

JAN 21 2021

A BILL FOR AN ACT

RELATING TO CAMPAIGN FINANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State has a
2 compelling interest in securing its democratic self-governance
3 from foreign influence.

4 The legislature further finds that former President Barack
5 Obama warned of foreign corporate spending in state elections
6 and that Ann Ravel, former commissioner of the Federal Election
7 Commission, specifically called on states to enact legislation
8 to limit the influence of foreign corporate spending on American
9 elections.

10 The legislature recognizes that several states and
11 municipalities, including Alaska; Connecticut; Massachusetts;
12 New York City; and St. Petersburg, Florida, have enacted or are
13 considering enacting legislation to limit foreign corporate
14 spending and to protect the integrity of their elections from
15 foreign corporate influence.

16 The purpose of this Act is to protect the State's
17 democratic self-governance by:



- 1 (1) Prohibiting foreign nationals and foreign corporations
2 from making independent expenditures;
- 3 (2) Requiring every corporation that contributes or
4 expends funds in a state election to file a statement
5 of certification regarding its status as a foreign
6 corporation; and
- 7 (3) Requiring noncandidate committees making only
8 independent expenditures to obtain a statement of
9 certification from each top contributor required to be
10 listed in an advertisement.

11 SECTION 2. Section 11-302, Hawaii Revised Statutes, is
12 amended by adding five new definitions to be appropriately
13 inserted and to read as follows:

14 "Chief executive officer" means the highest-ranking
15 officer or individual having authority to make decisions
16 regarding a corporation's affairs.

17 "Foreign corporation" means a corporation that meets at
18 least one of the following conditions:

- 19 (1) A single foreign owner holds, owns, controls, or
20 otherwise has direct or indirect beneficial ownership
21 of one per cent or more of the total equity,



1 outstanding voting shares, membership units, or other
2 applicable ownership interests of the corporation;

3 (2) Two or more foreign owners, in aggregate, hold, own,
4 control, or otherwise have direct or indirect
5 beneficial ownership of five per cent or more of the
6 total equity, outstanding voting shares, membership
7 units, or other applicable ownership interests of the
8 corporation; or

9 (3) A foreign owner participates directly or indirectly in
10 the corporation's decision-making process with respect
11 to the corporation's political activities in the
12 United States.

13 "Foreign investor" means a person or entity that:

14 (1) Holds, owns, controls, or otherwise has direct or
15 indirect beneficial ownership of equity, outstanding
16 voting shares, membership units, or other applicable
17 ownership interests of a corporation; and

18 (2) Is:

19 (A) A government of a foreign country, a foreign
20 political party, or a partnership, association,
21 corporation, organization, or other combination



1 of persons organized under the laws of or having
2 its principal place of business in a foreign
3 country; or

4 (B) A foreign national.

5 "Foreign national" means an individual who is not a citizen
6 of the United States or a national of the United States and who
7 is not lawfully admitted for permanent residence.

8 "Foreign owner" means:

9 (1) A foreign investor; or

10 (2) A corporation wherein a foreign investor holds, owns,
11 controls, or otherwise has directly or indirectly
12 acquired a beneficial ownership of equity or voting
13 shares in an amount that is equal to or greater than
14 fifty per cent of the total equity or outstanding
15 voting shares."

16 SECTION 3. Section 11-356, Hawaii Revised Statutes, is
17 amended to read as follows:

18 " ~~{}~~ §11-356 ~~{}~~ Contributions and expenditures by a foreign
19 national or foreign corporation; prohibited. (a) Except as
20 provided in subsection ~~{(b)}~~, (c), no contributions or
21 expenditures shall be made to or on behalf of a candidate,



1 candidate committee, or noncandidate committee, by a foreign
2 national or foreign corporation, including a domestic subsidiary
3 of a foreign corporation, a domestic corporation that is owned
4 by a foreign national, or a local subsidiary where
5 administrative control is retained by the foreign corporation,
6 and in the same manner prohibited under [2] title 52 United
7 States Code section [441e] 30121 and title 11 Code of Federal
8 Regulations section 110.20, as amended.

9 (b) No independent expenditures shall be made by a foreign
10 national or foreign corporation.

11 [~~b~~] (c) A foreign-owned domestic corporation may make
12 contributions if:

13 (1) Foreign national individuals do not participate in
14 election-related activities, including decisions
15 concerning contributions or the administration of a
16 candidate committee or noncandidate committee; or

17 (2) The contributions are domestically-derived.

18 (d) Every corporation that contributes to or makes an
19 expenditure on behalf of a candidate, candidate committee, or
20 noncandidate committee, within seven business days after making
21 the contribution or expenditure, shall file with the campaign



1 spending commission a statement of certification signed by the
2 corporation's chief executive officer avowing under penalty of
3 perjury that, after due inquiry, the corporation was:

4 (1) Not a foreign corporation on the date the expenditure
5 or contribution was made; or

6 (2) A foreign corporation on the date the expenditure or
7 contribution was made, but that:

8 (A) No foreign national or foreign corporation
9 participated in the corporation's
10 election-related activities, including decisions
11 concerning contributions, expenditures, or the
12 administration of a candidate committee or
13 noncandidate committee; or

14 (B) The funds from which the foreign corporation made
15 the contribution or expenditure were
16 domestically-derived.

17 (e) Every corporation that makes an independent
18 expenditure, within seven business days after making the
19 independent expenditure, shall file with the campaign spending
20 commission a statement of certification signed by the
21 corporation's chief executive officer avowing under penalty of



1 perjury that, after due inquiry, the corporation was not a
2 foreign corporation on the date the independent expenditure was
3 made.

4 (f) For the purposes of this section, "corporation" means
5 a corporation, company, limited liability company, limited
6 partnership, business trust, business association, or other
7 legal entity."

8 SECTION 4. Section 11-393, Hawaii Revised Statutes, is
9 amended to read as follows:

10 " ~~[+]§11-393[+]~~ Identification of certain top contributors
11 to noncandidate committees making only independent expenditures.

12 (a) An advertisement shall contain an additional notice in a
13 prominent location immediately after or below the notices
14 required by section 11-391, if the advertisement is broadcast,
15 televised, circulated, or published, including by electronic
16 means, and is paid for by a noncandidate committee that
17 certifies to the commission that it makes only independent
18 expenditures. This additional notice shall start with the
19 words, "The three top contributors for this advertisement are",
20 followed by the names of the three top contributors, as defined
21 in subsection ~~[(e)-7]~~ (f), who made the highest aggregate



1 contributions to the noncandidate committee for the purpose of
2 funding the advertisement; provided that:

3 (1) If a noncandidate committee is only able to identify
4 two top contributors who made contributions for the
5 purpose of funding the advertisement, the additional
6 notice shall start with the words, "The two top
7 contributors for this advertisement are", followed by
8 the names of the two top contributors;

9 (2) If a noncandidate committee is able to identify only
10 one top contributor who made contributions for the
11 purpose of funding the advertisement, the additional
12 notice shall start with the words, "The top
13 contributor for this advertisement is", followed by
14 the name of the top contributor;

15 (3) If a noncandidate committee is unable to identify any
16 top contributors who made contributions for the
17 purpose of funding the advertisement, the additional
18 notice shall start with the words, "The three top
19 contributors for this noncandidate committee are",
20 followed by the names of the three top contributors



1 who made the highest aggregate contributions to the
2 noncandidate committee; and

3 (4) If there are no top contributors to the noncandidate
4 committee, the noncandidate committee shall not be
5 subject to this section.

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

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



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

12 (d) A noncandidate committee shall obtain a statement of
13 certification from each top contributor required to be listed in
14 an advertisement pursuant to this section avowing under penalty
15 of perjury that, after due inquiry, none of the funds
16 contributed by the top contributor were derived from a foreign
17 corporation. If a noncandidate committee does not receive a
18 statement of certification from a top contributor, the
19 advertisement shall include the following statement: "Some of
20 the funds used to pay for this message may have been provided by
21 foreign corporations." A noncandidate committee shall be



1 entitled to rely on a statement of certification provided by a
2 top contributor unless the noncandidate committee has actual
3 knowledge that the statement of certification is false.

4 ~~[(d)]~~ (e) Any noncandidate committee that violates this
5 section shall be subject to a fine under section 11-410.

6 ~~[(e)]~~ (f) For purposes of this part, "top contributor"
7 means a contributor who has contributed an aggregate amount of
8 \$10,000 or more to a noncandidate committee within a twelve-
9 month period prior to the purchase of an advertisement."

10 SECTION 5. Nothing in this Act shall be construed to
11 diminish or infringe upon any right protected under the First
12 Amendment of the Constitution of the United States or conflict
13 with any federal statute or regulation.

14 SECTION 6. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 7. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



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1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 8. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 9. This Act shall take effect upon its approval.

6

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'C. Am', is written over a horizontal line.

S.B. NO. 166

Report Title:

Campaign Finance; Foreign Corporations; Foreign Nationals

Description:

Prohibits foreign nationals and foreign corporations from making independent expenditures. Requires every corporation that contributes or expends funds in a state election to file a statement of certification regarding its limited foreign influence. Requires noncandidate committees making only independent expenditures to obtain a statement of certification from each top contributor required to be listed in an advertisement.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

