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133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Fedor

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### SUMMARY

#### Political contributing entities

- Expands and clarifies the definition of a political contributing entity (PCE) to include any entity that makes contributions or expenditures and that is not an individual, a campaign committee, a political party, a legislative campaign fund (LCF), or a political action committee (PAC).
- Subjects certain entities that currently are not considered a PCE or another regulated political entity, such as corporations and continuing associations, to continuing law campaign finance requirements.
- Requires a PCE that is a corporation or an unincorporated business to include certain information about its leaders and owners in its periodic reports of contributions and expenditures.
- Expands the definition of a contribution when it is made to a PCE in order to require a PCE to report the source of all donations if the PCE uses its general fund to make expenditures.
- Clarifies the application of the continuing law dollar contribution limits to a PCE that is an unincorporated labor organization, business, or association.
- Changes the definition of an independent expenditure to include any use of funds or anything of value for that purpose, meaning that a PCE that uses its own money instead of contributions to fund an independent expenditure must report the expenditure.
- Clarifies that “independent expenditure” refers only to expenditures concerning candidates, whereas any expenditure concerning a ballot issue is labeled simply an “expenditure.”
- Requires corporations and labor organizations to report all expenditures in the same manner as other PCEs.

- Makes clear that all PCEs must comply with the continuing law that requires entities that engage in political advertising to report the expenditure and to identify themselves in the advertisement as the funding source.

### **Political activity by foreign nationals**

- Increases the scope of the law that prohibits foreign nationals from being involved in political campaigns by restricting participation in ballot issue campaigns and by expanding the definition of a foreign national with respect to corporations.

### **Name of bill**

- Specifies that the bill is to be known as the Ohio Anti-Corruption Act.

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## **DETAILED ANALYSIS**

### **Background on Ohio’s Campaign Finance Law**

In general, the state Campaign Finance Law is designed to require candidates and political entities to file publicly available reports about the money they accept or spend for the purpose of influencing state or local election results, abide by certain dollar contribution limits, disclose the source of political advertising, and follow other campaign related regulations. It is

important to note that this law does not apply to federal elections, and under the home rule provisions of the Ohio Constitution, a municipality or chartered county may have its own system for regulating campaign finance in local elections.<sup>1</sup>

## Political entities

Ohio's Campaign Finance Law currently categorizes political entities as follows:

- **Campaign committee** – A candidate or the candidate's campaign committee.
- **Political party** – A group recognized by the state as a political party.
- **Legislative campaign fund (LCF)** – A campaign entity associated with a caucus of the General Assembly.
- **Political action committee (PAC)** – A group of two or more persons whose primary or major purpose 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 another entity included in this list. ("Express advocacy" means a communication that contains express words advocating the nomination, election or defeat of a candidate or the adoption or defeat of a ballot question or issue.) Neither of the following are considered a political action committee:
  - A continuing association that makes disbursements for the direct costs of producing or airing electioneering communications and that does not engage in express advocacy.
  - 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.
- **Continuing association** – An association, other than a campaign committee, political party, LCF, PCE, or labor organization, that is intended to be a permanent organization that has a primary purpose other than supporting or opposing specific candidates, political parties, or ballot issues, and that functions on a regular basis throughout the year. The term includes nonprofit organizations that are exempt from federal taxation under subsection (501)(c)(3), (501)(c)(4), or (501)(c)(6) of the Internal Revenue Code.
- **Political contributing entity (PCE)** – Any entity, including a corporation or labor organization, that may lawfully make contributions and expenditures and that is not an individual, a campaign committee, a political party, an LCF, a PAC, or a continuing association.

A campaign committee, political party, LCF, PAC, or PCE must report its contributions and expenditures and must abide by certain other campaign finance related requirements. But,

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<sup>1</sup> Ohio Constitution, Article X, Section 3 and Article XVIII, Section 3.

an individual, person, or entity who *does not* fall under the definition of a campaign committee, political party, LCF, PAC, or PCE – for example, a continuing association – generally is not subject to those requirements. As a result, less information is available to the government and the public about the political activities of organizations that do not fit into one of those definitions.<sup>2</sup>

## Contributions and expenditures

The existing Campaign Finance Law generally uses the following definitions of political contributions and expenditures for purposes of reporting requirements, contribution limits, and other provisions of law:<sup>3</sup>

- **Contribution** – A loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, or transfer of funds or anything of value, including a transfer of funds from an *inter vivos* or testamentary trust or decedent’s estate, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, which contribution is made, received, or used for the purpose of influencing the results of an election.
- **Expenditure** – The disbursement or use of a contribution for the purpose of influencing the results of an election or of making a charitable donation to certain approved organizations.
- **Independent expenditure** – An expenditure by a person advocating the election or defeat of an identified candidate or candidates, that is not made with the consent of, in coordination, cooperation, or consultation with, or at the request or suggestion of any candidate or candidates or of the campaign committee or agent of the candidate or candidates.
- **Electioneering communication** – A broadcast, cable, or satellite communication that is made during the run-up to an election, refers to a clearly identified candidate, and is not coordinated with a candidate, but that does not meet the definition of an expenditure or independent expenditure, generally because it mentions the candidate but does not directly advocate the candidate’s election or defeat. Electioneering communications are sometimes referred to as “soft money” or “issue” advertising because they are political but not regulated in the same way as contributions and expenditures. Entities that make electioneering communications are subject to a separate reporting system from the system that applies to contributions and expenditures.

Ohio law prohibits a corporation or labor organization from using its money or property to make political contributions or expenditures with respect to candidates or, during the 30 days before an election, to make an electioneering communication. (Corporations and labor

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<sup>2</sup> R.C. 3517.01. See also R.C. 3517.10.

<sup>3</sup> R.C. 3517.01(C)(4), (5), and (16).

organizations may make contributions and expenditures concerning ballot issues.) However, in 2010, the U.S. Supreme Court ruled in *Citizens United v. Federal Election Commission* that corporations and labor organizations have a First Amendment right to make unlimited independent expenditures (including electioneering communications) and that they may make unlimited contributions to other entities that make only independent expenditures. The bill leaves those Revised Code restrictions on corporations and labor organizations in place, notwithstanding the fact that they are not being enforced. But, as is discussed below, the bill ensures that when a corporation or labor organization does make a contribution or expenditure, it is regulated as a PCE.<sup>4</sup>

## **Political contributing entities**

### **Expanded definition of PCE**

The bill expands and clarifies the definition of a PCE to include any entity that makes contributions or expenditures and that is not an individual, a campaign committee, a political party, an LCF, or a PAC. (Essentially, under the bill, only an individual who makes contributions or expenditures falls outside the structure of regulated entities.)

Currently, certain entities that make contributions or expenditures do not fit into the definition of any of the regulated political entities and therefore are not required to report their contributions and expenditures or comply with certain other restrictions. (Those entities are sometimes called “dark money” organizations.) By expanding the definition of a PCE to include any entity other than a campaign committee, political party, LCF, or PAC, the bill subjects those entities to the Campaign Finance Law. For instance, the bill eliminates references to continuing associations and instead categorizes those organizations as PCEs if they make contributions or expenditures.

The following table describes several common types of entities that currently are not (or might not be) considered PCEs, but that are PCEs under the bill if they make contributions or expenditures:<sup>5</sup>

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<sup>4</sup> R.C. 3517.01(C)(24), 3517.1011, and 3599.03; *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010); and *American Tradition Partnership v. Bullock*, 567 U.S. 516 (2012).

<sup>5</sup> R.C. 3517.01(C)(4), (7), (16), and (24) and 3599.03, and conforming changes in R.C. 3517.08, 3517.10, 3517.102, 3517.105, 3517.106, 3517.107, 3921.22, and 4503.03.

| Common types of PCEs   |  |  |
|--|--|--|
| Entity   | Expenditures permitted under continuing law  | Notes  |
| <b>Corporations</b>  |  |  |
| Corporation, generally   | May contribute to ballot issue committees or make expenditures about ballot issues<br><br>Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i> (see “ <b>Contributions and Expenditures</b> ,” above) | Under existing law, might not be considered a PCE because it cannot make contributions <i>and</i> expenditures<br><br>According to the Secretary of State, not currently considered a PCE <sup>6</sup> |
| Nonprofit corporation – 501(c)(3) charitable organization <sup>7</sup>               | May contribute to ballot issue committees or make expenditures about ballot issues   | Internal Revenue Code prohibits candidate related campaign activity, but does not prohibit ballot issue related campaign activity  |
| Nonprofit corporation – 501(c)(4) social welfare organization                        | May contribute to ballot issue committees or make expenditures about ballot issues<br><br>Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>  | Internal Revenue Code permits campaign activity, so long as that is not the organization’s primary activity  |
| Nonprofit corporation – 501(c)(5) labor, agricultural, or horticultural organization | May contribute to ballot issue committees or make expenditures about ballot issues<br><br>Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>  | Internal Revenue Code permits campaign activity, so long as that is not the organization’s primary activity  |

<sup>6</sup> Ohio Secretary of State, *Ohio Campaign Finance Handbook*, “[Chapter 7: Political Contributing Entities](#)” at 7-3.

<sup>7</sup> For more information about federal tax laws governing organizations’ political activities, see 26 U.S.C. 501 and 527 and Internal Revenue Service, *Common Tax Law Restrictions on Activities of Exempt Organizations* and *Political Campaign and Lobbying Activities of IRS 501(c)(4), (c)(5), and (c)(6) Organizations* (2003).

| Common types of PCEs  |   |  |
|---|---|--|
| Entity  | Expenditures permitted under continuing law   | Notes  |
| Nonprofit corporation – 501(c)(6) business league   | May contribute to ballot issue committees or make expenditures about ballot issues<br><br>Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>   | Internal Revenue Code permits campaign activity, so long as that is not the organization’s primary activity  |
| Internal Revenue Code Section 527 tax exempt organization, if incorporated                | May contribute to ballot issue committees or make expenditures about ballot issues<br><br>Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>   | Internal Revenue Code permits campaign activity, so long as the organization does not engage in express advocacy   |
| Unincorporated entities   |   |  |
| Labor organization, if unincorporated   | May contribute to ballot issue committees or make expenditures about ballot issues<br><br>Contributions to candidates or political entities and independent expenditures about candidates are allowed under <i>UAW Local Union 1112 v. Philomena</i> <sup>8</sup> | Under existing law, might not be considered a PCE because it cannot make contributions <i>and</i> expenditures<br><br>According to the Secretary of State, currently considered a PCE <sup>9</sup> |
| Unincorporated business or association (e.g., a partnership or limited liability company) | May contribute to candidates or ballot issue committees or make expenditures about candidates or ballot issues  | Appears to meet the existing definition of a PCE, but is listed separately from PCEs in some provisions of the current Campaign Finance Law  |
| Internal Revenue Code Section 527 tax exempt organization, if unincorporated              | May contribute to ballot issue committees or make expenditures about candidates or ballot issues  | Internal Revenue Code permits campaign activity, so long as the organization does not engage in express advocacy   |

<sup>8</sup> *UAW Local Union 1112 v. Philomena*, 121 Ohio App.3d 760, 788 (10<sup>th</sup> Dist. Ct. App. 1998).

<sup>9</sup> Ohio Secretary of State, *Ohio Campaign Finance Handbook*, “[Chapter 7: Political Contributing Entities](#)” at 7-3.

## PCE ownership information

Continuing law requires a PCE to include its full name and address on its periodic reports of contributions and expenditures. Under the bill, a PCE also must include all of the following information in its report if the PCE is a corporation or an unincorporated business (a cooperative, sole proprietorship, general partnership, limited partnership, limited partnership association, limited liability partnership, or limited liability company):<sup>10</sup>

- The name of each officer, director, principal shareholder, partner, owner, or member of the PCE.
- If the PCE is controlled by a corporation or unincorporated business, the name of the controlling corporation or unincorporated business, the name of each officer, director, principal shareholder, partner, owner, or member of the controlling corporation or unincorporated business. A corporation or unincorporated business is deemed to control the PCE if the corporation or unincorporated business, directly or indirectly, or acting through one or more persons or entities, owns or controls the PCE or has the power to vote 50% or more of any class of voting securities of the PCE.

## Contributions to PCEs

### Definition of contribution

The bill expands the definition of a contribution when it is made to a PCE in order to require a PCE to report the source of donations that are not given to the PCE solely for the purpose of influencing election results, and are not used solely for that purpose, if the PCE uses its general fund to make expenditures. (As is discussed above under “**Contributions and expenditures**,” existing law generally defines a political contribution to include any transfer of a thing of value to a reporting entity that is made, received, or used for the purpose of influencing election results.)

A PCE typically is not formed solely for political purposes. For example, a nonprofit corporation that is exempt from federal taxation under subsection 501(c)(4) or 501(c)(6) of the Internal Revenue Code – a social welfare organization or a business league – cannot engage in political activity as its primary activity, but may engage in some political activity while retaining its tax-exempt status. If the organization receives a donation to its general fund, and then uses its general fund to make political expenditures, the donation might not qualify as a political contribution under current law because it is not given for the purpose of influencing election results, and the nonprofit corporation arguably would not be using that particular donation for the purpose of influencing election results. As a result, some entities might not be required to disclose the source of those funds.

Under the bill, if a PCE deposits all donations received for the purpose of influencing election results in a separate account, places only those kinds of donations in the account, and

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<sup>10</sup> R.C. 3517.10(B)(2) and (F)(4).



makes contributions and expenditures only from that account, then only the donations made to the PCE for the purpose of influencing election results are considered contributions, as under current law. However, if the PCE does not follow that procedure – for example, if it deposits all donations in its general fund and makes contributions and expenditures from the general fund – then *all* donations to the PCE are considered contributions, even if they were not earmarked for political purposes.<sup>11</sup>

### **Contribution limits**

Under continuing law, dollar contribution limits do not apply to contributions to PACs or PCEs that only make expenditures concerning ballot issues. And, the limits on contributions to PACs or PCEs that make only independent expenditures are not being enforced. Most types of PCEs, including most organizations that are added to the definition of a PCE under the bill, are only allowed to make those kinds of unlimited contributions and expenditures, and thus are not subject to the continuing law contribution limit system.

An exception to that general principle would be a PCE that is an unincorporated labor organization, business, or association, which, under continuing law, may make and receive contributions in the same way as a campaign committee, political party, LCF, or PAC. Such a PCE would be subject to the continuing law contribution limits. No individual or entity may contribute more than \$13,292.35 to a PCE in a calendar year, except that an LCF may not make any contributions to a PCE. A PCE that makes a contribution also must abide by the applicable contribution limit, which varies based on the recipient. But, under continuing law, when an unincorporated business or association makes a contribution, the contribution is deemed to be made by the entity's partners, owners, or members, and counts against the contribution limits for those partners, owners, or members instead of against the limit for the PCE as a whole.<sup>12</sup>

### **Expenditures by PCEs**

#### **Definition of independent expenditure**

The bill changes the definition of an independent expenditure to include an expenditure *or other use of funds or anything of value* for the purpose of making an independent expenditure. The continuing definition of an expenditure includes only the use of a contribution, not money in general, in order to influence election results. (See “**Contributions and expenditures**,” above, for a fuller discussion of independent expenditures.)

With the expanded definition of independent expenditure, an entity such as a PCE that uses money or another thing of value that it *didn't* receive as a contribution to influence election results is considered to be making a reportable independent expenditure. For example,

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<sup>11</sup> R.C. 3517.01(C)(5) and 3517.10(A).

<sup>12</sup> R.C. 3517.10(I) and 3517.102. Under R.C. 3517.104, not in the bill, the dollar limits in the statute are adjusted for inflation every two years; see Ohio Secretary of State, [Ohio Campaign Contribution Limits Effective 25 February 2019 through 24 February 2021](#)

under the bill, an unincorporated business that used its profits to fund an independent political advertisement advocating the election of a candidate would be required to report that action as an independent expenditure.

Additionally, the bill clarifies that “independent expenditure” refers only to expenditures concerning candidates, whereas any expenditure concerning a ballot issue is labeled simply an “expenditure.”<sup>13</sup>

### **Reporting corporation and labor organization expenditures**

Under the bill, corporations and labor organizations must report their expenditures in the same manner as other PCEs, instead of by submitting a separate form, as existing law requires with respect to ballot issue expenditures by those entities. This requirement applies both to ballot issue expenditures and to the independent expenditures that corporations and labor organizations may make concerning candidates under *Citizens United v. FEC*, despite the fact that the statute prohibits them from making independent expenditures (see “**Contributions and expenditures**,” above).

### **Identification of source of political advertising by PCEs**

The bill makes clear that all PCEs must comply with the continuing law that requires entities that engage in political advertising to report the expenditure and to identify themselves in the advertisement as the funding source, in the same manner as PACs and other political entities currently must do. The existing law varies with respect to entities that are classified as PCEs under the bill based on the type of entity, as discussed above.<sup>14</sup>

### **Political activity by foreign nationals**

Finally, the bill increases the scope of the law that prohibits foreign nationals from being involved in political campaigns by restricting participation in ballot issue campaigns and by expanding the definition of a foreign national with respect to corporations.

Continuing law prohibits a foreign national from doing either of the following in support of or opposition to a candidate for any elective office in Ohio:

- Making a contribution, expenditure, or independent expenditure, either directly or indirectly through any other person or entity.
- Promising, either expressly or implicitly, to make a contribution, expenditure, or independent expenditure.

The bill prohibits a foreign national also from taking either of those actions with respect to a ballot issue by removing the language specifying that the prohibited contribution or expenditure is in support or of opposition to a candidate.

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<sup>13</sup> R.C. 3517.01(C)(16), 3517.105, and 3517.106.

<sup>14</sup> R.C. 3517.105.

For purposes of that restriction, “foreign national” currently has the same meaning as in the Federal Election Campaign Act, which includes all of the following:

- A person who is not a U.S. citizen or national or a lawful permanent U.S. resident.
- A government of a foreign country.
- A foreign political party.
- A person outside of the United States, unless one of the following apply:
  - The person is an individual who is a U.S. citizen.
  - The person is not an individual, is organized under or created by the laws of the United States or a U.S. state or jurisdiction, and has its principal place of business within the United States.
- A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

Under the bill, a person is a foreign national if the person meets the above definition or if either of the following apply to the person:

- The person is a corporation that is owned 20% or more by persons or entities whose domicile, if the owner is a corporation, or whose citizenship, if the owner is an individual or unincorporated association or entity, is outside the United States.
- The person is a corporation that is owned 5% or more by any one person or entity whose domicile, if the owner is a corporation, or whose citizenship, if the owner is an individual or unincorporated association or entity, is outside the United States.

As a result, the bill prohibits contributions and expenditures by a corporation that is organized under the laws of, and has its principal place of business in, the United States if a certain amount of the corporation’s ownership is domiciled or has citizenship outside the United States.<sup>15</sup>

## **Name of bill**

The bill specifies that it is to be known as the Ohio Anti-Corruption Act.<sup>16</sup>

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<sup>15</sup> R.C. 3517.13(W) and 3599.03. See also 22 U.S.C. 511(b) and 52 U.S.C. 30121(b).

<sup>16</sup> Section 5 of the bill.

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## HISTORY

| Action     | Date     |
|------------|----------|
| Introduced | 08-04-20 |

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