disclose the following information:

- (1) The noncandidate committee's name and address;
- (2) The cash on hand at the beginning of the reporting period and election period;
- (3) The reporting period and election period aggregate totals for each of the following categories:
  - (A) Contributions~~;~~ received;
  - ~~(B)~~ Contributions made;
  - ~~[(B)]~~ (C) Expenditures; and
  - ~~[(C)]~~ (D) Other receipts;
- (4) The cash on hand at the end of the reporting period; and
- (5) The surplus or deficit at the end of the reporting period.

(b) Schedules filed with the reports shall include the following additional information:

- (1) The amount and date of deposit of each contribution received and the name, address, occupation, and employer of each contributor making a contribution aggregating more than \$100 during an election period, which was not previously reported; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
  - (2) The amount and date of each contribution made and the name and address of the candidate, candidate committee, or noncandidate committee to which the contribution was made;
  - ~~[(2)]~~ (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure~~[-]~~; provided that:
    - (A) Expenditures for advertisements or electioneering communications shall include the names of the candidates supported, opposed, or clearly identified;
    - (B) Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose; and
    - (C) Independent expenditures shall include the name of any candidate supported, opposed, or clearly identified;
  - (4) For noncandidate committees making only independent expenditures, certification that no expenditures have been coordinated with a candidate, candidate committee, or any agent of a candidate or candidate committee;
  - ~~[(3)]~~ (5) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
  - ~~[(4)]~~ (6) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
  - ~~[(5)]~~ (7) The date of disposition of a durable asset, value at the time of disposition, method of disposition, and name and address of the person receiving the asset.
- (c) No loan may be made or received by a noncandidate committee.
- (d) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file a late contribution

report as provided in section 11-338 if the committee receives late contributions from any person aggregating more than \$500 or makes late contributions aggregating more than \$500.

(e) For purposes of this section, "electioneering communication" means the same as defined in section 11-341."

SECTION 6. Section 11-337, Hawaii Revised Statutes, is amended to read as follows:

**["§11-337"] Reporting expenditures.** (a) For purposes of this part, an expenditure is deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period are deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used.

(b) Any expenditure that is contracted or paid for and that is to be rendered during the last three days prior to an election shall be included in a late expenditure report as provided in section 11-338."

SECTION 7. Section 11-338, Hawaii Revised Statutes, is amended to read as follows:

**["§11-338"] Late contributions; late expenditures; report.** (a) The candidate, authorized person in the case of a noncandidate committee that is a party, or treasurer in the case of a candidate committee or other noncandidate committee, that, within the period of fourteen calendar days through four calendar days prior to any election, makes contributions aggregating more than \$500, or receives contributions from any person aggregating more than \$500, shall file a late contribution report by means of the commission's electronic filing system on or before the third calendar day prior to the election.

(b) The late contribution report shall include the following information:

(1) Name, address, occupation, and employer of the contributor;

(2) Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution;

(3) The amount of the contribution~~;~~ received;

~~(4)~~ The amount of the contribution made;

~~(4)~~ (5) The contributor's aggregate contributions to the candidate, candidate committee, or noncandidate committee; and

~~(5)~~ (6) The purpose, if any, to which the contribution will be applied~~[-]~~, including, for contributions to a noncandidate committee, the name of any candidate supported, opposed, or clearly identified.

(c) A noncandidate committee that makes independent expenditures in an aggregate amount of more than \$500 within the period between fourteen and four calendar days prior to any election shall file a late expenditure report by means of the commission's electronic filing system on or before the third calendar day prior to the election. The late expenditure report shall include the following information for each expenditure:

(1) The amount and date made;

(2) The vendor name, address, and contact information; and

(3) The purpose, including the name of any candidate supported, opposed, or clearly identified by the expenditure.

~~(e)~~ (d) A late contribution report or late expenditure report filed pursuant to this section shall be in addition to any other report required to be filed by this part."

SECTION 8. Section 11-340, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) True and accurate reports shall be filed with the commission on or before the due dates specified in this part. The commission may assess a fine against a ~~[candidate committee or noncandidate committee]~~ person that is required to file a report under this part if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.”

SECTION 9. Section 11-341, Hawaii Revised Statutes, is amended to read as follows:

**“[§11-341] Electioneering communications; statement of information.**

(a) Each person who makes ~~[a disbursement]~~ an expenditure for electioneering communications in an aggregate amount of more than \$2,000 during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date provided in this section.

(b) Each statement of information shall contain the following:

- (1) The name of the person making the ~~[disbursement;]~~ expenditure, name of any person or entity sharing or exercising discretion or control over ~~[such]~~ the person, and the custodian of the books and accounts of the person making the ~~[disbursement;]~~ expenditure;
- ~~[(2)]~~ (2) The names and titles of the executives or board of directors who authorized the expenditure, if the expenditure was made by a noncandidate committee, business entity, or an organization;
- ~~[(2)]~~ (3) The state of incorporation or formation and principal ~~[place of business]~~ address of the noncandidate committee, business entity, or organization or[-] for an individual, the name, address, occupation, and employer of the ~~[person]~~ individual making the ~~[disbursement;]~~ expenditure;
- ~~[(3)]~~ (4) The amount of each ~~[disbursement]~~ expenditure during the period covered by the statement and the identification of the person to whom the ~~[disbursement]~~ expenditure was made;
- ~~[(4)]~~ (5) The elections to which the electioneering communications pertain and the names~~[- if known, of the]~~ of any clearly identifiable candidates [identified or to be identified;] and whether those candidates are supported or opposed;
- ~~[(5)]~~ (6) If the ~~[disbursements]~~ expenditures were made by a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the candidate committee or noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;
- ~~[(6)]~~ (7) If the ~~[disbursements]~~ expenditures were made by an organization other than a candidate committee or noncandidate 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)]~~ (8) 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, or noncandidate committee, or agent of any candidate if any, and if so, the identification of the candidate, ~~[a]~~ candidate committee, or ~~[a]~~ noncandidate committee, or agent involved[-]; and

(9) The three top contributors as required under section 11- , if applicable.

(c) An electioneering communication statement of information filed pursuant to this section shall be in addition to the filing of any other report required under this part.

[(e)] (d) For purposes of this section:

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

“Electioneering communication” means any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper[;] or by electronic means; or sent by mail at a bulk rate, and that:

- (1) Refers to a clearly identifiable candidate;
- (2) 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; and
- (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

“Electioneering communication” shall not include communications:

- (1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by a candidate, candidate committee, or non-candidate committee;
- (2) That constitute expenditures by the [~~disbursing~~] expending organization;
- (3) 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)] (e) For purposes of this section, a person shall be treated as having made [~~a disbursement~~] an expenditure if the person has executed a contract to make the [~~disbursement~~] expenditure.”

SECTION 10. Section 11-391, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any advertisement that is broadcast, televised, circulated, or published, including by electronic means, shall contain:

- (1) The name and address of the candidate, candidate committee, non-candidate committee, or other person paying for the advertisement; and
- (2) A notice in a prominent location stating either that:
  - (A) The advertisement [~~is published, broadcast, televised, or circulated with~~] has the approval and authority of the candidate; provided that an advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice; or
  - (B) The advertisement [~~is published, broadcast, televised, or circulated without the approval and authority of~~] has not been approved by the candidate.”

SECTION 11. Section 11-332, Hawaii Revised Statutes, is repealed.



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SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 15. This Act shall take effect on November 5, 2014.

(Approved June 14, 2013.)

### Note

1. Edited pursuant to HRS §23G-16.5.