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135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Gavarone and McColley

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SUMMARY

Campaign spending by foreign nationals

- Prohibits a foreign national from making a campaign contribution or expenditure to support or oppose a state or local ballot issue, either directly or through another entity.
- Prohibits any entity, including a continuing association or corporation, from accepting such a contribution or expenditure.
- Prohibits a lawful permanent U.S. resident, also known as a green card holder, from making contributions or expenditures regarding ballot issues or candidates.
- Requires an entity that accepts a prohibited foreign contribution to return the contribution.
- Requires all political entities to certify on their campaign finance filings, under penalty of election falsification, that they have not accepted, and will not accept, any campaign contributions that are prohibited under the Campaign Finance Law.

Related campaign finance changes

- Clarifies that the term “expenditure” means the disbursement or use of a contribution *or other funds or anything of value* for the purpose of influencing the results of an election.
- Clarifies that the term “independent expenditure” includes an expenditure to advocate support of or opposition to an identified ballot issue or to achieve the successful circulation of an initiative or referendum petition, regardless of whether the issue has yet been certified to appear on the ballot.
- Specifies that if the committee in charge of a statewide or local initiative or referendum petition receives a contribution or makes an expenditure for the purpose of achieving the successful circulation of the petition, the committee is considered a political action

committee (PAC) for that purpose and must file periodic disclosures in the same manner as any other PAC.

DETAILED ANALYSIS

Campaign spending by foreign nationals

Prohibition

Under the bill, a foreign national is prohibited from making a campaign contribution or expenditure to support or oppose a state or local ballot issue, either directly or through another entity. No entity may accept such a contribution or expenditure (see **“Political entities covered by the bill,”** below). And, the bill prohibits a lawful permanent U.S. resident, also known as a green card holder, from making contributions or expenditures regarding ballot issues or candidates.

Under existing Ohio law, a foreign national may not make a contribution or expenditure in support of or opposition to a state or local candidate. And, no political entity may solicit or accept a contribution or expenditure from a foreign national. Currently, “foreign national” means any of the following:¹

- In the case of an individual, an individual who is not a U.S. citizen or national or a lawful permanent resident. (The bill removes the exception for lawful permanent residents, meaning that those individuals may not make contributions or expenditures.)
- A government of a foreign country or of a political subdivision of a foreign country;
- A foreign political party;
- A person, other than an individual, that is organized under the laws of a foreign country or has its principal place of business in a foreign country.

The current law mirrors federal law. Under the federal statute, a foreign national is prohibited from making a contribution or expenditure regarding a federal, state, or local candidate, but not regarding a ballot issue. And, federal law allows a lawful permanent U.S. resident to make contributions and expenditures.²

Penalty

The continuing penalty for a foreign national who makes a prohibited contribution or expenditure, or for a person that accepts a prohibited contribution or expenditure from a

¹ R.C. 3517.13(W).

² 52 United States Code (U.S.C.) 30121, prohibiting foreign nationals from making contributions “in connection with a federal, state, or local election.” In 2021, the Federal Election Commission determined that the federal statute does not apply to ballot issues. (Federal Election Commission, [Matter Under Review #7523](#) (2021), available at [fec.gov](https://www.fec.gov) under “Legal resources,” “Enforcement” via a search for closed MURs.)

foreign national, is a fine of three times the amount involved or \$10,000, whichever is greater. Current law also allows the Secretary of State to direct a person that accepts a prohibited contribution or expenditure from a foreign national to return it to the foreign national. Under the bill, the violator *must* return the contribution, in addition to paying the fine.³

However, under continuing law, the mandatory fine applies only if a case is resolved in court. Before any prosecution or court proceeding may begin for a violation of the Campaign Finance Law, a complaint must be filed with the Ohio Elections Commission. If the Commission determines that a violation has occurred, the Commission has discretion to refer the matter to a prosecutor for potential court proceedings or instead to impose an administrative fine in any amount, up to the maximum court fine.⁴

Certifying compliance

Under the bill, all campaign committees and other political entities must certify on their campaign finance filings, under penalty of election falsification, that they have not accepted, and will not accept, any campaign contributions that are prohibited under the Campaign Finance Law. This certification must be included on an entity's designation of treasurer that it files with the Secretary of State upon initially forming, as well as on its periodic statements of contributions and expenditures.⁵

Related campaign finance changes

Expenditures from alternate sources of funds

The bill clarifies that the term "expenditure" means the disbursement or use of a contribution *or other funds or anything of value* for the purpose of influencing the results of an election. Under continuing law, "contribution" means a donation that is made, received, or used for the purpose of influencing the results of an election. By making this change, the bill ensures that an entity that does not collect political contributions, but that uses its funds for political purposes, still is considered to be making an expenditure under the Campaign Finance Law and is subject to regulation. For example, if a foreign corporation uses its business profits to fund a campaign ad, that spending is considered a prohibited expenditure.⁶

Independent expenditures regarding ballot issues

The bill clarifies that the term "independent expenditure" includes an expenditure to advocate support of or opposition to an identified ballot issue or to achieve the successful circulation of an initiative or referendum petition, regardless of whether the issue has yet been certified to appear on the ballot. Currently, the definition refers only to an expenditure regarding a candidate that is not made with the consent of, in coordination, cooperation, or

³ R.C. 3517.13(W) and 3517.992(AA).

⁴ R.C. 3517.153, 3517.155(C), and 3517.993, not in the bill.

⁵ R.C. 3517.10.

⁶ R.C. 3517.01(C)(5) and (6).

consultation with, or at the request or suggestion of any candidate or agent of a candidate. However, the continuing law that requires entities to disclose their independent expenditures refers to both ballot issue and candidate related spending as independent expenditures.⁷

Additionally, the bill specifies that if the committee in charge of an initiative or referendum petition receives a contribution or makes an expenditure for the purpose of achieving the successful circulation of the petition, the committee is considered a political action committee (PAC) for that purpose and must file periodic disclosures in the same manner as any other PAC. The bill applies this requirement both to statewide petition activities, as under current law, and also to local initiative or referendum petitions.

Although the current law generally would appear to include any petition committee as a PAC, the section of law specifically governing statewide petition committees does not refer to them in that manner and lays out separate reporting requirements. Under that law, a statewide petition committee that receives contributions or makes expenditures must file a report of its contributions and expenditures within 30 days after filing the petition with the Secretary of State. If the signature drive is not successful, and the committee never files the petition with the Secretary, the statute would appear not to require the committee to file any report.

Instead, under the bill, a statewide or local petition committee that accepts any contributions or makes any expenditures must file disclosures as a PAC according to the general campaign finance reporting schedule. If the committee never accepts a contribution or makes an expenditure, it must file a statement to that effect within 30 days after it files the completed petition with the election officials.⁸

Political entities covered by the bill

Background on continuing associations and corporations

The bulk of Ohio's campaign finance requirements apply only to a specific set of regulated political entities:

- Candidates and their campaign committees;
- Political parties and their state candidate funds;
- Legislative campaign funds (LCFs), which are operated by the majority and minority caucuses in the General Assembly;
- Political action committees (PACs), sometimes called separate segregated funds under federal law. A PAC is an organization whose primary purpose is to influence election results through express advocacy and that is not one of the entities listed above.
- Political contributing entities (PCEs), which are entities that may lawfully make contributions and expenditures and that are not one of the entities listed above. A PCE

⁷ R.C. 3517.01(C)(17). See also R.C. 3517.105, not in the bill.

⁸ R.C. 3517.12. See also R.C. 3517.01(C)(8).

may include an organization whose primary purpose is not politics, but that engages in political spending on a limited basis.

Under continuing law, only these entities are required to file regular reports of contributions and expenditures and to disclose the source of their donations.

That list excludes certain other entities that lawfully make contributions or expenditures, either as authorized under the Revised Code or as permitted under court decisions:

- Continuing associations, which are permanent, year-round associations that have a primary purpose other than influencing election results. The definitions of PAC and PCE specifically exempt continuing associations. This category includes 501(c)(3), 501(c)(4), and 501(c)(6) nonprofit corporations, but does not include labor organizations.
- Corporations, including for-profit corporations, incorporated labor organizations, and any nonprofit corporation that is not considered a continuing association. The definition of a PCE appears to exclude corporations because under the Revised Code, they may not lawfully “make contributions and expenditures.” The Secretary of State advises corporations that they are not PCEs.

Continuing associations and corporations are allowed to make independent expenditures concerning candidates and ballot issues, but they are not regulated like PACs or PCEs. They must report their independent expenditures and identify themselves in their advertising, but they are not required to disclose the sources of their funding.⁹

Accepting contributions from foreign nationals

Existing law only prohibits a candidate, campaign committee, political party, LCF, PAC, or PCE from soliciting or accepting a contribution or expenditure from a foreign national. The prohibition does not apply to a continuing association or corporation. The bill closes that gap by adding language to prohibit a continuing association, corporation, or labor organization from soliciting or accepting foreign contributions or expenditures.¹⁰

However, because a continuing association or corporation is not required to disclose its finances, it probably would be difficult for the state to detect any violation. For example, a corporation that accepted foreign funds and used them to run a political ad would only be required to report the amount it spent on the ad. On the other hand, a PAC that did so would be required to report its total cash on hand, the source and amount of every donation, and the nature and amount of every expenditure from those funds, as well as making its bank records

⁹ R.C. 3517.01 and 3517.10. See also R.C. 3517.105 and 3599.03, not in the bill, and Ohio Secretary of State, [Campaign Finance Handbook](#) (PDF), ch. 8, p. 1 (2022), available at ohiosos.gov under “Campaign Finance.”

¹⁰ R.C. 3517.13(W).

available. Even if the PAC attempted to conceal the foreign funding, the violation might be detected through forensic accounting.

HISTORY

Action	Date
Introduced	01-23-24
