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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Manning

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SUMMARY

Corporate and labor independent expenditures

- Eliminates the prohibitions against corporations and labor organizations making independent expenditures and certain electioneering communications.
- Applies similar disclaimer and reporting requirements to corporate and labor independent expenditures as currently apply to other entities that make independent expenditures.
- Permits corporations and labor organizations to make political communications to members, employees, and officers without being required to report those communications as independent expenditures.
- Requires a corporation or labor organization making independent expenditures to identify the source of any amounts it receives during the filing period that exceeds \$5,000 and that is not received in the ordinary course of business or in exchange for goods and services.
- Prohibits a foreign corporation from making an independent expenditure or electioneering communication.
- Prohibits a foreign national from making an electioneering communication.

Independent expenditures, generally

- Requires any person or entity who makes an independent expenditure to include a disclaimer and report the independent expenditure only if the amount spent is \$500 or more.
- Specifies that an independent expenditure of \$10,000 or more made between the filing deadline and the general election in support of or opposition to a candidate must be

deemed an electioneering communication and reported in accordance with the Electioneering Communication Law.

- Eliminates reporting requirements for electioneering communications made during the 30 days before an election.

Political action committee threshold

- Exempts an entity from being considered a political action committee (PAC) if it has \$2,500 or less in its treasury at all times and makes contributions and expenditures of \$1,000 or less in a calendar year.

DETAILED ANALYSIS

Background – *Citizens United*

Until 2010, both federal law and Ohio law prohibited corporations and labor organizations from spending their money for political purposes, except regarding ballot issues. This meant that a corporation or labor organization could not (1) contribute to a candidate or political entity, (2) make an independent expenditure, meaning spending money on communications about a candidate without coordinating with any candidate or political entity, or (3) during the 30 days before an election, make an electioneering communication, which is a type of independent broadcast advertisement that refers to a clearly identified candidate but does not meet the definition of an independent expenditure.

In 2010, the U.S. Supreme Court ruled in *Citizens United v. Federal Election Commission* that a corporation or labor organization has a First Amendment right to make independent expenditures and electioneering communications. (The Court upheld disclosure requirements for those expenditures and communications.) However, Ohio's campaign finance statutes have not been amended since that decision. The Revised Code continues to prohibit corporations and labor organizations from engaging in any candidate-related political spending. As a result, corporations and labor organizations have been allowed to make independent expenditures and electioneering communications in Ohio for the past ten years, but they appear not to be subject to reporting requirements because the statute prohibits those expenditures and communications instead of regulating them.¹

Corporate and labor independent expenditures

Generally

The bill is largely a response to *Citizens United*, discussed above, in that it allows domestic corporations and labor organizations to make independent expenditures and electioneering communications. The bill maintains the current prohibition against corporations and labor organizations making direct contributions to candidates and political entities.

¹ *Citizens United v. Federal Election Commission*, 558 U.S. 310, 319 (2010).

Under continuing law, an independent expenditure is an expenditure by a person advocating the election or defeat of an identified 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 of the campaign committee or agent of the candidate.

An electioneering communication is a broadcast, cable, or satellite communication that refers to a clearly identified candidate and that is made during the run-up to an election, but that does not meet the definition of an independent expenditure. An electioneering communication, like an independent expenditure, cannot be coordinated with a candidate's campaign committee. For example, a television advertisement that says, "Candidate A is a good person," but does not actually urge the viewer to vote for Candidate A, might be considered an electioneering communication instead of an independent expenditure. Existing law prohibits any electioneering communication from being made using a contribution from a corporation or labor organization during the 30 days before Election Day. The bill eliminates this prohibition.

The bill also exempts certain internal corporate and labor communications from the definition of an independent expenditure. Under existing law, corporations and labor organizations may make political communications to their stockholders, members, donors, trustees, officers, directors, and their family members, and are not required to report those communications. Although the bill generally requires corporations and labor organizations to report their political communications, the bill specifies that they are not required to report those internal communications as independent expenditures.²

Disclaimer and reporting

Under the bill, a corporation or labor organization that makes an independent expenditure of \$500 or more must include a notice in the advertising resulting from the expenditure that it is not authorized by the candidate or campaign committee and specifying who paid for that advertising, the same as any other entity must do when it makes an independent expenditure.

The corporation or labor organization also must file statements itemizing its independent expenditures. The statements must be filed at the same time as other statements are filed under the Campaign Finance Law, except that an independent expenditure of \$10,000 or more that is made during the 90 days preceding a primary or general election must be reported as an electioneering communication (see "**Reporting independent expenditures in excess of \$10,000,**" below).

Finally, on those statements, the corporation or labor organization also must identify the source of any amounts the corporation or labor organization received during the period since the most recently filed statement that, in the aggregate, exceed \$5,000 and that were not

² R.C. 3517.01(B)(17), 3517.1011, 3517.992, 3599.03, 5727.61, and 5733.27.

received in the ordinary course of business and were not received in exchange for goods or services provided by the corporation or labor organization.³

Foreign corporations and foreign nationals

The bill adds to the existing prohibitions against foreign individuals and entities engaging in political spending in Ohio. Under continuing law, a foreign national is prohibited from making any contribution, expenditure, or independent expenditure concerning a candidate. “Foreign national” has the same meaning as in the Federal Election Campaign Act, and includes all of the following:

- A foreign government or foreign political party;
- A corporation or other entity organized under the laws of, or having its principal place of business in, a foreign country;
- An individual who is outside the U.S., other than a U.S. citizen;
- An individual who is in the U.S. who is not a U.S. citizen or national or a lawful permanent resident.

The bill expands this prohibition to also prohibit a foreign national from making any disbursement for the direct costs of producing or airing electioneering communications.

Additionally, the bill prohibits a foreign corporation from making an independent expenditure, making a disbursement for the direct costs of producing and airing electioneering communications, or making a contribution to another entity for the purpose of funding the direct costs of producing and airing electioneering communications. A corporation that knowingly violates this prohibition must be fined an amount equal to three times the amount expended, disbursed, or contributed in violation of the law, the same as the current penalty for a foreign national that violates the restriction.

The bill uses the federal tax law definition of a “foreign corporation,” meaning that the corporation is not created or organized in the U.S. or under the law of the U.S. or any U.S. state. It appears that for purposes of the bill, a foreign corporation also would be considered a foreign national and be subject to the existing law prohibitions against foreign nationals making contributions and expenditures.⁴

Independent expenditures, generally

Disclaimer and reporting threshold

The bill establishes a \$500 disclaimer and reporting threshold for all independent expenditures, including those made by corporations and labor organizations and those made by other entities, such as campaign committees, political parties, and political action committees

³ R.C. 3517.105(B) and 3599.03.

⁴ R.C. 3517.13 and 3517.992. See also 26 United States Code (U.S.C.) 7701 and 52 U.S.C. 30121.

(PACs). That is, independent expenditures of less than \$500 (1) need not include a statement identifying the entity paying for the communication, and (2) need not be reported, although a political entity still must include the expenditure in its regular report of contributions and expenditures.

Current law requires any individual or entity that makes an independent expenditure in support of or opposition to a candidate or ballot issue to include a disclaimer and to file a statement detailing that independent expenditure. However, a PAC with fewer than ten members currently is not required to include a disclaimer or report the independent expenditure if it spends \$100 or less for a local candidate or issue, \$250 or less for a General Assembly candidate, or \$500 or less for a statewide candidate or issue.⁵

Reporting independent expenditures in excess of \$10,000

The bill specifies that any independent expenditure of \$10,000 or more in support of or opposition to a candidate that is made during the period beginning 90 days before the primary election and ending on the day of the general election must be deemed an electioneering communication and reported in accordance with the Electioneering Communication Law, instead of being reported at the same times as other campaign finance statements are due. An entity's first electioneering communication in a given year must be reported within 24 hours after it is made, and the entity making the communication must make weekly reports thereafter, as long as any additional money is spent during that time.⁶

Electioneering communications during the 30 days before an election

The bill appears to eliminate any reporting requirements for electioneering communications made during the 30 days before an election. Under continuing law, an electioneering communication made before the 30th day before Election Day triggers the 24-hour and weekly reporting requirements described above. But, a communication made during the 30 days before Election Day currently is considered an independent expenditure instead, and is reported with other independent expenditures – presumably, to emphasize that a corporation or labor organization is prohibited from making such a communication during that 30-day period.

The bill removes the requirement to report an electioneering communication as an independent expenditure during the 30 days before an election, but does not expand the regular electioneering communication reporting requirement to include that 30-day period. As a result, it seems that under the bill, no reporting requirement applies during that time.⁷

⁵ R.C. 3517.105.

⁶ R.C. 3517.105 and 3517.1011.

⁷ R.C. 3517.01 and 3517.1011.

Political action committee threshold

The bill exempts an entity from being considered a political action committee (PAC) if it has \$2,500 or less in its treasury at all times and makes contributions and expenditures of \$1,000 or less in a calendar year. Under continuing law, a PAC is a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, a political contributing entity, or a legislative campaign fund. A continuing association that makes disbursements for the direct costs of producing or airing electioneering communications and that does not engage in express advocacy is not considered a PAC.

Existing law includes an exemption for a political club that is formed primarily for social purposes and that consists of 100 members or less, has officers and periodic meetings, has less than \$2,500 in its treasury at all times, and makes an aggregate total contribution of \$1,000 or less per calendar year. The bill eliminates that exception because such a political club does not meet the bill's definition of a PAC.⁸

HISTORY

Action	Date
Introduced	07-30-20

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⁸ R.C. 3517.01.