
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 in the seminal case
2 on campaign finance law, *Buckley v. Valeo*, 424 U.S. 1 (1976),
3 the United States Supreme Court acknowledged the sufficiently
4 important government interest in ensuring that voters are fully
5 informed through campaign spending disclosure requirements. The
6 Court also acknowledged that campaign spending disclosure
7 requirements directly serve the sufficiently important
8 government interests of deterring corruption and the appearance
9 of corruption, as well as gathering the data necessary to detect
10 campaign spending violations.

11 The legislature further finds that the State has
12 sufficiently important government interests in an informed
13 electorate, deterring corruption and the appearance of
14 corruption, and gathering data necessary to detect campaign
15 spending violations. Campaign disclosure requirements directly
16 serve these sufficiently important government interests.



1 The legislature also finds that the State's existing
2 campaign finance laws fail to reveal the source of campaign
3 spending money when the spending occurs by a 501(c)(4) nonprofit
4 organization and the funds they raise through donations are used
5 on campaign expenditures in an attempt to influence elections.
6 Because the nonprofit organization is not required under
7 existing law to disclose the identity of the donors making the
8 donations for this purpose, there is a lack of transparency that
9 fails to inform the public on who is trying to influence an
10 election.

11 The legislature notes that in recent national and local
12 elections, nonprofit organizations operating as noncandidate
13 committees have used money to influence the outcome of
14 elections. In addition, donors to these nonprofit
15 organizations, because of their status as a social welfare
16 organization, may not be aware that their donations are being
17 used for political purposes. The Internal Revenue Service is
18 currently not authorized to investigate these activities to
19 ensure compliance, which allows 501(c)(4) nonprofit
20 organizations operating as noncandidate committees to spend
21 unregulated amounts of money on political activity without any



1 consequences or oversight, which conceivably could be above the
2 political activity percentage threshold allowed.

3 The legislature additionally finds that there is a
4 compelling state interest in monitoring these nonprofit
5 organizations who are operating as noncandidate committees to
6 ensure they are not improperly using funds to influence the
7 political process. The government has a legitimate interest in
8 ensuring campaign spending laws are followed when a 501(c)(4)
9 nonprofit organization is operating as a noncandidate committee,
10 which is furthered by these additional reporting requirements.

11 The legislature also notes that there are individuals and
12 organizations that use 501(c)(4) nonprofit organizations as
13 shell organizations to pass through large donations. The
14 legislature believes that requiring 501(c)(4) nonprofit
15 organizations operating as noncandidate committees to disclose
16 the name and address of donors who make a donation individually
17 or in an aggregate of more than \$10,000, will assist the
18 campaign spending commission in discovering those nonprofit
19 organizations being used to funnel large amounts of funds as
20 donations to influence elections.



1 The purpose of this Act is to enhance existing campaign
2 spending disclosure requirements to ensure that if a 501(c)(4)
3 nonprofit organization is operating as a noncandidate committee,
4 its campaign spending activities are disclosed to the
5 electorate. Because organizations that meet campaign spending
6 thresholds are currently required to disclose the identities of
7 their contributors, under the enhanced disclosure requirements
8 contained in this Act, organizations that meet the campaign
9 spending thresholds as a noncandidate committee will also be
10 required to disclose the identities of their donors.

11 SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended
12 by adding a new section to be appropriately designated and to
13 read as follows:

14 "§11- Donors; consent; notice. (a) A nonprofit
15 organization subject to this chapter and operating as a
16 noncandidate committee may use a donation for electioneering
17 communications, independent expenditures, or contributions only
18 upon receipt of written consent from the donor to use the
19 donation for electioneering communications, independent
20 expenditures, or contributions.



1 (b) A nonprofit organization subject to this chapter and
2 operating as a noncandidate committee shall provide written
3 notice to donors that the donor's name and address may be
4 reported pursuant to this chapter in a public document if the
5 donor provides written consent to use the donation for
6 electioneering communications, independent expenditures, or
7 contributions.

8 (c) If the donor fails to provide written consent that the
9 donation may be used for electioneering communications,
10 independent expenditures, or contributions, the nonprofit
11 organization shall, within thirty days of receipt of the
12 donation, transmit to the donor a written confirmation by the
13 nonprofit organization's highest ranking official that the
14 donation will not be used for electioneering communications,
15 independent expenditures, or contributions; and the name and
16 address of the donor will not be reported by the nonprofit
17 organization pursuant to this chapter.

18 (d) Only a nonprofit organization subject to this chapter
19 and operating as a noncandidate committee shall be subject to
20 the reporting requirements of this section."



1 SECTION 3. Section 11-302, Hawaii Revised Statutes, is
2 amended by adding four new definitions to be appropriately
3 inserted and to read as follows:

4 "Donation" means all transfers of money, credit or debit
5 card transactions, online payments, payments made through a
6 third party, paid personal services, or transfers of any other
7 thing of value to a nonprofit organization.

8 "Donor" means a person that makes a donation to a nonprofit
9 organization subject to this chapter and operating as a
10 noncandidate committee.

11 "Electioneering communication":

12 (1) Means any advertisement that is broadcast from a
13 cable, satellite, television, or radio broadcast
14 station; published in any periodical or newspaper or
15 by electronic means; or sent by mail, and that:

16 (A) Refers to a clearly identifiable candidate;

17 (B) Is made, or scheduled to be made, either within
18 thirty days before a primary or initial special
19 election or within sixty days before a general or
20 special election; and



- 1 (C) Is not susceptible to any reasonable
- 2 interpretation other than as an appeal to vote
- 3 for or against a specific candidate; and
- 4 (2) Shall not include communications:
 - 5 (A) In a news story or editorial disseminated by any
 - 6 broadcast station, publisher of periodicals or
 - 7 newspapers, or by electronic means, unless the
 - 8 facilities are owned or controlled by a
 - 9 candidate, candidate committee, or noncandidate
 - 10 committee;
 - 11 (B) In house bulletins; or
 - 12 (C) That constitute a candidate debate or forum, or
 - 13 solely promote a debate or forum and are made by
 - 14 or on behalf of the person or organization
 - 15 sponsoring the debate or forum.

16 "Nonprofit organization" means an organization that is
 17 exempt from federal taxation under section 501(c)(4) of the
 18 Internal Revenue Code of 1986, as amended."

19 SECTION 4. Section 11-335, Hawaii Revised Statutes, is
 20 amended to read as follows:



1 **"§11-335 Noncandidate committee reports.** (a) The
2 authorized person in the case of a party, or treasurer in the
3 case of a noncandidate committee that is not a party, shall file
4 preliminary, final, and supplemental reports that disclose the
5 following information:

- 6 (1) The noncandidate committee's name and address;
7 (2) The cash on hand at the beginning of the reporting
8 period and election period;
9 (3) The reporting period and election period aggregate
10 totals for each of the following categories:
11 (A) Contributions received;
12 (B) Contributions made;
13 (C) Expenditures; and
14 (D) Other receipts;
15 (4) The cash on hand at the end of the reporting period;
16 and
17 (5) The surplus or deficit at the end of the reporting
18 period.

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



1 (1) The amount and date of deposit of each contribution
2 received and the name, address, occupation, and
3 employer of each contributor making a contribution
4 aggregating more than \$100 during an election period,
5 which was not previously reported[~~r~~] pursuant to this
6 section; provided that if:
7 (A) All the information is not on file, the
8 contribution shall be returned to the contributor
9 within thirty days of deposit; and
10 (B) A noncandidate committee making only independent
11 expenditures receives a contribution of more than
12 \$10,000 in the aggregate in an election period
13 from an entity other than an individual, for-
14 profit business entity, or labor union, then the
15 schedule shall include:
16 (i) The internet address where the contributing
17 entity's disclosure report can be publicly
18 accessed, if the contributing entity is
19 subject to state or federal disclosure
20 reporting requirements regarding the source
21 of the contributing entity's funds;



- 1 (ii) The name, address, occupation, and employer
2 of each funding source that contributed \$100
3 or more in the aggregate in an election
4 period to that contributing entity; or
5 (iii) An acknowledgment that the contributing
6 entity is not subject to any state or
7 federal disclosure reporting requirements
8 regarding the source of the contributing
9 entity's funds;
- 10 (2) The amount and date of each contribution made and the
11 name and address of the candidate, candidate
12 committee, or noncandidate committee to which the
13 contribution was made;
- 14 (3) All expenditures, including the name and address of
15 each payee and the amount, date, and purpose of each
16 expenditure; provided that:
- 17 (A) Expenditures for advertisements or electioneering
18 communications shall include the names of the
19 candidates supported, opposed, or clearly
20 identified;



- 1 (B) Expenditures for consultants, advertising
2 agencies and similar firms, credit card payments,
3 and salaries shall be itemized to permit a
4 reasonable person to determine the ultimate
5 intended recipient of the expenditure and its
6 purpose;
- 7 (C) Independent expenditures shall include the name
8 of any candidate supported, opposed, or clearly
9 identified; and
- 10 (D) The purpose of an independent expenditure shall
11 include the name of the candidate who is
12 supported or opposed by the expenditure, and
13 whether the expenditure supports or opposes the
14 candidate;
- 15 (4) For noncandidate committees making only independent
16 expenditures, certification that no expenditures have
17 been coordinated with a candidate, candidate
18 committee, or any agent of a candidate or candidate
19 committee;



- 1 (5) The amount, date of deposit, and description of other
2 receipts and the name and address of the source of
3 each of the other receipts;
- 4 (6) A description of each durable asset, the date of
5 acquisition, value at the time of acquisition, and the
6 name and address of the vendor or contributor of the
7 asset; [~~and~~]
- 8 (7) The date of disposition of a durable asset, value at
9 the time of disposition, method of disposition, and
10 name and address of the person receiving the asset[~~-~~];
11 and
- 12 (8) For donations received by a nonprofit organization
13 subject to this chapter and operating as a
14 noncandidate committee, the amount and date of deposit
15 of each donation received and the name and address of
16 each donor making a donation individually or
17 aggregating more than \$10,000 during an election
18 period, which was not previously reported pursuant to
19 this section; provided that a schedule filed pursuant
20 to this section shall not include a donor if the donor
21 has not provided consent pursuant to section 11- .



1 (c) No loan may be made or received by a noncandidate
2 committee.

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

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

11 SECTION 5. Section 11-338, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

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

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

17 (2) Name of the candidate, candidate committee, or
18 noncandidate committee making or receiving the
19 contribution; provided that, for noncandidate
20 committees making only independent expenditures, if a
21 late contribution greater than \$5,000 in the aggregate



1 is received from an entity other than an individual,
2 for-profit business entity, or labor union, then the
3 report shall include:

4 (A) The internet address where the contributing
5 entity's disclosure report can be publicly
6 accessed, if the contributing entity is subject
7 to any state or federal disclosure reporting
8 requirements regarding the source of the
9 contributing entity's funds;

10 (B) The name, address, occupation, and employer of
11 each funding source of more than \$100 in the
12 aggregate to that contributing entity; or

13 (C) An acknowledgment that the contributing entity is
14 not subject to any state or federal disclosure
15 reporting requirements regarding the source of
16 the contributing entity's funds;

17 (3) The amount of the contribution received;

18 (4) The amount of the contribution made;

19 (5) The contributor's aggregate contributions to the
20 candidate, candidate committee, or noncandidate
21 committee; [~~and~~]



1 (6) The purpose, if any, to which the contribution will be
 2 applied, including, for contributions to a
 3 noncandidate committee, the name of any candidate
 4 supported, opposed, or clearly identified[-]; and
 5 (7) For a nonprofit organization filing a late
 6 contribution report, the amount and date of deposit of
 7 each donation received and the name and address of
 8 each donor making a donation individually or
 9 aggregating more than \$10,000 during an election
 10 period, which was not previously reported pursuant to
 11 section 11-335; provided that a schedule filed
 12 pursuant to this section shall not include a donor if
 13 the donor has not provided consent pursuant to section
 14 11- ."

15 SECTION 6. Section 11-341, Hawaii Revised Statutes, is
 16 amended as follows:

17 1. By amending subsection (b) to read:

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

20 (1) The name of the person making the expenditure, name of
 21 any person or entity sharing or exercising discretion



- 1 or control over the person, and the custodian of the
2 books and accounts of the person making the
3 expenditure;
- 4 (2) The names and titles of the executives or board of
5 directors who authorized the expenditure, if the
6 expenditure was made by a noncandidate committee,
7 business entity, or an organization;
- 8 (3) The state of incorporation or formation and principal
9 address of the noncandidate committee, business
10 entity, or organization or for an individual, the
11 name, address, occupation, and employer of the
12 individual making the expenditure;
- 13 (4) The amount of each expenditure during the period
14 covered by the statement of information and the
15 identification of the person to whom the expenditure
16 was made;
- 17 (5) The elections to which the electioneering
18 communications pertain and the names of any clearly
19 identifiable candidates and whether those candidates
20 are supported or opposed;



- 1 (6) If the expenditures were made by a noncandidate
2 committee, the names and addresses of all persons who
3 contributed to the noncandidate committee for the
4 purpose of publishing or broadcasting the
5 electioneering communications;
- 6 (7) If the expenditures were made by an organization other
7 than a noncandidate committee, the names and addresses
8 of all persons who contributed to the organization for
9 the purpose of publishing or broadcasting the
10 electioneering communications;
- 11 (8) If the expenditures were made by a nonprofit
12 organization, the amount and date of the deposit of
13 each donation received and the name and address of
14 each donor making a donation individually or
15 aggregating more than \$10,000 during an election
16 period, which was not previously reported pursuant to
17 section 11-335; provided that a schedule filed
18 pursuant to this section shall not include a donor's
19 name or address if the donor has not provided consent
20 pursuant to section 11- ;



1 ~~[(+8)]~~ (9) Whether any electioneering communication is made
2 in coordination, cooperation, or concert with or at
3 the request or suggestion of any candidate, candidate
4 committee, or noncandidate committee, or agent of any
5 candidate if any, and if so, the identification of the
6 candidate, candidate committee, or noncandidate
7 committee, or agent involved; and

8 ~~[(+9)]~~ (10) The three top contributors as required under
9 section 11-393, if applicable."

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

11 "(d) For purposes of this section:

12 "Disclosure date" means, for every calendar year, the first
13 date ~~[by which a person has made expenditures during that same~~
14 ~~year of more than \$1,000 in the aggregate for electioneering~~
15 ~~communications.~~

16 ~~"Electioneering communication" means any advertisement that~~
17 ~~is broadcast from a cable, satellite, television, or radio~~
18 ~~broadcast station; published in any periodical or newspaper or~~
19 ~~by electronic means; or sent by mail, and that:~~

20 ~~(1) Refers to a clearly identifiable candidate;~~



1 ~~(2) Is made, or scheduled to be made, either within thirty~~
2 ~~days before a primary or initial special election or~~
3 ~~within sixty days before a general or special~~
4 ~~election; and~~

5 ~~(3) Is not susceptible to any reasonable interpretation~~
6 ~~other than as an appeal to vote for or against a~~
7 ~~specific candidate.~~

8 ~~"Electioneering communication" shall not include communications:~~

9 ~~(1) In a news story or editorial disseminated by any~~
10 ~~broadcast station or publisher of periodicals or~~
11 ~~newspapers, unless the facilities are owned or~~
12 ~~controlled by a candidate, candidate committee, or~~
13 ~~noncandidate committee;~~

14 ~~(2) That constitute actual expenditures by the expending~~
15 ~~organization;~~

16 ~~(3) In house bulletins; or~~

17 ~~(4) That constitute a candidate debate or forum, or solely~~
18 ~~promote a debate or forum and are made by or on behalf~~
19 ~~of the person sponsoring the debate or forum.]~~

20 during the calendar year on which an electioneering
21 communication is publicly distributed, and the date on which any



1 subsequent electioneering communication is publicly distributed;
2 provided that the person making the electioneering communication
3 has made expenditures for electioneering communications of more
4 than \$2,000 in the aggregate. "Disclosure date" for mailers
5 means the date the mailers are first mailed.

6 "Person" shall not include a candidate or candidate
7 committee."

8 SECTION 7. Section 11-363, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By amending subsection (a) to read:

11 "(a) Expenditures or disbursements for electioneering
12 communications [~~as defined in section 11-341~~], or any other
13 coordinated activity made by any person for the benefit of a
14 candidate in cooperation, consultation, or concert with, or at
15 the request or suggestion of, a candidate, a candidate
16 committee, or their agents, shall be considered to be a
17 contribution to the candidate and expenditure by the candidate."

18 2. By amending subsection (c) to read:

19 "(c) [~~"Coordinated"~~] For purposes of this section,
20 "coordinated activity" means:



- 1 (1) The payment by any person in cooperation,
2 consultation, or concert with, at the request of, or
3 pursuant to, any general or particular understanding
4 with a candidate, candidate committee, the party of a
5 candidate, or an agent of a candidate, candidate
6 committee, or the party of a candidate;
- 7 (2) The payment by any person for the production,
8 dissemination, distribution, or republication of any
9 written, graphic, or other form of campaign material,
10 in whole or in part, prepared by a candidate,
11 candidate committee, or noncandidate committee, or an
12 agent of a candidate, candidate committee, or
13 noncandidate committee; or
- 14 (3) Any payment by any person or contract for any
15 electioneering communication[~~as defined in section~~
16 ~~11-341,~~] where the payment is coordinated with a
17 candidate, candidate committee, the party of the
18 candidate, or an agent of a candidate, candidate
19 committee, or the party of the candidate."

20 SECTION 8. Section 11-393, Hawaii Revised Statutes, is
21 amended by amending subsection (e) to read as follows:



1 "(e) For purposes of this [~~part,~~] section, "top
2 contributor" means a contributor who has contributed an
3 aggregate amount of \$10,000 or more to a noncandidate committee
4 within a twelve-month period [~~prior to~~] before the purchase of
5 an advertisement."

6 SECTION 9. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 10. This Act shall take effect on January 1, 2023.



Report Title:

Campaign Spending; Nonprofit Organizations; Electioneering
Communication; Donors; Disclosures

Description:

Specifies consent procedures for when 501(c)(4) nonprofit organizations operating as noncandidate committees can use donations for electioneering communications, independent expenditures, or contributions and requires these organizations to provide certain written notice to donors. Requires 501(c)(4) nonprofit organizations operating as noncandidate committees to disclose the name and address of donors who make a donation individually or in an aggregate of more than \$10,000, with certain exceptions. Adds definitions. Effective 1/1/2023.
(CD1)

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