



GOV. MSG. NO. 1212

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 14, 2013

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813


The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 14, 2013, the following bill was signed into law:

HB1147 HD2 SD2 CD1

RELATING TO CAMPAIGN SPENDING
ACT 112 (13)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on JUN 14 2013

ORIGINAL

ACT 112

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

H.B. NO.

1147
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO CAMPAIGN SPENDING.

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

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

10 Since *Citizens United*, case law across the country has
11 supported transparency and disclosure provisions in campaign
12 finance laws. See *Human Life of Washington, Inc. v. Brumsickle*,
13 624 F.3d 990 (9th Cir. 2010). Hawaii's disclosure and
14 transparency provisions allow our electorate to "follow the
15 money." It is the intent of the legislature to expand those
16 disclosure and transparency provisions, building on the existing
17 statutory structure.

HB1147 CD1 HMS 2013-3534



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



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

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



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

4 "§11- Identification of certain top contributors to
5 noncandidate committees making only independent expenditures.

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

18 (1) If a noncandidate committee is only able to identify
19 two top contributors who made contributions for the
20 purpose of funding the advertisement, the additional
21 notice shall start with the words, "The two top



- 1 contributors for this advertisement are", followed by
2 the names of the two top contributors;
- 3 (2) If a noncandidate committee is able to identify only
4 one top contributor who made contributions for the
5 purpose of funding the advertisement, the additional
6 notice shall start with the words, "The top
7 contributor for this advertisement is", followed by
8 the name of the top contributor;
- 9 (3) If a noncandidate committee is unable to identify any
10 top contributors who made contributions for the
11 purpose of funding the advertisement, the additional
12 notice shall start with the words, "The three top
13 contributors for this noncandidate committee are",
14 followed by the names of the three top contributors
15 who made the highest aggregate contributions to the
16 noncandidate committee; and
- 17 (4) If there are no top contributors to the noncandidate
18 committee, the noncandidate committee shall not be
19 subject to this section.



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

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

16 (c) This section shall not apply to advertisements
17 broadcast by radio or television of such short duration that
18 including a list of top contributors in the advertisement would
19 constitute a hardship to the noncandidate committee paying for
20 the advertisement. A noncandidate committee shall be subject to
21 all other requirements under this part regardless of whether a



1 hardship exists pursuant to this subsection. The commission
2 shall adopt rules pursuant to chapter 91 to establish criteria
3 to determine when including a list of top contributors in an
4 advertisement of short duration constitutes a hardship to a
5 noncandidate committee under this subsection.

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

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

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

14 "~~§~~11-314~~§~~ Duties of the commission. The duties of
15 the commission under this part are to:

- 16 (1) Develop and adopt forms required by this part;
17 (2) Adopt and publish a manual for all candidates,
18 candidate committees, and noncandidate committees,
19 describing the requirements of this part, including
20 uniform and simple methods of recordkeeping;



- 1 (3) Preserve all reports required by this part for at
2 least ten years from the date of receipt by the
3 commission;
- 4 (4) Permit the inspection, copying, or [~~dupliating~~]
5 duplication of any report required by this part
6 pursuant to rules adopted by the commission under
7 chapter 91; provided that this paragraph shall not
8 apply to the sale or use of information under section
9 11-344;
- 10 (5) Ascertain whether any [~~candidate, candidate committee,~~
11 ~~noncandidate committee, or party~~] person has failed to
12 file a report required by this part or has filed a
13 substantially defective or deficient report. The
14 commission shall notify [~~these persons~~] the person by
15 first class mail that a fine may be assessed for the
16 failure to file or the filing of a substantially
17 defective or deficient report, and the defective or
18 deficient report shall be corrected and explained.
19 All fines collected under this section as authorized
20 by [~~section~~] sections 11-340 and 11-410 shall be
21 deposited in the general fund of the State;



- 1 (6) Hold public hearings;
- 2 (7) Investigate and hold hearings for receiving evidence
- 3 of any violations pursuant to subpart I of this part;
- 4 (8) Adopt rules pursuant to chapter 91;
- 5 (9) Request the initiation of prosecution for the
- 6 violation of this part pursuant to section 11-411;
- 7 (10) Administer and monitor the distribution of public
- 8 funds under this part;
- 9 (11) Suggest accounting methods for candidates, candidate
- 10 committees, or noncandidate committees in connection
- 11 with reports and records required by this part;
- 12 (12) Employ or contract with, without regard to chapters
- 13 76, 78, and 89, persons it finds necessary for the
- 14 performance of its functions, including a full-time
- 15 executive director, and to fix their compensation;
- 16 provided that the commission shall have the authority,
- 17 at its discretion, to dismiss persons employed by or
- 18 contracted with the commission;
- 19 (13) Conduct random audits and field investigations, as
- 20 necessary; and
- 21 (14) File for injunctive relief when indicated."



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

3 1. By amending subsections (a) and (b) to read:

4 "(a) Every report required to be filed by a candidate or
5 candidate committee shall be certified as complete and accurate
6 by the candidate and treasurer.

7 (b) Every report required to be filed by a noncandidate
8 committee shall be certified as complete and accurate by the
9 chairperson and treasurer."

10 2. By amending subsection (f) to read:

11 "(f) All reports filed under this part are public
12 records[-] and shall be made available for public inspection on
13 the commission's website in a searchable database."

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

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

21 (1) The noncandidate committee's name and address;



- 1 (2) The cash on hand at the beginning of the reporting
- 2 period and election period;
- 3 (3) The reporting period and election period aggregate
- 4 totals for each of the following categories:
- 5 (A) Contributions~~[+]~~ received;
- 6 (B) Contributions made;
- 7 ~~[(B)]~~ (C) Expenditures; and
- 8 ~~[(C)]~~ (D) Other receipts;
- 9 (4) The cash on hand at the end of the reporting period;
- 10 and
- 11 (5) The surplus or deficit at the end of the reporting
- 12 period.
- 13 (b) Schedules filed with the reports shall include the
- 14 following additional information:
- 15 (1) The amount and date of deposit of each contribution
- 16 received and the name, address, occupation, and
- 17 employer of each contributor making a contribution
- 18 aggregating more than \$100 during an election period,
- 19 which was not previously reported; provided that if
- 20 all the information is not on file, the contribution

1 shall be returned to the contributor within thirty
2 days of deposit;

3 (2) The amount and date of each contribution made and the
4 name and address of the candidate, candidate
5 committee, or noncandidate committee to which the
6 contribution was made;

7 ~~[-2-]~~ (3) All expenditures, including the name and address
8 of each payee and the amount, date, and purpose of
9 each expenditure[-]; provided that:

10 (A) Expenditures for advertisements or electioneering
11 communications shall include the names of the
12 candidates supported, opposed, or clearly
13 identified;

14 (B) Expenditures for consultants, advertising
15 agencies and similar firms, credit card payments,
16 salaries, and candidate reimbursements shall be
17 itemized to permit a reasonable person to
18 determine the ultimate intended recipient of the
19 expenditure and its purpose; and



1 (C) Independent expenditures shall include the name
2 of any candidate supported, opposed, or clearly
3 identified;

4 (4) For noncandidate committees making only independent
5 expenditures, certification that no expenditures have
6 been coordinated with a candidate, candidate
7 committee, or any agent of a candidate or candidate
8 committee;

9 [~~3~~] (5) The amount, date of deposit, and description of
10 other receipts and the name and address of the source
11 of each of the other receipts;

12 [~~4~~] (6) A description of each durable asset, the date of
13 acquisition, value at the time of acquisition, and the
14 name and address of the vendor or contributor of the
15 asset; and

16 [~~5~~] (7) The date of disposition of a durable asset, value
17 at the time of disposition, method of disposition, and
18 name and address of the person receiving the asset.

19 (c) No loan may be made or received by a noncandidate
20 committee.



1 (d) The authorized person in the case of a party, or
2 treasurer in the case of a noncandidate committee that is not a
3 party, shall file a late contribution report as provided in
4 section 11-338 if the committee receives late contributions from
5 any person aggregating more than \$500 or makes late
6 contributions aggregating more than \$500.

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

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

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

19 (b) Any expenditure that is contracted or paid for and
20 that is to be rendered during the last three days prior to an



1 election shall be included in a late expenditure report as
2 provided in section 11-338."

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

5 " ~~§~~11-338 ~~§~~ **Late contributions; late expenditures;**
6 **report.** (a) The candidate, authorized person in the case of a
7 noncandidate committee that is a party, or treasurer in the case
8 of a candidate committee or other noncandidate committee, that,
9 within the period of fourteen calendar days through four
10 calendar days prior to any election, makes contributions
11 aggregating more than \$500, or receives contributions from any
12 person aggregating more than \$500, shall file a late
13 contribution report by means of the commission's electronic
14 filing system on or before the third calendar day prior to the
15 election.

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

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



- 1 (2) Name of the candidate, candidate committee, or
2 noncandidate committee making or receiving the
3 contribution;
- 4 (3) The amount of the contribution[+] received;
- 5 (4) The amount of the contribution made;
- 6 ~~[(4)]~~ (5) The contributor's aggregate contributions to the
7 candidate, candidate committee, or noncandidate
8 committee; and
- 9 ~~[(5)]~~ (6) The purpose, if any, to which the contribution
10 will be applied[-], including, for contributions to a
11 noncandidate committee, the name of any candidate
12 supported, opposed, or clearly identified.
- 13 (c) A noncandidate committee that makes independent
14 expenditures in an aggregate amount of more than \$500 within the
15 period between fourteen and four calendar days prior to any
16 election shall file a late expenditure report by means of the
17 commission's electronic filing system on or before the third
18 calendar day prior to the election. The late expenditure report
19 shall include the following information for each expenditure:
- 20 (1) The amount and date made;
- 21 (2) The vendor name, address, and contact information; and



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

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

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

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

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

18 "~~[-]~~**§11-341**~~[+]~~ **Electioneering communications; statement of**
19 **information.** (a) Each person who makes ~~[a disbursement]~~ an
20 expenditure for electioneering communications in an aggregate
21 amount of more than \$2,000 during any calendar year shall file



1 with the commission a statement of information within twenty-
2 four hours of each disclosure date provided in this section.

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

5 (1) The name of the person making the [~~disbursement,~~
6 expenditure, name of any person or entity sharing or
7 exercising discretion or control over [~~such~~] the
8 person, and the custodian of the books and accounts of
9 the person making the [~~disbursement,~~] expenditure;

10 (2) The names and titles of the executives or board of
11 directors who authorized the expenditure, if the
12 expenditure was made by a noncandidate committee,
13 business entity, or an organization;

14 [~~+~~2] (3) The state of incorporation or formation and
15 principal [~~place of business~~] address of the
16 noncandidate committee, business entity, or
17 organization or [~~]~~ for an individual, the name,
18 address, occupation, and employer of the [~~person~~]
19 individual making the [~~disbursement,~~] expenditure;

20 [~~+~~3] (4) The amount of each [~~disbursement~~] expenditure
21 during the period covered by the statement and the



1 identification of the person to whom the
2 [~~disbursement~~] expenditure was made;

3 [~~(4)~~] (5) The elections to which the electioneering
4 communications pertain and the names [~~, if known, of~~
5 ~~the~~] of any clearly identifiable candidates
6 [~~identified or to be identified,~~] and whether those
7 candidates are supported or opposed;

8 [~~(5)~~] (6) If the [~~disbursements~~] expenditures were made by
9 a candidate committee or noncandidate committee, the
10 names and addresses of all persons who contributed to
11 the candidate committee or noncandidate committee for
12 the purpose of publishing or broadcasting the
13 electioneering communications;

14 [~~(6)~~] (7) If the [~~disbursements~~] expenditures were made by
15 an organization other than a candidate committee or
16 noncandidate committee, the names and addresses of all
17 persons who contributed to the organization for the
18 purpose of publishing or broadcasting the
19 electioneering communications; [~~and~~

20 [~~(7)~~] (8) Whether or not any electioneering communication
21 is made in coordination, cooperation, or concert with



1 or at the request or suggestion of any candidate,
2 candidate committee, or noncandidate committee, or
3 agent of any candidate if any, and if so, the
4 identification of the candidate, [a] candidate
5 committee, or [a] noncandidate committee, or agent
6 involved[-]; and

7 (9) The three top contributors as required under section
8 11- , if applicable.

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

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

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

19 "Electioneering communication" means any advertisement that
20 is broadcast from a cable, satellite, television, or radio
21 broadcast station; published in any periodical or newspaper[-]



1 or by electronic means; or sent by mail at a bulk rate, and
2 that:

- 3 (1) Refers to a clearly identifiable candidate;
- 4 (2) Is made, or scheduled to be made, either within thirty
5 days prior to a primary or initial special election or
6 within sixty days prior to a general or special
7 election; and
- 8 (3) Is not susceptible to any reasonable interpretation
9 other than as an appeal to vote for or against a
10 specific candidate.

11 "Electioneering communication" shall not include
12 communications:

- 13 (1) In a news story or editorial disseminated by any
14 broadcast station or publisher of periodicals or
15 newspapers, unless the facilities are owned or
16 controlled by a candidate, candidate committee, or
17 noncandidate committee;
- 18 (2) That constitute expenditures by the [~~disbursing~~
19 expending organization;
- 20 (3) In house bulletins; or



1 (4) That constitute a candidate debate or forum, or solely
2 promote a debate or forum and are made by or on behalf
3 of the person sponsoring the debate or forum.

4 [~~(d)~~] (e) For purposes of this section, a person shall be
5 treated as having made [~~a disbursement~~] an expenditure if the
6 person has executed a contract to make the [~~disbursement~~]
7 expenditure."

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

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

- 13 (1) The name and address of the candidate, candidate
- 14 committee, noncandidate committee, or other person
- 15 paying for the advertisement; and
- 16 (2) A notice in a prominent location stating either that:
 - 17 (A) The advertisement [~~is published, broadcast,~~
 - 18 ~~televised, or circulated with~~] has the approval
 - 19 and authority of the candidate; provided that an
 - 20 advertisement paid for by a candidate, candidate



1 committee, or ballot issue committee does not
2 need to include the notice; or
3 (B) The advertisement [~~is published, broadcast,~~
4 ~~televised, or circulated without the approval and~~
5 ~~authority of]~~ has not been approved by the
6 candidate."

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

9 ~~["§11-332] Filing report by corporations. (a) A~~
10 ~~corporation shall file a report with the commission for~~
11 ~~contributions from its own treasury that aggregate more than~~
12 ~~\$1,000 per two year election period made directly to a candidate~~
13 ~~or candidate committee; provided that this section shall not~~
14 ~~authorize contributions to a candidate or candidate committee~~
15 ~~where otherwise prohibited by this part. The reporting shall be~~
16 ~~made pursuant to the time requirements contained in section 11-~~
17 ~~336 and section 11 338.~~
18 ~~(b) The filing shall include the name of the corporation,~~
19 ~~business address, a contact individual, and amounts contributed~~
20 ~~that are more than \$100 to each candidate or candidate~~
21 ~~committee."]~~



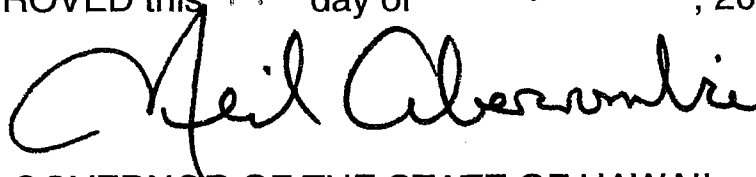
1 SECTION 12. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions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

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

10 SECTION 14. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 15. This Act shall take effect on November 5,
13 2014.

APPROVED this 14 day of JUN, 2013



GOVERNOR OF THE STATE OF HAWAII

