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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 114\*  
135<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 114's Fiscal Note](#)

**Version:** As Reported by Senate General Government

**Primary Sponsors:** Reps. Humphrey and Seitz

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### SUMMARY

#### Deadline to certify presidential candidates

- Delays the deadline, from August 7 to August 23, for a major political party to certify the names of its presidential and vice-presidential candidates to the Secretary of State for purposes of the 2024 general election.
- Allows a party to make that certification, for purposes of the 2024 election, in writing by any reasonably reliable method that, under the circumstances, will provide for the Secretary to receive it by the deadline, including hand delivery, U.S. mail, commercial carrier, facsimile, or email.

#### Campaign finance

##### Use of campaign funds for child care

- Allows a candidate to use the candidate's campaign fund to pay the cost of child care while the candidate is campaigning or carrying out official duties, so long as certain requirements are met.
- Allows a candidate or public official or employee to accept funds from a political entity to pay the cost of child care while the person is campaigning or fundraising for the entity or attending a political meeting, so long as those requirements are met.

##### Campaign spending by foreign nationals

- Prohibits a foreign national from making a contribution or expenditure to support or oppose a state or local ballot issue, either directly or through another entity, and retains

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\* This analysis was prepared before the report of the Senate General Government Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

the current prohibition against a foreign national making a contribution or expenditure regarding a candidate.

- Prohibits a foreign national from soliciting another person to make a contribution or expenditure.
- Expands the list of entities that are prohibited from soliciting or accepting a contribution or expenditure from a foreign national.
- Prohibits any person from knowingly aiding or facilitating a violation of the prohibitions described above regarding foreign nationals.
- 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 all political entities to certify on their campaign finance filings, under penalty of election falsification, that they have not knowingly accepted, and will not knowingly accept, any campaign contributions that are prohibited under the Campaign Finance Law.

### **Expenditures from alternate sources of funds**

- Clarifies that the term “expenditure” means the disbursement or use of a contribution *or other funds* for the purpose of influencing the results of an election.

### **Independent expenditures regarding ballot issues**

- 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.

### **Ballot issue committees**

- 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.

### **Enforcement of the Campaign Finance Law**

- Requires, when the Ohio Elections Commission (OEC) refers a violation of the Campaign Finance Law for prosecution, that the Attorney General prosecute most cases that currently would go to the Franklin County Prosecutor.
- Provides a procedure for choosing a different prosecutor if the appropriate prosecutor is a victim or witness or otherwise involved in the case.
- Retains the existing penalty for violating the law regarding contributions and expenditures by foreign nationals, but requires a violator to return the contribution to the foreign national, in addition to paying a fine.

- Requires the OEC, if it finds a violation of that law, to either (1) impose the maximum fine and, if applicable, order the violator to return the funds, or (2) refer the matter for prosecution.
- Allows the Attorney General, if the OEC refers a violation of that law to a county prosecutor, to transfer the case to the Attorney General for prosecution upon the request of the county prosecutor or upon the Attorney General’s own initiative, unless the Attorney General has a conflict of interest.

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## TABLE OF CONTENTS

Deadline to certify presidential candidates.....	3
Campaign finance.....	4
Use of campaign funds for child care.....	4
Candidate’s own campaign funds .....	4
Other political entities’ funds.....	5
Campaign spending by foreign nationals.....	6
Foreign nationals making contributions or expenditures .....	6
Accepting contributions or expenditures from foreign nationals.....	7
Aiding or facilitating a violation.....	7
Definition of “foreign national” .....	8
Certifying compliance.....	8
Expenditures from alternate sources of funds .....	8
Independent expenditures regarding ballot issues .....	8
Ballot issue committees .....	9
Enforcement of the Campaign Finance Law .....	9
Violations involving foreign nationals .....	10
Political entities covered by the bill .....	11
Background on continuing associations and corporations .....	11
Accepting contributions from foreign nationals .....	12

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## DETAILED ANALYSIS

### **Deadline to certify presidential candidates**

For purposes of the 2024 general election, the bill delays the deadline for a major political party to certify the names of its presidential and vice-presidential candidates to the Secretary of State after it nominates those candidates at its convention. Under the bill, a party must certify its candidates by the 74<sup>th</sup> day before the election (August 23), instead of the 90<sup>th</sup> day (August 7).

The bill specifies that for purposes of the 2024 election, a party may make that certification in writing by any reasonably reliable method that, under the circumstances, will provide for the Secretary to receive it by the deadline, including by hand delivery, any type of U.S. mail, commercial carrier service, facsimile, or email.<sup>1</sup>

## **Campaign finance**

### **Use of campaign funds for child care**

#### **Candidate's own campaign funds**

The bill allows a candidate for state or local office to use the candidate's campaign fund (that is, political contributions received from donors) to pay the cost of child care while the candidate is campaigning or carrying out official duties, so long as all of the following apply:

- The costs are incurred only as a direct result of the candidate's activities and would not otherwise be incurred;
- The costs are reasonable;
- The child care is rendered in Ohio;
- The candidate is a primary caregiver of the child;
- The child is 12 or younger.

Continuing law limits the purposes for which a candidate may use the candidate's campaign fund. In general, a candidate may not use campaign funds to cover the candidate's personal expenses, except that a candidate may be reimbursed from the candidate's campaign fund for the following types of expenses:

- Legitimate and verifiable prior campaign expenses incurred by the candidate;
- Legitimate and verifiable ordinary and necessary prior expenses incurred by the candidate in connection with duties as the holder of a public office, including expenses incurred through participation in nonpartisan or bipartisan events if the participation of the candidate would normally be expected;
- Legitimate and verifiable ordinary and necessary prior expenses incurred by the candidate while doing any of the following:
  - Engaging in activities in support of or opposition to another candidate, a political party, or a ballot issue;
  - Raising funds for a political entity or another candidate;
  - Participating in the activities of a political entity;
  - Attending a political party convention or other political meeting.

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<sup>1</sup> Section 3 of the bill.

The bill specifies that the cost of child care is considered an “ordinary and necessary expense” under this law, so long as all the requirements listed above are met.

For example, if a candidate normally stayed at home during the day to care for the candidate’s infant, but the candidate hired a babysitter at a reasonable rate to stay at home with the child so that the candidate could campaign or carry out official duties, the bill would allow the candidate to use campaign funds to pay the babysitter.

On the other hand, if a candidate normally sent the candidate’s children to a day care facility, and the candidate campaigned or carried out official duties while the children were at the facility, the bill would not allow the candidate to use campaign funds to pay for day care because the candidate would have paid for day care regardless of whether the candidate was campaigning or carrying out official duties. And, under the bill’s requirements that the child care be for a reasonable cost and rendered in Ohio, the bill would prevent a candidate from, for example, using campaign funds to send a child to an overseas boarding school while the candidate was on the campaign trail.<sup>2</sup>

In 2018, the Federal Election Commission (FEC) issued an advisory opinion that under federal law and administrative rules, a candidate for federal office may use the candidate’s campaign funds to pay for child care costs that are incurred as a direct result of campaign activities or official duties and that would not otherwise exist. The bill allows state and local candidates in Ohio to use their campaign funds for child care costs in a similar manner, but imposes additional restrictions on the cost and location of the child care, the age of the child, and the candidate’s relationship to the child.<sup>3</sup>

### **Other political entities’ funds**

Similarly, the bill allows a candidate or public official or employee to accept funds from a political entity to pay the cost of child care while the person is campaigning or fundraising for the entity or attending a political meeting, so long as all of the following apply:

- The costs are incurred only as a direct result of the person’s activities and would not otherwise be incurred;
- The costs are reasonable;
- The child care is rendered in Ohio;
- The candidate or the public official or employee is a primary caregiver of the child;
- The child is 12 or younger.

Under continuing law, a candidate or public official or employee may accept money or things of value from a political party, political action committee (PAC), political contributing

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<sup>2</sup> R.C. 3517.13(O), (P), and (R)(4).

<sup>3</sup> FEC, [Advisory Opinion 2018-06](https://www.fec.gov/data/legal/advisory-opinions) (May 10, 2018), available on the FEC’s website: [www.fec.gov/data/legal/advisory-opinions](https://www.fec.gov/data/legal/advisory-opinions).

entity, or legislative campaign fund or from another candidate's campaign committee only if the payment qualifies as one of the following:

- Reimbursement for legitimate and verifiable ordinary and necessary expenses incurred by the candidate or public official or employee while engaged in any legitimate activity of the political party, PAC, political contributing entity, legislative campaign fund, or campaign committee, including all of the following:
  - Engaging in activities in support of or opposition to another candidate, a political party, or a ballot issue;
  - Raising funds for a political party, legislative campaign fund, campaign committee, or another candidate;
  - Attending a political party convention or other political meeting.
- Compensation for actual and valuable personal services rendered under a written contract with the entity to carry out the entity's legitimate activities.

In this situation, under the bill, the cost of child care also is considered an ordinary and necessary expense incurred by a candidate or public official or employee while engaging in those activities and duties, so long as the bill's requirements are met. For instance, the bill would allow a state political party to reimburse a public official for child care costs while the official attended the party's national convention if the official incurred those child care costs as a direct result of attending the convention and otherwise would not have incurred those costs. However, in that example, the child would be required to remain in Ohio instead of traveling with the official to the convention.<sup>4</sup>

## **Campaign spending by foreign nationals**

### **Foreign nationals making contributions or expenditures**

The bill prohibits a foreign national from making a contribution or expenditure to support or oppose a state or local ballot issue, either directly or through another entity. Existing Ohio and federal law prohibit a foreign national from making a contribution or expenditure in support of or opposition to a candidate, but the current prohibitions do not cover ballot issues. The bill also prohibits a foreign national from soliciting another person to make a contribution or expenditure.

Additionally, the bill prohibits a foreign national from making a loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, or transfer of funds to another person with a designation, instruction, or encumbrance that the foreign national knows will result in any part of the funds being used to make a contribution or expenditure. "Designation, instruction, or encumbrance" includes any designation, instruction, or encumbrance that is direct or indirect, express or implied, oral or written, or involving an intermediary or conduit. In other words, the bill prohibits a foreign national from making a donation that the foreign

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<sup>4</sup> R.C. 3517.13(Q) and (R)(4).

national knows will be used for political purposes, even if the foreign national does not say so explicitly.<sup>5</sup>

### **Accepting contributions or expenditures from foreign nationals**

Further, the bill expands the list of entities that may not solicit or accept a contribution or expenditure from a foreign national. Currently, no candidate, campaign committee, political party, legislative campaign fund, political action committee, political contributing entity, or separate segregated fund may solicit or accept such a contribution or expenditure. The bill adds a continuing association, corporation, or labor organization to that list. (See “**Political entities covered by the bill,**” below.)

The bill specifies that the prohibition against accepting a foreign contribution or expenditure includes knowingly transferring funds, or accepting a transfer of funds, directly or indirectly into an account from which the person makes political contributions or expenditures from an account that is controlled by the person or the person’s affiliate and that, at any time, has contained funds received directly or indirectly from a foreign national. A person is affiliated with another person if they are both established, financed, maintained, or controlled by, or if they are, the same corporation, organization, labor organization, or other person, including any parent, subsidiary, division, or department of that corporation, organization, labor organization, or other person.

For example, assume that Branch A and Branch B are branches of the same organization. Branch A accepts funds from a foreign national and places them in its general account. Later, Branch A transfers some funds from its general account into Branch B’s political account and Branch B accepts the transfer. Branch B would be in violation of the bill, even though it did not accept funds directly from a foreign national, and even though it might be difficult to trace those specific funds to a foreign national because they were commingled with other funds in Branch A’s general account.<sup>6</sup>

### **Aiding or facilitating a violation**

The bill also prohibits any person from knowingly aiding or facilitating a violation of the prohibitions described above regarding foreign nationals.<sup>7</sup>

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<sup>5</sup> R.C. 3517.13(W)(1). See also 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](#) under “Legal resources,” “Enforcement” via a search for closed MURs.)

<sup>6</sup> R.C. 3517.13(W).

<sup>7</sup> R.C. 3517.13(W)(3).

### **Definition of “foreign national”**

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 current Ohio and federal law, “foreign national” means any of the following:<sup>8</sup>

- 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 Ohio’s 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.

### **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 knowingly accepted, and will not knowingly accept, any campaign contributions that are prohibited under the Campaign Finance Law, including the prohibitions regarding foreign nationals. 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.<sup>9</sup>

### **Expenditures from alternate sources of funds**

The bill clarifies that the term “expenditure” means the disbursement or use of a contribution *or other funds* 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.<sup>10</sup>

### **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

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<sup>8</sup> R.C. 3517.13(W) and 52 U.S.C. 30121.

<sup>9</sup> R.C. 3517.10.

<sup>10</sup> R.C. 3517.01(C)(5) and (6).



regarding a candidate that is not made with the consent of, in coordination, cooperation, or 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.<sup>11</sup>

### **Ballot issue committees**

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.<sup>12</sup>

### **Enforcement of the Campaign Finance Law**

Under continuing law, 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 (OEC). If the OEC determines that a violation has occurred, the OEC has discretion to refer the matter to the appropriate prosecutor for potential court proceedings or instead to impose an administrative fine in any amount, up to the maximum court fine.

The bill changes the definition of “appropriate prosecutor” to require the Attorney General to prosecute most cases that currently would go to the Franklin County Prosecutor. And, the bill provides a procedure for choosing a different prosecutor if the “appropriate prosecutor” is a victim or witness or otherwise involved in the case.

Under existing law, if the OEC refers a violation involving a political entity that files its campaign finance reports with the Secretary of State (such as a statewide candidate, a political

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<sup>11</sup> R.C. 3517.01(C)(17). See also R.C. 3517.105, not in the bill.

<sup>12</sup> R.C. 3517.12. See also R.C. 3517.01(C)(8).

party, or a PAC that spends on statewide campaigns), the appropriate prosecutor is the Franklin County Prosecutor. The bill changes the appropriate prosecutor in that situation to the Attorney General. However, if the Attorney General is a victim or witness or otherwise involved in the matter, the appropriate prosecutor is a county prosecutor whom the OEC deems appropriate to prosecute the matter.

For a violation involving a political entity that files its campaign finance reports with a board of elections (such as a General Assembly candidate, a local candidate, or a local PAC), the OEC currently may choose between the Franklin County Prosecutor and the prosecutor of the county in which the candidate or ballot issue is on the ballot. If the candidate or issue is on the ballot in more than one county, the OEC may refer the case to the prosecutor of the most populous of those counties. Under the bill, the OEC may choose between the Attorney General and that county prosecutor. But, the OEC may not refer a case to a prosecutor who is a victim or witness or otherwise involved in the matter.

The bill specifies that when the Attorney General prosecutes a campaign finance violation, the Attorney General may do so with all the rights, privileges, and powers conferred by law on county prosecutors, including the power to appear before grand juries and to interrogate witnesses before grand juries. These powers are in addition to any other applicable powers of the Attorney General.<sup>13</sup>

### **Violations involving foreign nationals**

The continuing penalty for violating the law regarding contributions and expenditures by foreign nationals 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 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.<sup>14</sup>

The bill also requires that, if the OEC finds a violation of the prohibitions against foreign national campaign spending, it must either (1) impose the maximum fine and, if applicable, order the violator to return the funds, or (2) refer the matter for prosecution. That is, if the OEC determines that a violation has occurred, the bill removes the OEC's option to impose a lesser fine, or no fine at all, and to refrain from referring the case for prosecution.

If the OEC refers a violation of those prohibitions involving local political entities to a county prosecutor, the bill gives the Attorney General the authority to transfer the case to the Attorney General for prosecution upon the request of the county prosecutor or upon the Attorney General's own initiative. However, the Attorney General may not do so if the Attorney General is a victim or witness or otherwise involved in the matter.<sup>15</sup>

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<sup>13</sup> R.C. 3517.155(A). See also R.C. 3517.11(A), not in the bill.

<sup>14</sup> R.C. 3517.13(W) and 3517.992(AA).

<sup>15</sup> R.C. 3517.155. See also R.C. 3517.153 and 3517.993, not in the bill.

## **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 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.<sup>16</sup>

### **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.<sup>17</sup>

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

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## **HISTORY**

Action	Date
Introduced	03-16-23
Reported, H. Government Oversight	05-24-23
Passed House (65-29)	06-14-23
Reported, S. General Government	---

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ANHB0114RS-135/sb

<sup>16</sup> 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](http://ohiosos.gov) under “Campaign Finance.”

<sup>17</sup> R.C. 3517.13(W).