

Ballot Issue Committee Guidance (August, 2011)

This is issued to provide guidance to a ballot issue committee regarding the application of Hawaii's campaign finance laws during the 2012 election.

I. Definition of a ballot issue committee

"Ballot issue committee" means a noncandidate committee¹ that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election."² (Emphasis added)

II. Registration; reporting and other requirements

A ballot issue committee must file an organizational report to register with the Commission as a noncandidate committee if the following requirements are met:

- The issue is certified to be on the ballot at the next applicable election.
- The committee receives contributions or makes expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period.

The ballot issue committee's organizational report must be filed with the Commission within ten days of receiving contributions or making expenditures that exceed this \$1,000 threshold; except that within the thirty day period prior to an election, a noncandidate committee shall file an organizational report within two days of receiving contributions or making expenditures that amount to more than \$1,000, in the aggregate, in a two-year election period.³ In order to determine whether the threshold is met, contributions or expenditures are aggregated beginning with the certification of the issue.

The ballot issue committee also must comply with reporting and other requirements applicable to a noncandidate committee, including the following:

- Appoint a chairperson;⁴
- Appoint a treasurer;⁵
- Appoint a custodian of books;⁶
- Open a bank account and deposit all contributions and make all expenditures from that account;⁷

¹ "Noncandidate committee" means a committee as defined in this section 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. Act 211, SLH 2010, §11-302.

² Act 211, SLH 2010, §11-302

³ Act 211, SLH 2010, §11-321(g)

⁴ Act 211, SLH 2010, §11-323

⁵ Act 211, SLH 2010, §11-324

⁶ Act 211, SLH 2010, §11-323(9)

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- Not accepting or making any loans;⁸
- File periodic reports with the Commission which disclose contributions and expenditures;⁹ and
- Retain complete records for at least five years.¹⁰ The “[r]ecords shall include vouchers, worksheets, and receipts which shall provide in sufficient detail the necessary information and data, from which the reports and statements may be verified, explained, or clarified, and checked for accuracy and completeness.”¹¹

This is the reporting schedule for a ballot issue committee in the 2012 election:

Due date	Reporting period	Report
August 1, 2012	January 1 through July 27, 2012	Preliminary Primary
August 8, 2012	July 28 through August 7, 2012	Late Contributions Report ¹²
August 31, 2012	July 28 through August 11, 2012	Final Primary Report
October 29, 2012	August 12 through October 22, 2012	Preliminary General Report
November 5, 2012	October 23 through November 2, 2012	Late Contributions Report ¹³
December 6, 2012	October 23 through November 6, 2012	Final Election Period Report

Additional guidance is available on the Commission’s website at www.hawaii.gov/campaign, including the 2012 Guidebook for Noncandidate Committees. The Guidebook may be viewed or downloaded under “Noncandidate Committee Guidance,” and by clicking “Noncandidate Committee Guidebook.”

⁷ Act 211, SLH 2010, §11-351(a)

⁸ Act 211, SLH 2010, §11-373

⁹ Act 211, SLH 2010, §§11-335 and 11-336

¹⁰ Section 3-160-23(3), Hawaii Administrative Rules (HAR)

¹¹ Section 3-160-23(3), HAR

¹² The “Late Contributions Report” is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregates more than \$500 during the period of fourteen calendar days through four calendar days prior to the Primary Election. Late Contributions must also be reported on the Final Primary Report. The report is not required if there are no Late Contributions.

¹³ The “Late Contributions Report” is for reporting contributions received from any person or entity that aggregates more than \$500 and for reporting contributions made to candidates that aggregates more than \$500 during the period of fifteen calendar days through four calendar days prior to the General Election. Late Contributions must also be reported on the Final Election Period Report. The report is not required if there are no Late Contributions.

III. Contributions to a ballot issue committee; expenditures by the ballot issue committee

The ballot issue committee's "exclusive purpose" must be to receive contributions, make expenditures, or incur financial obligations "...for or against any question or issue appearing on the ballot..."¹⁴

"A ballot issue committee shall receive contributions or make expenditures only for or against any issue appearing on the ballot at the next applicable election...(and)...is prohibited from receiving contributions or making expenditures to influence the nomination or election of a candidate to office."¹⁵

If a person is not subject to any statutory prohibition (e.g., state or county contractor, foreign corporation or foreign national), the person's contributions to a ballot issue committee are **not** subject to contribution limits¹⁶ (i.e., the \$1,000 cap per person per election for contributions to a noncandidate committee is not applicable when a person contributes to a ballot issue committee).

A candidate, generally, may not contribute campaign funds to a ballot issue committee. While a candidate may donate campaign funds to eligible community and educational groups subject to limitations, the eligible groups do not include "organizations established temporarily to advocate or promote political or ballot issues"¹⁷ unless the ballot issue involves a "question, or issue with which...(the candidate)...is directly associated."¹⁸

IV. Advertisement by a ballot issue committee

An "advertisement"¹⁹ by a ballot issue committee must contain the name and address of the committee paying for the advertisement.²⁰ The recommended terms for indicating who paid for the advertisement is "Paid for by."

V. After the election

After the election, the ballot committee must terminate within ninety days and dispose of surplus funds as required by the law.²¹

¹⁴ Act 211, SLH 2010, §11-302

¹⁵ Act 211, SLH 2010, §11-327

¹⁶ Act 211, SLH 2010, §11-358

¹⁷ Section 3-160-23(c), HAR

¹⁸ Act 211, SLH 2010, §11-381(a)(1)(B)

¹⁹ "Advertisement" means any communication, excluding sundry items such as bumper stickers, that:

(1) Identifies a candidate directly or by implication, or identifies an issue or question that will appear on the ballot at the next applicable election; and
(2) Advocates or supports the nomination, opposition, or election of the candidate, or advocates the passage or defeat of the issue or question on the ballot. Act 211, SLH 2010, §11-302.

²⁰ Act 211, SLH 2010, §11-391

To terminate, a ballot issue committee shall:

- Cease receiving contributions or making expenditures;
- Expend all funds by returning funds to contributors or donating funds to community organizations or the Hawaii Election Campaign Fund;²²
- Pay all expenditures (no deficit);
- Close the bank account and provide a copy of the closing statement showing a zero balance to the Commission;
- File all required reports with the Commission;
- Mail or deliver the “Request for Termination of Registration” form to the Commission; and
- Obtain the Commission’s approval to terminate. The committee must continue to file reports until it receives a copy of the approved Request for Registration Termination form.

²¹ “ Every ballot issue committee shall terminate its registration with the commission by filing a termination report to be approved as provided in section 11-326. The termination report shall be filed within ninety days after the election for which the issue appeared on the ballot.” Act 211, SLH 2010, §11-327(d).

²² “A ballot issue committee shall return all surplus funds to the contributors or donate funds to a community service, educational, youth, recreational, charitable, scientific, or literary organization within ninety days after the election for which the issue appeared on the ballot. Surplus funds that are not returned or donated within ninety days after the election for which the issue appeared on the ballot shall escheat to the Hawaii election campaign fund.” Act 211, SLH 2010, §11-327(c).