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Bill Analysis

Version: As Passed by the Senate

Primary Sponsors: Reps. Mathews and Peterson

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SUMMARY

- Specifies that the bill responds to the Governor's proclamation calling a special session of the General Assembly.

Deadline to certify presidential candidates

- Delays the deadline, for purposes of the 2024 general election, for a major political party to certify its candidates for President and Vice-President to the Secretary of State from August 7 to the effective date of the bill.
- 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.
- Requires the Secretary to certify the forms of the official ballots by the fourth day after the bill takes effect, instead of August 27.
- Specifies that these provisions are intended to apply retroactively for purposes of the 2024 general election, and that they are remedial in nature because they prevent a major political party's candidates from being inadvertently excluded from the ballot.

Numbering of state ballot issues

- Specifies that, beginning with the general election on November 5, 2024, a state issue appearing at the top of the ballot must be designated as Issue 1 and any state issue placed below that must be consecutively numbered.
- Specifies that, for elections occurring after November 5, 2024, a state issue appearing at the top of the ballot must be designated by the next number after the number of the last state issue, instead of starting over at Issue 1.

- Requires, once state Issue 500 appears on the ballot, that the next state issue be designated as Issue 1.

Campaign finance

Campaign spending by foreign nationals

- Prohibits a foreign national from knowingly 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 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 to include a continuing association.
- Prohibits any person from knowingly aiding or facilitating a violation of the prohibitions described above regarding foreign nationals.
- Adds the term “knowingly” to each prohibition regarding foreign national campaign spending.
- 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.
- 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 Ohio Elections Commission (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.

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 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

- 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.

DETAILED ANALYSIS

The bill specifies that it responds to the Governor’s proclamation calling a special session of the General Assembly beginning on Tuesday, May 28, 2024, for the following purposes:¹

- Enabling a major political party to certify to the Ohio Secretary of State the names of the major party candidates for President and Vice-President of the United States of America nominated by the party’s national convention pursuant to R.C. 3505.10;
- Meaningfully strengthening the State of Ohio’s prohibition against foreign influence with and in Ohio’s elections.

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 bill’s effective date (90 days after the Governor signs it and files it with the Secretary of State), as adjusted for any Sunday or legal holiday, instead of the 90th day before the election (August 7).

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. The Secretary then must certify the forms of the official ballots by the fourth day after the bill’s effective date, as adjusted for any Sunday or legal holiday, instead of by the 70th day before the election.

The bill specifies that these provisions are intended to apply retroactively for purposes of the 2024 general election, and that they are remedial in nature because they prevent a major political party’s candidates from being inadvertently excluded from the ballot.²

Numbering of state ballot issues

Issues that appear on a ballot are grouped together, with state issues appearing at the top of the ballot and local issues following in a rotating order prescribed by law. Currently, those issues are consecutively numbered beginning with Issue 1 at each election.

¹ Section 5 of the bill.

² Section 3 of the bill.

Under the bill, beginning with the 2024 general election, state issues must be designated beginning with Issue 1, and at future elections, state issues must be numbered beginning with the next available numeral, instead of starting over at Issue 1. For example, if only one state issue appears on the ballot in November 2024, it will be “Issue 1.” The state issue that appears at the top of the ballot at the next election will be “Issue 2,” and no state issue will ever have a repeating number from a previous election. Once state Issue 500 appears on the ballot, the next state issue must be designated as Issue 1.

The bill permits the existing numbering process to continue for local questions and issues. It is not clear whether, under the bill, the local issues in a county would be labeled for each election beginning with a local Issue 1, beginning with the next available number after the state issues that appear on the ballot, or using some other indicator, such as letters. The Secretary of State currently provides detailed instructions to the boards of elections regarding ballot issues and might institute a standardized method for labeling local issues under the bill.³

Campaign finance

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 knowingly making a contribution or expenditure in support of or opposition to a candidate, but the current prohibitions do not cover ballot issues. (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.)⁴ 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

³ R.C. 3505.06 and Ohio Secretary of State, [Ohio Ballot Questions and Issues Handbook \(PDF\)](#) (2023), available at ohiosos.gov under “Publications.”

⁴ Ohio Elections Commission, [Advisory Opinion 2021ELC-05 \(PDF\)](#) (December 16, 2021), available at elc.ohio.gov under “Advisory Opinions,” “Advisory Opinions by Year.”

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

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 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 the person, at any time, knew to contain political funds received directly or indirectly from a foreign national, as described by the bill. A person is affiliated with another person if they are both established, financed, maintained, or controlled by, or if they are, the same person, including any parent, subsidiary, division, or department of that person.

For example, assume that Branch A and Branch B are branches of the same organization. Branch A, which might be located outside Ohio, accepts funds from a foreign national for political purposes, as described by the bill, and places them in its account. Later, Branch A transfers some funds from its account into Branch B’s political account and Branch B accepts the transfer, knowing that Branch A’s account has contained foreign political funds. 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 account. However, Branch B would not be in violation of the bill if (1) the foreign funds were not political in nature, such as business profits, or (2) Branch B did not actually know that foreign political funds had been in Branch A’s account.⁶

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.⁷

⁵ 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.)

⁶ R.C. 3517.13(W).

⁷ R.C. 3517.13(W)(3).

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.⁸

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:⁹

- 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.¹⁰

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.

⁸ R.C. 3517.13(W) and 3517.992(AA).

⁹ R.C. 3517.13(W) and 52 U.S.C. 30121.

¹⁰ R.C. 3517.10.

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.¹¹

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.¹²

Ballot issue committees

Additionally, the bill specifies that if the committee in charge of a statewide 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.

Although the existing 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 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.¹³

¹¹ R.C. 3517.13(W), 3517.155(D), 3517.992(AA), and 3517.993. See also R.C. 3517.153, not in the bill.

¹² R.C. 3517.01(C)(17). See also R.C. 3517.105, not in the bill.

¹³ R.C. 3517.12. See also R.C. 3517.01(C)(8).

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
Any person with respect to contributions or expenditures made or accepted for the purpose of advocating support of or opposition to an identified statewide ballot issue	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

Person involved in the violation	Current prosecutor	Prosecutor under the bill
Legislative campaign fund	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
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.¹⁴

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.

¹⁴ R.C. 3517.155(A)(2).

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.¹⁵

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, corporation, or labor organization. The bill partially closes that gap by adding language to prohibit a continuing association from soliciting or accepting foreign contributions or expenditures.¹⁶

However, because a continuing association is not required to disclose its finances, it probably would be difficult for the state to detect any violation. For example, a continuing association 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.

¹⁵ 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 under “Campaign Finance.”

¹⁶ R.C. 3517.13(W).

HISTORY

Action	Date
Introduced	09-18-23
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