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*Bill Analysis*  
Legislative Service Commission

## **H.B. 571**

124th General Assembly  
(As Introduced)

**Reps. Flannery, Britton, Carano, Boccieri, Rhine, Distel, DeBose, Fedor,  
R. Miller**

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### **BILL SUMMARY**

- Specifies that all loans, gifts, and other donations that are made, received, or used by a state or county political party, other than moneys received from the Ohio Political Party Fund, are for the purpose of influencing the results of an election and must be included in campaign finance statements.
- Specifies that all loans, gifts, and other donations that are made to or received or used by the operating fund of a state or county political party must be considered to be for the purpose of influencing the results of an election and must be included in campaign finance statements.
- Specifies that all gifts made to, and received or used by, a state or county political party for the construction, renovation, or purchase of an office facility are for the purpose of influencing the results of an election and must be included in campaign finance statements.
- Specifies that all loans, gifts, and other donations that are made, received, or used by a legislative campaign fund are for the purpose of influencing the results of an election and must be included in campaign finance statements.
- Specifies that all disbursements made by a state or county political party or a legislative campaign fund are expenditures and must be considered to be made for the purpose of influencing the results of an election or as a charitable donation and must be included in campaign finance statements.
- Requires a legislative campaign fund to file preprimary, postprimary, pregeneral, and postgeneral campaign finance statements in each even-

numbered year, and permits a legislative campaign fund to file those statements in odd-numbered years.

- Removes political parties and legislative campaign funds from the list of entities that are not required to file a preprimary or pregeneral campaign finance statement if they receive contributions and make expenditures of less than \$1,000 during the reporting period.
- Requires political parties to include in campaign finance statements information regarding expenditures made for the purpose of informing the party's members of its activities or endorsements or for voter contact.
- Requires continuing associations, political contributing entities, and political parties to include in campaign finance statements information regarding expenditures for the staff and maintenance of their headquarters and for political polls, surveys, indexes, and other measurements not on behalf of a particular candidate.
- Requires each state and county political party to track and report in its campaign finance statements the flow of all contributions received by the party from the point at which a contribution is received until its final expenditure, and requires the Secretary of State to adopt rules specifying the manner in which that information must be tracked and reported.
- Prohibits legislative campaign funds from making in-kind contributions to a designated state campaign committee of a House or Senate candidate aggregating more than \$25,000 in a primary or general election period.
- Prohibits a designated state campaign committee of a House or Senate candidate from accepting in-kind contributions from a legislative campaign fund aggregating more than \$25,000 in a primary or general election period.
- Prohibits state and county political parties and legislative campaign funds from failing to file a complete and accurate required campaign finance statement.
- Provides for a fine of not more than \$1,000 for each day of violation or 10% of all contributions received during the relevant reporting period, whichever amount is greater, for state and county political parties and

legislative campaign funds that fail to file a complete and accurate required campaign finance statement.

- Defines an "issue advocacy entity" for the purposes of the Campaign Finance Law as a person or combination of persons (1) that makes or receives a contribution or makes an expenditure of more than \$1,000 for political advertising that names or otherwise identifies a particular candidate, whether or not the advertising expressly calls for the election or defeat of that candidate, and (2) that is not an entity currently covered by the Campaign Finance Law.
- Generally applies the provisions of the Campaign Finance Law to issue advocacy entities.
- Requires every issue advocacy entity to file campaign finance statements regarding contributions made or received and expenditures made by the entity in connection with the nomination, election, or defeat of particular candidates.
- Requires specified entities to file campaign finance statements regarding contributions made or received, and expenditures made, "in connection with" the nomination, election, or defeat of a candidate, regardless of whether advertising arising from the contributions or expenditures expressly calls for the election or defeat of that candidate.
- Includes within the definition of "communications advocating the election or defeat" a communication supporting or opposing a named or otherwise identified candidate, regardless of whether the communication expressly calls for the election or defeat of that candidate, so that independent expenditures for those communications must be reported under the Campaign Finance Law.
- Requires specified identifying information to be included on political publications for or against a candidate, regardless of whether the publication expressly calls for the nomination, election, or defeat of that candidate.
- Requires state and county political parties and issue advocacy entities, in the first statement of contributions and expenditures they are required to file after the effective date of the bill, to include the balance on hand that



they have on that date, and requires the Secretary of State to prescribe the manner in which that balance must be reported.

- Corrects references to the obsolete term "legislative candidate fund" so that they refer to the correct term--"legislative campaign fund."
- Specifies that the bill's Campaign Finance Law changes take effect December 7, 2002.
- Makes an appropriation.

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## CONTENT AND OPERATION

### Political party campaign finance reporting requirements

#### General reporting requirements

Existing law requires political parties to file campaign finance statements at specified times identifying contributions made or received and expenditures made in connection with the nomination or election of any candidate, or in connection with a ballot issue or question, at any election held or to be held in this state (sec. 3517.10). A "contribution" generally is defined as a loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, or transfer of funds or of anything of value (including a transfer of funds from an inter vivos or testamentary trust or a decedent's estate), and the payment by any person other than the person to whom 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. An "expenditure" is defined as the disbursement or use of a contribution for the purpose of influencing the results of an election or of making a charitable donation. (Sec. 3517.01(B)(5) and (6).) Existing law, then, generally requires political parties to include on campaign finance statements only those receipts or disbursements that would be a contribution or expenditure if made, received, or used *for the purpose of influencing the results of an election*.

#### Contributions and expenditures for the purpose of influencing the results of an election

The bill specifies that any loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, or transfer of funds or anything of value, and the payment by any person other than the person to whom services are rendered for the personal services of another person, that is made, received, or used by a state or county political party generally must be considered to be made, received, or used, for the purpose of influencing the results of an election and, therefore, to constitute *a contribution*; this consideration does not apply, however, to money a state or county political party received from the Ohio Political Party Fund under existing law. Similarly, any disbursement or use of a contribution by a state or county political party is *an expenditure* under the bill, and must be considered to

be made for the purpose of influencing the results of an election or to be made as a charitable donation. Thus, all loans, gifts, and other donations made, received, or used by a state or county political party, and expenditures made by a state or county political party, must be reported on a statement of contributions and expenditures, since they must be considered to be for the purpose of influencing the results of an election or of making a charitable donation. (Secs. 3517.01(B)(5) and (6) and 3517.10.)

### **Contributions to the operating fund of a political party**

As previously discussed, existing law does not require loans, gifts, or other donations to a state or county political party to be included on campaign finance statements as contributions unless made, received, or used for the purpose of influencing the results of an election. Therefore, loans, gifts, or other donations may be made to funds of a political party other than the party's state candidate fund, which donations are then not required to be included in campaign finance statements.

The bill explicitly requires any loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, or transfer of funds or of anything of value, and a payment by any person other than the person to whom services are rendered for the personal services of another person, that is made to or received or used by *the operating fund of a state or county political party* to be (1) considered to be for the purpose of influencing the results of the next subsequent primary or general election, and (2) reported on the party's campaign finance statements. (See **COMMENT 1**.) Thus, under the bill, any gift made to, or received or used by, the operating fund of a state or county political party will be assumed to be for the purpose of influencing the results of the next subsequent election and, as such, must be reported under the Campaign Finance Law, whether or not it is actually made, received, or used for that purpose. (Sec. 3517.08(G).)

### **Gifts for the construction, renovation, or purchase of office facilities**

In addition to filing campaign finance statements for contributions and expenditures made, received, and used for the purpose of influencing the results of an election, state and county political parties also are required to file annual reports identifying gifts received, and the manner in which those gifts were disbursed, if those gifts are specifically designated for and used to defray costs incurred for the construction, renovation, or purchase of an office facility that is not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for any office (sec. 3517.101).

The bill eliminates the annual filing requirement for gifts designated for and used to defray costs incurred for the construction, renovation, or purchase of



such an office facility. Instead, any such gift must be (1) considered to be for the purpose of influencing the results of the next subsequent primary or general election and (2) reported by the state or county political party in a statement of contributions and expenditures. The same information that was previously required to be included in the annual filing regarding such gifts must be included in the statement of contributions and expenditures required by the bill. (Sec. 3517.101(B) and (C).)

**Expenditures for voter contact, political polling, maintenance of party headquarters, and notification of party activities**

Existing law specifies that an expenditure by a political party is not considered to be a contribution by the political party or an expenditure by or on behalf of a candidate or campaign committee, and thus is not required to be reported under the Campaign Finance Law, if the purpose of that expenditure is any of the following (sec. 3517.08(B)(2) and (C)):

- To inform predominantly the members of the political party of its activities or endorsements by means of mailed publications or other direct communication;
- For voter contact, such as sample ballots, absent voter's ballots application mailings, voter registration, or get-out-the-vote activities;
- For the staff and maintenance of the political party's headquarters;
- For a political poll, survey, index, or other type of measurement not on behalf of a specific candidate.

The bill removes these exemptions, thereby requiring a political party to include in its campaign finance statements information regarding expenditures made for any of these purposes (sec. 3517.08(B)(2) and (C)).

**Tracking the flow of specified contributions to final expenditure**

The bill requires each state or county political party that files a statement of contributions and expenditures to track and report, as part of that statement, the flow of all contributions received by the party, including in-kind contributions and contributions received by the party's operating fund, from any one contributor that aggregate more than \$2,500 during a reporting period. Each such contribution must be tracked and reported from the point at which it is received until its final expenditure. The report of the flow of contributions must include, but is not limited to, details regarding which specific contributions received were later expended on particular candidates. (Sec. 3517.10(M)(1).) The Secretary of State

is required to adopt rules under the Administrative Procedure Act specifying the manner in which this contribution and expenditure information must be tracked and reported (sec. 3517.10(M)(2)). (See **COMMENT 2**.)

### **Legislative campaign fund campaign finance reporting requirements**

#### **General reporting requirements**

Like political parties, legislative campaign funds are required to file campaign finance statements at specified times identifying contributions made or received, and expenditures made, in connection with the nomination or election of any candidate, or in connection with a ballot issue or question, at any election held or to be held in this state (sec. 3517.10).<sup>1</sup> "Contribution" and "expenditure" are defined, for this purpose, in the same manner as for campaign finance statements filed by political parties (see "**Political party campaign finance reporting requirements: General reporting requirements**," above). Any loan, gift, or other donation received, and any disbursement made, by a legislative campaign fund that is not for the purpose of influencing the results of an election or of making a charitable donation is not required to be reported under existing law.

#### **Contributions and expenditures for the purpose of influencing the results of an election**

The bill specifies that any loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, or transfer of funds or anything of value, and the payment by any person other than the person to whom services are rendered for the personal services of another person, that is made, received, or used by a legislative campaign fund--items that would be *contributions* if made, received, or used for the purpose of influencing the results of an election--must be considered to be made, received, or used for the purpose of influencing the results of an election and, therefore, to constitute a contribution. Similarly, any disbursement or use of a contribution by a legislative campaign fund is *an expenditure* and must be considered to be made for the purpose of influencing the results of an election or to be made as a charitable donation. Thus, all loans, gifts, and other donations made, received, or used by a legislative campaign fund, and all disbursements made by a legislative campaign fund, must be reported on a statement of contributions and expenditures, since they must be considered to be for the purpose of influencing the results of an election or of making a charitable donation. (Secs. 3517.01(B)(5) and (6) and 3517.10.)

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<sup>1</sup> "*Legislative campaign fund*" means a fund that is established as an auxiliary of a state political party and associated with one of the houses of the General Assembly (sec. 3517.01(B)(15)).

## **Filing schedule for campaign finance statements**

### **In general**

Every political party, legislative campaign fund, or other specified entity that "made or received a contribution or made an expenditure in connection with the nomination or election of any candidate or in connection with any ballot issue or question at any election held or to be held in this state" generally must file a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures, no later than 4 p.m. on the following dates (sec. 3517.10(A)):

- The 12th day before the primary election, to reflect contributions received and expenditures made from the last previously filed statement to the close of business on the 20th day before the primary election (a preprimary statement);
- The 38th day after the primary election, to reflect contributions received and expenditures made from the last previously filed statement to the close of business on the seventh day before the filing of the statement (a postprimary statement);
- The 12th day before the general election, to reflect contributions received and expenditures made from the last previously filed statement to the close of business on the 20th day before the general election (a pregeneral statement);
- The 38th day after the general election, to reflect contributions received and expenditures made from the last previously filed statement to the close of business on the seventh day before the filing of the statement (a postgeneral statement);
- The last business day of January of every year, to reflect contributions received and expenditures made from the last previously filed statement to the close of business on December 31 of the previous year (an annual statement).

### **Filing exemption for entities with contributions and expenditures below \$1,000**

Political parties, legislative campaign funds, and specified other entities that have received contributions of less than \$1,000 and that have made expenditures of less than \$1,000 during the relevant time period are not required to file a preprimary or pregeneral statement under existing law. In that case, the

contributions and expenditures that would have been included within the preprimary or pregeneral statement must be reported in the postprimary or postgeneral statement, respectively. (Sec. 3517.10(A).)

The bill requires political parties and legislative campaign funds to file preprimary and pregeneral statements, regardless of whether they receive contributions or make expenditures of \$1,000 or more during the reporting period. Campaign committees, political action committees, and political contributing entities continue to be exempted from being required to file a preprimary or pregeneral statement if they receive contributions and make expenditures of less than \$1,000 during the reporting period. As under existing law, campaign committees, political action committees, and political contributing entities that do not file a preprimary or pregeneral statement because they received contributions and made expenditures of less than \$1,000 must report any contributions received and expenditures made during that period on the postprimary or postgeneral statement, as applicable. (Sec. 3517.10(A).)

**Statements filed by a legislative campaign fund in even-numbered years**

A political party, legislative campaign fund, or other specified entity is not required to file an annual statement for any year in which it is required to file a postgeneral statement. It may opt, however, to file the annual statement in a year in which the statement is not required. Likewise, a political party, legislative campaign fund, or other specified entity is not required to file an annual statement if it has not received any contributions and has not made any expenditures since its last previously filed statement. It must, however, file on the date on which the annual statement otherwise would be required to be filed a statement to the effect that it has not received any contributions or made any expenditures since its last previously filed statement. (Sec. 3517.10(A).)

The bill requires a legislative campaign fund, whether or not it makes or receives contributions or makes expenditures in any particular amount during the relevant time period, to file (1) a preprimary, (2) a postprimary, (3) a pregeneral, and (4) a postgeneral statement of contributions and expenditures in each even-numbered year. A legislative campaign fund may choose, although it is not required, to file those statements in odd-numbered years. (Sec. 3517.10(A).)

The bill retains the provision of existing law exempting legislative campaign funds from being required to file annual statements in years in which they are required to file postgeneral statements. Since the bill permits a legislative campaign fund to file a postgeneral statement in a year in which it is not required to file that statement, it appears that, under the bill, a legislative campaign fund opting to file a postgeneral statement in such a year still would be required to file an annual statement for that year. (Sec. 3517.10(A).)

## Prohibitions and penalties

### Limits on in-kind contributions from legislative campaign funds to certain campaign committees

Existing law generally prohibits a legislative campaign fund from making a transfer or a contribution of cash or cash equivalents to a designated state campaign committee aggregating more than either of the following (sec. 3517.102(B)(6)(b)(ii)): <sup>2</sup>

(1) \$50,000 in a primary election period or \$100,000 in a general election period to the campaign committee of any one Senate candidate;

(2) \$25,000 in a primary election period or \$50,000 in a general election period to the campaign committee of any one House candidate.

Existing law does not limit the amount of in-kind contributions that a legislative campaign fund may make to a designated state campaign committee. The bill restricts to an aggregate of \$25,000 in a primary or general election period the value of in-kind contributions that a legislative campaign fund may make to a designated state campaign committee of a House or Senate candidate (sec. 3517.102(B)(6)(b)(iii)). And, a parallel provision of the bill prohibits a designated state campaign committee of a House or Senate candidate from accepting in-kind contributions from a legislative campaign fund aggregating more than \$25,000 in a primary or general election period (sec. 3517.102(C)(6)(c)). The bill does not change the prohibitions relative to, and thus current contribution limits continue to apply to, transfers or contributions of cash or cash equivalents from legislative campaign funds to designated state campaign committees (sec. 3517.102(B)(6)(b)(ii)).

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<sup>2</sup> "Transfer or contribution of cash or cash equivalents" does not include any in-kind contributions (sec. 3517.102(B)(6)(b)(iii)).

*In the case of contributions to or from a legislative campaign fund, "designated state campaign committee" means a campaign committee of either of the following (sec. 3517.102(A)(9)(c)):*

- *A Senate or House candidate who, if elected, will be a member of the same party that established the legislative campaign fund and the same house with which the legislative campaign fund is associated;*
- *A state senator or state representative who is a member of the same party that established the legislative campaign fund and the same house with which the legislative campaign fund is associated.*

Any legislative campaign fund that makes an in-kind contribution in excess of the permitted amount must be fined an amount equal to three times the amount contributed in excess of the \$25,000 limit (sec. 3517.992(I)(4)(a)). Similarly, any designated state campaign committee that accepts an in-kind contribution from a legislative campaign fund in excess of the permitted amount must be fined an amount equal to three times the amount accepted in excess of the \$25,000 limit (sec. 3517.992(J)(1)). In either case, however, no violation of the relevant prohibition occurs, and the Secretary of State is not permitted to refer a party to the Ohio Elections Commission, if the amount contributed or accepted in excess of the amount permitted is either (1) completely refunded within five business days after it is accepted, or (2) completely refunded on or before the 10th business day after notification to the recipient of the excess contribution by a board of elections or the Secretary of State (sec. 3517.992(I)(6) and (J)(5)).

**Knowledge standard for failure to file a campaign finance statement**

Continuing law prohibits any person, other than a campaign committee, from *knowingly* failing to file a required campaign finance statement.<sup>3</sup> Campaign committees are not subject to the "knowingly" requirement--they are prohibited from failing to file a complete and accurate required campaign finance statement. (Sec. 3517.13(A), (B), (C), (D), and (E).) Any person who knowingly fails to file a required campaign finance statement, and a candidate whose campaign committee, or a treasurer of a campaign committee who, fails to file a complete and accurate required campaign finance statement must be fined not more than \$100 for each day of violation (sec. 3517.992(A)).

The bill specifically prohibits any state or county political party, and any legislative campaign fund, from failing to file a complete and accurate required campaign finance statement. Similar to a campaign committee under continuing law, state and county political parties and legislative campaign funds do not have to "knowingly" fail to file a required campaign finance statement to commit a violation of the bill's prohibitions. (Sec. 3517.13(E)(2) and (3).) A state or county political party or legislative campaign fund that fails to file a complete and accurate required campaign finance statement must be fined not more than \$1,000 for each day of violation, or 10% of all contributions received during the relevant reporting period, whichever amount is greater (sec. 3517.992(B)(1) and (2)).

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<sup>3</sup> "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association (sec. 1.59(C))--not in the bill).

## Issue advocacy entities

### Definition

The bill defines a new type of entity for the purposes of the Campaign Finance Law. An "issue advocacy entity" means any person or combination of two or more persons that makes or receives a contribution or makes an expenditure of more than \$1,000 during a primary election period or general election period for political advertising that names or otherwise identifies a particular candidate, regardless of whether the advertising expressly calls for the election or defeat of that candidate, and that is not a political party, a campaign committee, a political contributing entity, a legislative campaign fund, or a political action committee (sec. 3517.01(B)(8), (21), and (22)).<sup>4</sup>

### Application of the Campaign Finance Law

The bill generally applies the requirements of the Campaign Finance Law to these newly defined issue advocacy entities, thereby requiring them to file campaign finance statements regarding contributions made or received, and expenditures made, in connection with the nomination, election, or defeat of any candidate. Contributions and expenditures that are "in connection with" the nomination, election, or defeat of a candidate include contributions made or received, and expenditures made, for the purpose of supporting or opposing a named or otherwise identified candidate, regardless of whether any advertising arising from the contribution or expenditure expressly calls for the election or defeat of that candidate. (Secs. 3517.01(B)(16) and (17), 3517.10(A), (B), (C), (D), (E), and (F)(1) and (4), 3517.105(B) and (C), 3517.106(B), (C), (E), and (K), 3517.11(A), 3517.13(E)(1), (G)(2), (O), and (Q), 3517.155(A), 3517.20(A)(2) and (3) and (B), and 3517.992(A)(2) and (Z).) (See **COMMENT 3**.)

Although issue advocacy entities are required to file campaign finance statements regarding contributions made or received and expenditures made, those entities are not subject to the contribution limits that apply to other entities under the Campaign Finance Law (sec. 3517.102). Thus, unlimited contributions apparently may be made to these entities without a violation of the Campaign Finance Law occurring, as long as those contributions are properly reported.

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<sup>4</sup> For the purpose of determining whether \$1,000 was spent during a primary or general election period, the bill defines a "general election period" as beginning on the date after the primary election immediately preceding the general election at which a candidate seeks office, and ending on December 31, following the general election. A "primary election period" begins on January 1 of the year following the year in which the last general election was held for the office that the candidate seeks, including any mid-term election, and ends on the day of the primary election. (Sec. 3517.01(B)(22)(a) and (b).)

Other provisions of the Campaign Finance Law, including those governing the deadlines for submission of campaign finance statements, the manner in which those statements must be submitted, and the information required to be included within those statements, apply to issue advocacy entities under the bill.

### **Communications advocating the election or defeat of a candidate**

#### **General filing requirements**

Existing law requires specified entities to file campaign finance statements regarding contributions made or received and expenditures made *in connection with* the "nomination or election" of any candidate, or *in connection with* any ballot issue or question, at any election held or to be held in this state (sec. 3517.10(A)). In addition to contributions and expenditures made in connection with the nomination or election of a candidate, the bill requires campaign finance statements to be filed for contributions and expenditures made in connection with the *defeat* of a candidate (sec. 3517.10(A)). The bill also specifies that contributions and expenditures "in connection with" the nomination, election, or defeat of a candidate include contributions made or received, and expenditures made, for the purpose of supporting or opposing a named or otherwise identified candidate, regardless of whether any advertising arising from the contribution or expenditure expressly calls for the election or defeat of that candidate (sec. 3517.10(F)(4)).

Thus, the bill requires any entity required to file campaign finance statements to file those statements for any contributions made or received or expenditures made for the purpose of supporting or opposing a named or otherwise identified candidate. Campaign finance statements must be filed regarding those contributions and expenditures whether or not advertising arising from them expressly calls for the election or defeat of a candidate. (See **COMMENT 3**.)

#### **Independent expenditures**

Continuing law requires certain political entities that make independent expenditures to include (1) specified information on public political advertising arising from the expenditures and (2) information regarding the expenditures in their campaign finance statements.<sup>5</sup> The bill does not change any details regarding

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<sup>5</sup> An "independent expenditure," for the purpose of the Campaign Finance Law, means 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 (sec. 3517.01(B)(17)).

the information that must be provided regarding the source of public political advertising; nor does it affect the types of information required to be provided on campaign finance statements regarding the independent expenditures. But, the bill broadens the types of communications associated with independent expenditures, so that individuals making expenditures to support these communications must adhere to the requirements of the law governing independent expenditures. (Sec. 3517.105.)

As under existing law, the bill requires the specified political entities to identify themselves as the source of a communication, and to include information about a communication on campaign finance statements, if their independent expenditure is for the purpose of financing communications advocating the election or defeat of an identified candidate (sec. 3517.105(B)(1) and (2)). The bill defines "communications advocating the election or defeat" of a candidate as including a communication supporting or opposing a named or otherwise identified candidate, *regardless* of whether the communication *expressly calls* for the election or defeat of that candidate (sec. 3517.105(A)(1)(b)). Thus, the bill requires the specified political entities (1) to include information regarding themselves as the source of such a communication in public political advertising that they fund through independent expenditures and (2) to include on their campaign finance statements information regarding independent expenditures made for such a communication. Both of these requirements apply to independent expenditures made by the entities regardless of whether advertising (i.e., the communication) arising from those expenditures expressly calls for the election or defeat of a candidate. (See **COMMENT 3**.)

### **Information required on political publications**

Existing law requires certain political entities that issue a form of "political publication for or against a candidate," or that make an expenditure for the purpose of financing a political communication in support of or opposition to a candidate through "public political advertising," to include specified information, including the name and residence or business address of the candidate or the chairperson, treasurer, or secretary of the campaign committee or other entity, in a conspicuous place on that political publication or within the political communication (sec. 3517.20). The bill does not change any details regarding the information that must be so provided.

But, the bill broadens the definition of a "political publication for or against a candidate," so that additional publication forms will be subject to the requirement that the source of the publication be included in a conspicuous place on the publication. Under the bill, "political publication for or against a candidate" means a notice, placard, advertisement, sample ballot, brochure, flyer, direct mailer, or other form of general publication that is designed to promote the

nomination, election, or defeat of a candidate, *regardless of whether the publication expressly calls for the nomination, election, or defeat of the candidate* (sec. 3517.20(A)(1)(a)). Thus, the bill requires specified entities to include information regarding the source of a political publication that the entity issues on that publication, regardless of whether the publication expressly calls for the election or defeat of a candidate. (See **COMMENT 3**.)

### **Elimination of filing exemption for specified entities**

Existing law specifies that an expenditure by a continuing association or a political contributing entity is not considered to be a contribution to any campaign committee or an expenditure by or on behalf of a campaign committee, and thus is not required to be reported under the Campaign Finance Law, if the purpose of that expenditure is for either of the following (sec. 3517.08(C)).<sup>6</sup>

- The staff and maintenance of the continuing association's or political contributing entity's headquarters;
- A political poll, survey, index, or other type of measurement not on behalf of a specific candidate.

The bill removes these exemptions, thereby requiring a continuing association and a political contributing entity to include in its campaign finance statements information regarding expenditures made for these purposes (sec. 3517.08(C)).

### **One-time additional filing requirement**

The bill requires state and county political parties and the newly defined issue advocacy entities, in the first statement of contributions and expenditures they are required to file after the effective date of the bill, to include the balance

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<sup>6</sup> A "continuing association" is defined, for the purposes of the Campaign Finance Law, as an association, other than a campaign committee, political party, legislative campaign fund, political contributing entity, 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 (sec. 3517.01(B)(4)).

A "political contributing entity" is any entity, including a corporation or labor organization, that may lawfully make contributions and expenditures and that is not an individual or a political action committee, continuing association, campaign committee, political party, legislative campaign fund, issue advocacy entity [added by the bill], designated state campaign committee, or state candidate fund (sec. 3517.01(B)(21)).

on hand that the political party or issue advocacy entity has on that date. (See "Miscellaneous provisions: Effective date," below.) The Secretary of State must prescribe the manner in which that balance is to be reported in the statement of contributions and expenditures. (Section 3 of the bill.)

### Miscellaneous provisions

#### Correction of obsolete term

The term "legislative candidate fund" currently appears in two provisions of the Campaign Finance Law. However, the term is not defined, and it is apparent from the context that the text actually should refer to a "legislative campaign fund." For example, in the penalty provisions of the Campaign Finance Law, the text specifies that any "legislative candidate fund" that violates a specific provision of the Revised Code must be levied a certain fine. The prohibition to which that penalty applies, however, refers to disbursements of moneys to a "legislative campaign fund." The bill corrects these obsolete references by changing them to the term currently used in the Revised Code, "legislative campaign fund." (Secs. 3517.102(C)(6)(b) and 3517.992(P).)

#### Effective date

The bill's provisions described in this analysis take effect December 7, 2002 (Section 5 of the bill).

The first campaign finance statement that the various entities, including political parties, legislative campaign funds, and issue advocacy entities, would be required to file if they receive contributions or make expenditures for the purpose of influencing the November 5, 2002, general election, is required to be filed December 13, 2002, 38 days after the general election. Campaign finance statements filed on December 13, 2002, are required to include information on contributions received and expenditures made from the date of the last previously filed statement through December 6, 2002, the seventh day before the statement is filed.

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## COMMENT

1. It is unclear how section 3517.08(G) will be implemented if a political party does not maintain an account clearly designated as an "operating fund," or which accounts of a political party might be included within that term if the party maintains multiple accounts for the purpose of paying operating expenses. However, since other provisions of the bill specify that all loans, gifts, or other donations to a political party must be considered to be for the purpose of influencing an election, it appears that any such loan, gift, or other donation would

be required to be reported under those provisions, regardless of whether the contribution was made to an "operating fund" or another fund of a political party.

2. Although only contributions from a single contributor that aggregate in excess of \$2,500 during a reporting period must be tracked and reported under section 3517.10(M)(1), it appears that all contributions to a political party, regardless of amount, will need to be tracked in order to meet the requirement. Since contributors may make contributions on more than one occasion during a reporting period, each contribution will have to be tracked from the point at which it is made to its final expenditure, in order to keep accurate records in case a particular contributor exceeds an aggregate of \$2,500 during a reporting period. Otherwise, it would not seem possible to determine at a later date the final expenditure of contributions already received that are included within the aggregate amount required to be reported for that contributor.

To determine the final expenditure of individual monetary contributions, each contributor's monetary contribution may have to be placed in a separate account. Once funds from multiple contributors are combined into a single account, it may be impossible to determine which particular contributor's money was spent on a particular expense. The rules to be adopted by the Secretary of State, thus, could require each contribution to be kept separate or could utilize accounting or other procedures to arbitrarily specify which contributions will be presumed to be expended first, if those moneys cannot be independently identified.

3. Because the bill's issue advocacy entity provisions and certain other provisions regulate political speech beyond that *expressly* advocating the election or defeat of a particular candidate, these provisions may be violative of and unenforceable under the First Amendment to the United States Constitution. If enacted, the bill then potentially could be challenged on the following First Amendment grounds:

(a) It requires campaign finance statements to be filed for advertising that reaches beyond the express words advocating election or defeat recognized by the United States Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976).

(b) What constitutes "advertising," or whether a particular candidate is "otherwise identified" may be unclear so that individuals or entities might restrict their speech beyond what is necessary to avoid the filing of campaign finance statements.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	04-24-02	p. 1720

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