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S.B. 215
135th General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Gavarone and McColley

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SUMMARY

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 the current prohibition against a foreign national making a contribution or expenditure regarding a candidate.
- Prohibits any entity from soliciting or accepting a contribution or expenditure from a foreign national.
- 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 accepted, and will not accept, any campaign contributions that are prohibited under the Campaign Finance Law.
- Requires an entity that accepts a prohibited foreign contribution to return the contribution.
- Requires the Ohio Elections Commission (OEC), if it finds a violation of the prohibition regarding foreign nationals, to either (1) impose the maximum fine and, if applicable, require the violator to return the contribution or (2) refer the matter for prosecution.
- Allows the Attorney General to prosecute a violation of the prohibition regarding foreign nationals under certain circumstances.

Expenditures from alternate sources of funds

- 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.

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.

Alternative political organizations (APOs)

- Creates a new category of regulated political entity, an “alternative political organization,” which includes all of the entities that currently are not required to disclose their donors under the Campaign Finance Law, other than an individual or an unincorporated business.
- Requires every APO to appoint a treasurer and file a designation of that appointment in the same manner as other political entities.
- Requires an APO, unless it qualifies for an exemption, to file statements of contributions and expenditures in the same manner as a political contributing entity (PCE) and to comply with all other restrictions that apply to PCEs under the Campaign Finance Law.
- Requires an APO that commingles its political and nonpolitical funds to report the sources of all funds it receives, regardless of whether they are received for political purposes.
- Provides an accounting procedure that an APO may use to avoid commingling those funds so that when it discloses its donors under the bill, the APO is only required to report the sources of funds it uses for political purposes.
- Exempts an APO from being regulated as a PCE and being required to disclose its donors if the APO files a certificate attesting that either of the following apply to the APO:
 - It does not commingle its political and nonpolitical funds;
 - It *does* commingle its political and nonpolitical funds, but it has not accepted, and will not accept, anything of value from a foreign national, directly or indirectly, in the form of a political contribution or for any other purpose.
- Specifies that the certificate becomes void if the APO stops qualifying for the exemption.

DETAILED ANALYSIS

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.¹

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 so that, in effect, the prohibition applies to any person other than an individual. 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 federal political committee and an alternative political organization to that list. (See “**Alternative political organizations (APOs)**,” below.)

The bill specifies that the prohibition against accepting a foreign contribution or expenditure includes 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.²

¹ 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](https://www.fec.gov) under “Legal resources,” “Enforcement” via a search for closed MURs.)

² R.C. 3517.13(W) and conforming change in R.C. 3517.01(C)(24).

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:³

- 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 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.⁴

Enforcement

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 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 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.⁵

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 Commission determines that a violation has occurred, the Commission 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. For violations involving statewide or State Board of Education elections, the appropriate prosecutor is the Franklin County Prosecutor. For violations involving district or local elections, the OEC may choose between the Franklin County Prosecutor and the relevant county prosecutor.

³ R.C. 3517.13(W) and 52 U.S.C. 30121.

⁴ R.C. 3517.10.

⁵ R.C. 3517.13(W) and 3517.992(AA).

The bill creates an exception to this system for violations of the prohibition regarding foreign nationals. Under the bill, if the OEC finds a violation of that kind, it must either (1) impose the maximum fine described above and, if applicable, order the violator to return the funds, or (2) refer the matter to the appropriate prosecutor or to the Attorney General. Once the OEC determines that a violation has occurred, the bill gives the Attorney General the authority to prosecute the violation if the OEC refers the matter to the Attorney General, if the appropriate prosecutor requests the Attorney General to prosecute the case, or upon the Attorney General's own initiative.⁶

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.⁷

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 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.⁸

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

⁶ R.C. 3517.155. See also R.C. 3517.153 and 3517.993, not in the bill.

⁷ R.C. 3517.01(C)(5) and (6).

⁸ R.C. 3517.01(C)(17). See also R.C. 3517.105, not in the bill.

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.⁹

Alternative political organizations (APOs)

Background on continuing associations and corporations

The bulk of Ohio's existing 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), which are organizations whose primary purpose is to influence election results through express advocacy and that are not an entity 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, such as an unincorporated labor organization.

Under existing law, only these entities are required to file regular reports of contributions and expenditures and to disclose the source of their donations. The law also requires federal political entities (separate segregated funds and federal political committees) that receive contributions or make expenditures in connection with a state or local election in Ohio to file a copy of the relevant portions of their federal campaign finance disclosures with the Secretary of State.

This system 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

⁹ R.C. 3517.12. See also R.C. 3517.01(C)(8).

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.

Currently, 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.¹⁰

Continuing associations and corporations as APOs

The bill creates a new category of regulated political entity, an “alternative political organization,” which includes all of the entities that currently are not required to disclose their donors under the Campaign Finance Law. Under the bill, an APO is a continuing association, corporation, labor organization, or other person, other than an individual, that makes contributions and expenditures and that is not another type of regulated political entity under existing law.

The bill makes an exception for an unincorporated business, which includes a cooperative, a sole proprietorship, a general partnership, a limited partnership, a limited partnership association, a limited liability partnership (LLP), and a limited liability company (LLC). Under continuing law, if an unincorporated business makes a contribution, it must attribute the contribution to the business’s partners, owners, or members as individuals. For example, if Law Firm, LLP, made a contribution to a candidate, the candidate would have to report the contribution as a certain amount contributed by Partner A and a certain amount by Partner B, from Law Firm, LLP. Under the bill, an unincorporated business that makes a contribution in that manner is not considered an APO because the individual partners, owners, or members are already reported as the source of the contribution.¹¹

Designation of treasurer

The bill requires every APO, before receiving a contribution or making an expenditure on or after the bill’s effective date, to appoint a treasurer and file a designation of that appointment in the same manner as other political entities. The designation must include the full name and address of the APO and its treasurer. As with all other designations of treasurer, the bill requires the designation to include a certification made under penalty of election falsification that the

¹⁰ R.C. 3517.01 and 3517.10. See also R.C. 3517.082, 3517.105, 3517.107, 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.”

¹¹ R.C. 3517.01(C)(26) and 3517.10(I).

APO has not accepted, and will not accept, any contributions that are prohibited under the Campaign Finance Law.

If the APO makes expenditures regarding statewide or State Board of Education elections, it must file with the Secretary of State; if it only makes expenditures regarding district or local elections, it must file with the appropriate board of elections.¹²

Filing and regulation as a PCE

Unless the APO qualifies for an exemption (see below), the bill requires an APO to file statements of contributions and expenditures as though it were a PCE and to comply with all other restrictions that apply to PCEs under the Campaign Finance Law.

By their nature, many entities that are classified as APOs under the bill accept funds both (1) for the purpose of influencing elections and (2) for other purposes, such as conducting a for-profit business or carrying out nonpolitical social welfare activities. If an APO makes contributions and expenditures out of a general account instead of a special political account – that is, it commingles its political and nonpolitical funds – the bill requires the APO to report all funds it receives, regardless of the purpose for which they are received, as political contributions.

Alternatively, the bill allows an APO to create a separate account specifically for the purpose of receiving political contributions and making political expenditures. The APO must deposit in that account all contributions that it receives for the purpose of influencing elections. No nonpolitical contributions may be deposited in the account, and the APO may make political contributions and expenditures only from that account. If the APO follows that accounting procedure, then it is only required to report the sources of contributions that are earmarked for political purposes. And, the APO is eligible for an exemption from the filing requirement, as described below.¹³

Exemption from filing and regulation as a PCE

The bill exempts an APO from being required to file statements of contributions and expenditures and otherwise being regulated as a PCE if the APO certifies that it has not accepted, and will not accept, anything of value from a foreign national, directly or indirectly, in the form of a political contribution or for any other purpose. Upon filing its designation of treasurer or upon filing a statement of contributions and expenditures, an eligible APO may file a certificate attesting that it qualifies for the exemption. The certificate must be signed under penalty of election falsification and must be on a form prescribed by the Secretary of State.

If, after filing a certificate, an APO accepts anything of value from a foreign national, directly or indirectly, for any purpose, the certificate is void. Thereafter, the APO must be regulated as a PCE and must file statements of contributions and expenditures. On its first

¹² R.C. 3517.121(A) and conforming change in R.C. 3517.13(E). See also R.C. 3517.10(D)(1) and 3517.11(A), not in the bill.

¹³ R.C. 3517.121(B).

statement filed after the certificate becomes void, the APO must disclose all contributions received and expenditures made from the time the certificate was filed.¹⁴

HISTORY

| Action | Date |
|---------------------------------|----------|
| Introduced | 01-23-24 |
| Reported, S. General Government | 02-28-24 |
| Passed Senate (25-7) | 02-28-24 |

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¹⁴ R.C. 3517.121(C).