Bill Analysis

Lynda J. Jacobsen *Legislative Service Commission*

H.B. 134

124th General Assembly
(As Introduced)

Reps. **R. Miller, Allen, Britton, Sferra, Cirelli, S. Smith, Key, Boccieri, Strahorn, Barrett**

BILL SUMMARY

- Prohibits candidates, and campaign committees of candidates, for statewide office from expending more than $1 for each person in the state, as determined by the most recent census, in connection with the candidate's nomination or election.

- Prohibits candidates, and campaign committees of candidates, for the office of member of the General Assembly from expending more than $1 for each person in the Senate or House of Representatives district that the candidate is seeking to represent, as determined by the most recent census, in connection with the candidate's nomination or election.

- Prohibits candidates, and campaign committees of candidates, for county office from expending more than $1 for each person in the county, as determined by the most recent census, in connection with the candidate's nomination or election.

- Specifies that any candidate who, or campaign committee of a candidate that, violates a population-based expenditure limit must be fined an amount equal to three times the amount expended in excess of that limit.

CONTENT AND OPERATION

Existing law

Existing Campaign Finance Law restricts (1) the total amount of contributions that a particular individual or partisan political entity may make to a campaign committee or other partisan political entity and (2) the total amount of contributions that a partisan political entity may receive from a particular individual or other partisan political entity.[1] It also generally requires specified partisan political entities that make or receive contributions or make expenditures in connection with an election to file campaign finance statements regarding those contributions and expenditures with the Secretary of State. An individual contributor may make contributions to a campaign committee of a candidate for statewide office or for the office of member of the General Assembly, and the campaign committee may accept contributions from the individual contributor, aggregating up to $2,500. (Secs. 3517.10 and 3517.102(B) and (C)--not in the bill.)

Individuals, partisan political entities, and certain other entities making independent expenditures are not restricted in the amount of money they may expend, but are required to file campaign finance statements itemizing those expenditures with the Secretary of State or a county board of elections. Independent expenditures are expenditures that advocate the election or defeat of an identified candidate and that are not made in coordination, cooperation, or consultation with, or at the request or suggestion of, a candidate or a candidate's campaign committee or agent. (Secs. 3517.01(B)(17) and 3517.105--not in the bill.) Similarly, candidates may expend an unlimited amount of their personal funds to finance their campaigns, although, if a candidate expends more than a specified amount of personal funds, the contribution limits mentioned above no longer apply to that candidate's opponent (sec. 3517.103--not in the bill).

Changes proposed by the bill

Expenditure limitations on candidates and campaign committees

The bill retains the limits to which individuals and partisan political entities making political *contributions* must adhere, and continues to limit the amount of contributions that a partisan political entity may receive from a particular individual or other partisan political entity. In addition, the bill prohibits *expenditures* by candidates, or campaign committees of candidates, for statewide or county office in excess of any of the following (sec. 3517.13(X)(1)):[2]

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[1] *These partisan political entities include campaign committees, county political parties, state political parties, political action committees, political contributing entities, and legislative campaign funds. In relation to county and state political parties, section 3517.102 focuses on their "state candidate fund" in particular.*

[2] *These expenditure limits apply during the entire primary election period and general election period associated with a given office.*

- In the case of candidates for statewide office (see the next full paragraph below), $1 multiplied by the total population of the state, as determined by the most recent decennial census (division (X)(1)(a)).

- In the case of a candidate for the office of member of the General Assembly, $1 multiplied by the population of the Senate or House of Representatives district the candidate is seeking to represent, as determined by the most recent decennial census (division (X)(1)(b)).

- In the case of a candidate for a county elective office, $1 multiplied by the population of the county, as determined by the most recent decennial census (division (X)(1)(c)).

Based on the 2000 decennial census, a candidate for any of the *statewide offices* of Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, State Board of Education member, or Justice or Chief Justice of the Supreme Court could expend under the bill no more than $11,353,140 during the entire primary election period and general election period associated with the relevant office (see **COMMENT** 1). This is because, according to the 2000 census, Ohio's population is 11,353,140.[3] Thus, multiplied by $1 for each person, the total expenditure limit for a statewide office is $11,353,140. Candidates for the office of member of the General Assembly and candidates for county office would be similarly restricted, based on the total population of the applicable Senate or House of Representatives district or county.[4]

Penalty

Any candidate or candidate's campaign committee expending funds in excess of the aggregate amount permitted under the bill's applicable population limit must be fined an amount equal to three times the amount expended in excess of the permitted aggregate amount (see **COMMENT** 2) (sec. 3517.992(BB)).

[3] *"Resident Population and Apportionment of the U.S. House of Representatives: Ohio." U.S. Census Bureau. (http://www.census.gov/dmd/www/resapport/states/ohio.pdf)*

[4] *A county office includes: county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, county commissioner, prosecuting attorney, and coroner (sec. 3517.13(X)(2), by cross-reference to sec. 3517.092 (A)(5)--not in the bill).*

COMMENT

1. It is unclear whether the bill, if enacted and then challenged on First Amendment grounds, would be found by a court to be constitutional under the First Amendment of the United States Constitution. The United States Supreme Court, in *Buckley v. Valeo,* 424 U.S. 1 (1976), ruled that expenditure limits are an unconstitutional violation of free speech under the First Amendment. However, the applicability of that decision to the bill cannot be predicted, since the bill only applies to the expenditure of *campaign contributions* by certain candidates and their campaign committees and does not prohibit individuals or entities from making independent expenditures or candidates from expending personal funds. A court could interpret the bill either as imposing limits on contributions made to the specified candidates or their campaign committees, in which case it likely would be found to be constitutional, or as an unconstitutional limit on expenditures.

2. The nature of the "primary election period" under the Campaign Finance Law, combined with the expenditure limits established by the bill, means that the expenditure limits may change for some offices in the course of the primary election period, since that period will overlap with the release of census population data. If the population of a county, a district, or the state should decrease, a candidate or the campaign committee of a candidate may learn that the applicable expenditure limit has been reduced because of decreased population reflected by the intervening census. Such a reduction, then, might subject a candidate who, or campaign committee of a candidate that, has already expended contributions to a fine for violating the new expenditure limit, even though the previously made expenditures were not in violation of the limit in place at the time they were made, based on prior census data.

HISTORY

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