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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Seitz

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### SUMMARY

- Prohibits a foreign national from knowingly making, or promising to make, a contribution or expenditure with respect to a state or local ballot issue, but does not prohibit a foreign national from making an independent expenditure regarding a local ballot issue.
- Retains existing law that prohibits a foreign national from knowingly making a contribution or expenditure with respect to a candidate.
- Prohibits the committee in charge of a statewide initiative or referendum petition, along with any other type of regulated political entity, from knowingly soliciting or accepting a contribution or expenditure from a foreign national.
- Requires the Ohio Elections Commission (OEC), when it finds a violation of the prohibitions regarding foreign nationals, to either impose the maximum administrative penalty or refer the matter for prosecution.
- Prohibits any person from making a contribution to the committee in charge of a statewide initiative or referendum petition in the name of another person, similar to the continuing law regarding contributions to other political entities.
- Specifies that when such a committee files a designation of treasurer with the Secretary of State, as it must do under continuing law, the committee must use the same form as other political entities use for that purpose.
- Changes the prosecutors who have jurisdiction over campaign finance cases referred by the OEC for prosecution and gives the Attorney General authority over certain cases currently handled by the Franklin County Prosecutor.
- Declares an emergency.

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## DETAILED ANALYSIS

### Foreign national campaign spending

#### Prohibited contributions and expenditures

The bill prohibits a foreign national from knowingly doing any of the following:

- Making a contribution to a candidate, campaign committee, political action committee (PAC), political contributing entity (PCE), legislative campaign fund, state candidate fund, political party, or separate segregated fund or to any committee in charge of a statewide initiative or referendum petition (see “**Application to ballot issues,**” below);
- Making an expenditure (including an independent expenditure) in support of or opposition to a candidate for any elective office in Ohio, including an office of a political party, or in support of or opposition to any statewide ballot issue;
- Promising, either expressly or implicitly, to make a contribution or expenditure described above.

The current statute prohibits a foreign national from knowingly making a contribution or expenditure in support of or opposition to a candidate, but the law does not explicitly prohibit foreign contributions or expenditures regarding ballot issues.

Further, the bill prohibits the committee in charge of a statewide initiative or referendum petition from knowingly soliciting or accepting a contribution or expenditure from a foreign national. Continuing law prohibits any candidate, campaign committee, PAC, PCE, legislative campaign fund, state candidate fund, political party, or separate segregated fund from doing so.<sup>1</sup>

In 2021, the Ohio Elections Commission (OEC) issued an opinion that the existing statute prevents a foreign national from participating in any ballot issue campaign in Ohio by prohibiting a political entity from soliciting or accepting a contribution from a foreign national, apparently regardless of the purpose.<sup>2</sup>

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<sup>1</sup> R.C. 3517.13(W).

<sup>2</sup> Ohio Elections Commission, [Advisory Opinion 2021ELC-05 \(PDF\)](#) (December 16, 2021), available at [elc.ohio.gov](http://elc.ohio.gov) under “Advisory Opinions,” “Advisory Opinions by Year.”

## Application to ballot issues

The bill adds several references in the Campaign Finance Law to a “committee described in R.C. 3517.12,” which is the committee in charge of a statewide initiative or referendum petition. Currently, such a committee would appear to fit the general definition of a PAC,<sup>3</sup> but R.C. 3517.12 does not refer to them as PACs. For this reason, a reviewing court might find that a statewide initiative or referendum petition committee is not a PAC. The bill subjects those committees to PAC-like regulation in the context of foreign national campaign spending. The bill explicitly prohibits a foreign national from making a contribution to such a committee and prohibits such a committee from accepting a contribution from a foreign national. Additionally, the bill prohibits a foreign national from making an independent expenditure regarding any statewide ballot issue.

Under continuing law, any other group formed to support or oppose a state or local ballot issue, such as a constitutional amendment proposed by the General Assembly or a school levy, likely would be considered a PAC and could not receive contributions from a foreign national. However, it appears that the bill would not prohibit a foreign national from making an independent expenditure regarding a local ballot issue – for example, by paying for ads for or against a levy issue without coordinating with a political entity in doing so.

The bill also prohibits any person from making a contribution to the committee in charge of a statewide initiative or referendum petition in the name of another person. Current law prohibits any person from making such a contribution to a campaign committee, PAC, PCE, legislative campaign fund, or political party. And, the bill specifies that when the committee in charge of a statewide initiative or referendum petition files a designation of treasurer with the Secretary of State, as it must do under continuing law, the committee must use the same form as other political entities use for that purpose.<sup>4</sup>

## Culpable mental state

The bill adds the term “knowingly” to each prohibition described above. It appears that this change does not impact existing law because the corresponding penalty provisions, which the bill does not change, state that the penalties apply to whoever “knowingly” violates the law.<sup>5</sup>

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<sup>3</sup> Under R.C. 3517.01(C)(8), 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,” that is not another type of regulated political entity. However, certain exceptions apply.

<sup>4</sup> R.C. 3517.12(A) and 3517.13(G) and (W).

<sup>5</sup> R.C. 3517.13(W). See also R.C. 3517.992(AA), not in the bill.

## Definition of “foreign national” – continuing law

Under continuing law, unchanged by the bill, “foreign national” means any of the following:<sup>6</sup>

- In the case of an individual, an individual who is not a U.S. citizen or national or a lawful permanent resident (green card holder);
- 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.

This law mirrors the definition in the federal law that prohibits a foreign national from making a contribution or expenditure regarding a federal, state, or local candidate, but not regarding a ballot issue.<sup>7</sup>

## Penalty

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 OEC. If the OEC determines that a violation has occurred, the OEC has discretion to refer the matter to a prosecutor for potential court proceedings or instead to impose an administrative fine in any amount, up to the maximum court fine. With respect to violations of the law regarding foreign nationals, the bill instead requires the OEC to either impose the maximum administrative penalty or refer the matter for prosecution.

The continuing penalty for a foreign national who knowingly makes a prohibited contribution or expenditure, or for a person that knowingly 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 knowingly accepts a prohibited contribution or expenditure from a foreign national to return it to the foreign national. Under the bill, a violator *must* return the amount in addition to paying the fine.<sup>8</sup>

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

<sup>7</sup> 52 United States Code 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.)

<sup>8</sup> R.C. 3517.13(W) and 3517.155(D). See also R.C. 3517.153, 3517.992(AA), and 3517.993, not in the bill.

## Enforcement of the Campaign Finance Law

When the OEC refers a case for prosecution, the bill changes the prosecutor who has jurisdiction over the case. The following table shows, for each type of case, the current prosecutor and the prosecutor under the bill.

Person involved in the violation	Current prosecutor	Prosecutor under the bill
Candidate or campaign committee for statewide office or the State Board of Education	Franklin County Prosecutor	Attorney General
Candidate or campaign committee for any other office	OEC chooses between the Franklin County Prosecutor and the county prosecutor of the most populous county where the candidacy will appear on the ballot	County prosecutor of the county where the candidate resides or where the campaign committee has its principal place of business County prosecutor may give the case to the Attorney General
Committee in charge of a statewide initiative or referendum petition	Franklin County Prosecutor	Attorney General
PAC or PCE, generally	Franklin County Prosecutor	County prosecutor of the county where the person has its principal place of business County prosecutor may give the case to the Attorney General
PAC or PCE that makes contributions only at the local level	OEC chooses between the Franklin County Prosecutor and the county prosecutor of the most populous county where the candidacy or issue will appear on the ballot	County prosecutor of the county where the person has its principal place of business County prosecutor may give the case to the Attorney General
Political party (state or local)	Franklin County Prosecutor	County prosecutor of the county where the person has its principal place of business County prosecutor may give the case to the Attorney General
Legislative campaign fund	Franklin County Prosecutor	County prosecutor of the county where the person has its principal place of business

Person involved in the violation	Current prosecutor	Prosecutor under the bill
		County prosecutor may give the case to the Attorney General
Person whose principal place of business is not in Ohio	Depends on the person's category described above	Attorney General
Individual who is not a resident of Ohio	Depends on the individual's category described above	Attorney General

In each of the situations described above, the bill prohibits a case from being referred to a prosecutor who is a victim or witness or otherwise involved in the matter. If the OEC cannot refer a case to the listed prosecutor for that reason, the OEC must choose a county prosecutor whom the OEC deems appropriate to prosecute the matter.<sup>9</sup>

### Emergency clause

The bill declares an emergency, meaning that it takes effect immediately and is not subject to the referendum.

## HISTORY

Action	Date
Introduced	05-28-24

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<sup>9</sup> R.C. 3517.155(A)(2).