Lynda Jacobsen *Legislative Service Commission*

H.B. 632

124th General Assembly
(As Introduced)

Rep. Grendell

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, 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 of contributions by a state or county political party or a legislative campaign fund are expenditures, 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 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 a state or local committee of a political party, a finance committee of such a committee, or a committee recognized by a state or

local committee as its fund-raising auxiliary to include on its statements of contributions the full address of each entity from which it receives a contribution.

- Requires county political parties, with regard to their state candidate funds, to file required campaign finance statements by electronic means of transmission to the Secretary of State's office.

- 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 or make expenditures of less than $1,000 during the reporting period.

- 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.

- Requires both contribution and expenditure information be reported on the monthly statements filed by the campaign committees of a statewide candidate during July, August, and September in the year of the election in which the candidate seeks office.

- Requires the July monthly statement filed by campaign committees of statewide candidates to reflect all contributions received and expenditures made since the last previously filed statement.

- Eliminates the option for campaign committees of candidates for the office of member of the General Assembly who receive contributions of $10,000 or less to file their campaign finance statements in paper format with a county board of elections.

- Requires the campaign committees of all candidates for the office of member of the General Assembly to file their campaign finance statements by electronic means of transmission to the Secretary of State.

- Requires campaign committees of candidates for statewide office, specified political action committees and political contributing entities, legislative campaign funds, state political parties, and individuals, partnerships, or other entities making specified independent expenditures, regardless of the amount of contributions they receive and/or the

expenditures they make during a reporting period, to file their campaign finance statements by electronic means of transmission to the Secretary of State.

- Eliminates the provision prohibiting the Secretary of State from posting on the Internet the contribution and expenditure information for a candidate until that information is available for posting for all candidates for a particular office.

- Eliminates the Secretary of State's authority to require an entity filing a correction to a campaign finance statement to file that correction in the form of an amended statement.

- Permits a county political party that has no state candidate fund and that is located in a county with a population of less than 150,000 to make one or more contributions aggregating not more than $2,500 to a designated state campaign committee from its operating account.

- Prohibits state and county political parties and legislative campaign funds from failing to file a complete and accurate required campaign finance statement, and provides for a fine of not more than $100 for each day of violation.

- Generally permits any person, including a corporation, to make a gift of up to $10,000 in a calendar year to a major state or county political party's Levin account for the purpose of defraying costs for voter registration, voter identification, get-out-the-vote, or generic campaign activities.

- Requires state and county political parties that receive gifts for their Levin accounts to file annual statements describing in detail the gifts received and the disbursements made of those gifts from those accounts.

- Prohibits a state or county political party from failing to file a required Levin account statement, from knowingly failing to report or knowingly misrepresenting a gift required to be reported on a statement, and from expending or using a gift received for a Levin account for a purpose other than to defray a cost incurred for voter registration, voter identification, get-out-the-vote, or generic campaign activities.

- Generally defines an "electioneering communication" as a broadcast, cable, or satellite communication, distribution of printed materials, or telemarketing activity that refers to the name, image, or likeness of a candidate, that occurs on the day of an election or during the 60 days preceding an election, and that meets certain other requirements.

- Requires any person or entity engaging in electioneering communication to file with the Secretary of State a statement detailing specific information about that communication, including an accounting of gifts used to purchase or fund the communication.

- Permits any person or entity otherwise prohibited from making a contribution to make a gift to fund an electioneering communication.

- Deletes obsolete references regarding the filing of campaign finance statements by specified entities by fax, paper, or on computer disk.

- Corrects references to the obsolete term "legislative candidate fund" so that they refer to the correct term--"legislative campaign fund."

- Makes other changes in the Campaign Finance Law.

TABLE OF CONTENTS

Political party campaign finance reporting requirements 5
General reporting requirements 5
Contributions and expenditures for the purpose of influencing the results of an election 6
Expenditures for voter contact, political polling, maintenance of party headquarters, and notification of party activities 6
Inclusion of a contributor's full address on statements of contributions 7
Electronic filing for county political party state candidate funds 7
Legislative campaign fund campaign finance reporting requirements 8
General reporting requirements 8
Contributions and expenditures for the purpose of influencing the results of an election 8
Filing schedule for campaign finance statements 9
In general 9
Filing exemption for entities with contributions and expenditures below $1,000 10
Statements filed by a legislative campaign fund in even-numbered years 10
Monthly statements for statewide candidates 11

Filing location for General Assembly candidates 11
Electronic filing with the Secretary of State's office by other entities..... 12
The Secretary of State's campaign finance duties 13
Placing campaign finance information online simultaneously for candidates for the same office..... 13
Authority to require the filing of an amended statement..... 13
Inspection of statements filed electronically..... 14
Contributions from specified county political party operating accounts..... 14
Expenditures for the maintenance of a continuing association's or political contributing entity's headquarters and political polls..... 15
Mens rea standard for failing to file a campaign finance statement..... 15
Electioneering communication 16
Definition..... 16
Campaign finance reporting requirements 17
Related provisions 18
Levin accounts 18
In general 18
Reporting requirements 19
Prohibitions and penalties 20
Miscellaneous provisions 21
Deletion of obsolete filing provisions..... 21
Correction of obsolete term..... 21

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 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 in campaign

finance statements only those receipts or disbursements that would be contributions or expenditures 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 campaign committee, political action committee, legislative campaign fund, political party, political contributing entity, or 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 provision, however, does not apply to money that a state or county political party receives 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 all disbursements of contributions by a state or county political party, generally 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.)

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 communications;

- 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)).

Inclusion of a contributor's full address on statements of contributions

Existing law generally requires entities filing statements of contributions received to include the full name and address of each person, political party, campaign committee, legislative campaign fund, political action committee, or political contributing entity from whom the contributions were received and each political action committee's registration number. The requirement of filing the full address, however, does not currently apply to a statement filed by a state or local committee of a political party, a finance committee of such a committee, or a committee recognized by a state or local committee as its fund-raising auxiliary. The bill removes this exemption, thus requiring a state or local committee of a political party, a finance committee of such a committee, and a committee recognized by a state or local committee as its fund-raising auxiliary to include, on any statements of contributions received that it files, the full address of each person, political party, campaign committee, legislative campaign fund, political action committee, and political contributing entity from whom it receives contributions. (Sec. 3517.10(B)(4)(b)(i).)

Electronic filing for county political party state candidate funds

Existing law requires certain entities to file their required campaign finance statements by electronic means of transmission to the office of the Secretary of State. Other entities, including county political parties, must file those statements on paper with the local board of elections. (Sec. 3517.11.)

The bill requires county political parties, only with regard to their state candidate funds, to file those statements by electronic means of transmission to the office of the Secretary of State.[1] With respect to all other funds, a county political

---

[1] *A "state candidate fund" is a fund that a state or county political party may establish from which it may make contributions, in specified amounts, to a designated state campaign committee (sec. 3517.10(D)(3)(c) and 3517.102(A)(6)). In the case of contributions to or from a county political party, a "designated state campaign committee" means the campaign committee of a statewide candidate, statewide officeholder, Senate candidate or House candidate whose candidacy is to be submitted to some or all of the electors in that county, or member of the General Assembly whose district contains all or part of that county (sec. 3517.102(A)(9)(b)).*

party must continue to file those statements with the board of elections. (Secs. 3517.106(B)(5) and (E)(2) and 3517.11(A)(1).)

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).[2] "Contribution" and "expenditure" are defined, for this purpose, in the same manner as for campaign finance statements filed by political parties. Thus, any loan, gift, or other donation made or 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 campaign committee, political action committee, legislative campaign fund, political party, political contributing entity, or 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 of contributions 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.)

---

[2] *"Legislative campaign fund" means a fund that is established as an auxiliary of a state political party and is 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 its 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).

In addition to these statements, the campaign committee of a statewide candidate must file monthly statements of contributions received during July, August, and September in the year of the general election in which the candidate

seeks office.[3] Monthly statements must be filed not later than three business days after the last day of the month covered by the statement. (Sec. 3517.10(A)).

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

Political parties, legislative campaign funds, and other specified entities that receive contributions of less than $1,000 and make 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 exempt from having 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 during a reporting period 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

---

[3] *"Statewide candidate" means the joint candidates for the offices of Governor and Lieutenant Governor or a candidate for the office of Secretary of State, Auditor of State, Treasurer of State, Attorney General, member of the State Board of Education, Chief Justice of the Supreme Court, or Justice of the Supreme Court (sec. 3517.10(F)(2)).*

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, but 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).)

Monthly statements for statewide candidates

The bill continues existing law's requirement that campaign committees of statewide candidates file monthly statements during July, August, and September in the year of the general election in which the candidate seeks office. But, instead of only requiring contribution information in those statements, the bill specifies that those statements must include both contributions received and expenditures made during those months. Moreover, the July monthly statement reflecting contributions received and expenditures made during that month also must reflect all contributions received and expenditures made from the close of business on the last day reflected in the last previously filed statement, if any, through the last day of July. (Sec. 3517.10(A).)

Filing location for General Assembly candidates

Existing law generally phases in the electronic filing of campaign finance statements over a period of several years. The final phase-in, scheduled for January 1, 2003, requires the campaign committees of all candidates for the office of member of the General Assembly to file their campaign finance statements by electronic means of transmission to the Secretary of State if those campaign committees receive more than $10,000 in contributions during a reporting period. Campaign committees that receive $10,000 or less in contributions during a reporting period may file those statements by electronic means of transmission to the Secretary of State, or they may file those statements in paper format with the appropriate county board of elections. (Secs. 3517.106(F)(1) and (4) and 3517.11.)

The bill requires the campaign committees of *all candidates* for the office of member of the General Assembly, regardless of the amount of contributions received during a reporting period, to file their required campaign finance statements by electronic means of transmission to the Secretary of State. Campaign committees receiving contributions of $10,000 or less during a reporting period, then, are no longer permitted under the bill to file their campaign finance statements in paper format with a county board of elections. (Secs. 3517.106(F) and 3517.11(A)(1).)

Electronic filing with the Secretary of State's office by other entities

As mentioned above, existing law generally phases in the electronic filing of campaign finance statements over a period of years. Beginning January 1, 2001, campaign committees of *candidates for statewide office* were required to file their campaign finance statements by electronic means of transmission to the Secretary of State if they received more than $10,000 in contributions or made expenditures of more than $10,000 in a reporting period; under other circumstances, those campaign committees were permitted to file their campaign finance statements by electronic means of transmission to the Secretary of State (sec. 3517.106(E)(1)). Also, beginning January 1, 2001, certain *political action committees*, certain *political contributing entities*, *legislative campaign funds*, and *state political parties* were permitted to file their campaign finance statements by electronic means of transmission to the Secretary of State; but, beginning January 1, 2002, each of these entities that received more than $10,000 in contributions or made expenditures of more than $10,000 in a reporting period was required to file its campaign finance statements by electronic means of transmission to the Secretary of State (secs. 3517.106(E)(2) and (3) and 3517.11(A)(1)). Finally, beginning January 1, 2001, any individual, partnership, or other entity that made an *independent expenditure* in support of or opposition to a *statewide candidate* or a statewide ballot issue or question was permitted to file its campaign finance statements by electronic means of transmission to the Secretary of State; but, beginning January 1, 2002, each of these entities that made independent expenditures of more than $10,000 in a reporting period was required to file its campaign finance statements by electronic means of transmission to the Secretary of State (sec. 3517.106(G)(1) and (2)).

The bill instead requires the campaign committees of candidates for statewide office, the specified political action committees and political contributing entities, legislative campaign funds, state political parties, and the individuals, partnerships, or other entities making the described independent expenditures, regardless of the amount of contributions they receive and/or the expenditures they make during a reporting period, to file their campaign finance

statements by electronic means of transmission to the Secretary of State (sec. 3517.106(E)(1) and (2) and (G)).

The Secretary of State's campaign finance duties

Placing campaign finance information online simultaneously for candidates for the same office

Existing law generally requires the Secretary of State to make available on the Internet the contribution and expenditure information from a campaign finance statement filed with his or her office by a campaign committee of a statewide candidate or of a candidate for the office of member of the General Assembly within five business days after the filing. Under existing law, the Secretary of State is prohibited from making that information available on the Internet for a candidate until the Secretary of State is able to make available online the contribution and expenditure information for *all candidates* for a particular office. As soon as the Secretary of State receives the information for all candidates for a particular office, the Secretary of State must simultaneously make it available online. Thus, the failure of one candidate for an office to file a campaign finance statement in a timely manner, or a breakdown in the electronic filing system that delays the availability of one candidate's campaign finance statement, currently can result in a delay in the online availability of the contribution and expenditure information for all candidates for that office, until the last candidate's information is available to the Secretary of State. (Sec. 3517.106(E)(1) and (F)(1).)

The bill retains the requirement that the Secretary of State make available on the Internet the contribution and expenditure information from the campaign finance statements of the specified candidates. But, it eliminates the provisions prohibiting the information for a candidate from being made available online until the information for that candidate's opponents also is available to the Secretary of State. Thus, under the bill, a candidate's contribution and expenditure information generally must be made available online within five days after the candidate's campaign finance statement is filed with the Secretary of State's office, regardless of whether the candidate's opponents timely file their statements. (Sec. 3517.106(E)(1) and (F).)

Authority to require the filing of an amended statement

If a campaign finance statement filed by electronic means of transmission is found to be incomplete or inaccurate, the entity filing the statement generally must file in a similar manner an addendum, amendment, or other correction to the statement that provides the information necessary to complete or correct it. But, the Secretary of State may require that an amended statement instead be so filed. (Secs. 3517.106 and 3517.11.)

The bill eliminates the authority of the Secretary of State to require an entity to file an amended statement in lieu of an addendum, amendment, or other correction to an incomplete or inaccurate campaign finance statement. An entity filing an incomplete or inaccurate statement still is required to provide the information necessary to complete or correct the statement, but the Secretary of State cannot require that information to be filed in the form of an amended statement. (Secs. 3517.106(E)(1) and (2), (F), (G), (H)(1) and (2), and (I) and 3517.11(B)(3)(a) and (b) and (C).)

Inspection of statements filed electronically

The Secretary of State or a board of elections must examine all campaign finance statements for compliance with the Campaign Finance Law (sec. 3517.11(B)(4)(a)).

Existing law generally permits the Secretary of State to examine for completeness and accuracy all campaign finance statements filed by the campaign committees of candidates for the office of member of the General Assembly, and explicitly requires the Secretary of State to conduct that examination for all statements filed with the Secretary of State's office by those campaign committees by electronic means of transmission. The bill deletes these provisions. But, as the bill requires all campaign finance statements of those campaign committees to be filed with the Secretary of State, the Secretary of State still will be required to examine those statements for compliance with the Campaign Finance Law due to the continuation of the requirement mentioned in the preceding paragraph. (Secs. 3517.106(F) and 3517.11(A)(1) and (B)(3)(a) and (4)(a).)

Additionally, the Secretary of State currently is permitted to contract with an individual who, or entity that is not associated with the Secretary of State and is experienced in interpreting the Campaign Finance Law, to conduct examinations of campaign finance statements filed by any statewide candidate. The bill expands this authority to permit the Secretary of State to contract with such an individual or entity to conduct examinations of statements filed by candidates for the office of member of the General Assembly. (Sec. 3517.11(B)(4)(b).)

Contributions from specified county political party operating accounts

Existing law (unchanged by the bill) permits a county political party to establish a state candidate fund, from which contributions, in specified amounts, may be made to a designated state campaign committee (sec. 3517.10(D)(3)(c) and 3517.102(A)(6)). A county political party that has no state candidate fund and that is located in a county having a population of less than 150,000 is permitted to make one or more contributions from other accounts to any one designated state campaign committee that do not exceed, in the aggregate, $2,500 in any primary

election period or general election period. These permissible "other accounts" from which contributions may be made do *not include* (1) accounts containing the public moneys that the political party received from the Ohio Political Party Fund or (2) the county political party's operating account. (Sec. 3517.102(B)(6)(c).)

The bill removes from the excluded "other accounts" the county political party's operating account. Thus, under the bill, a county political party that does not have a state candidate fund and that is located in a county with a population of less than 150,000 may make one or more contributions from the party's operating account to any one designated state campaign committee that do not exceed, in the aggregate, $2,500 in any primary election or general election period. (Sec. 3517.102(B)(6)(c).)

Expenditures for the maintenance of a continuing association's or political contributing entity's headquarters and political polls

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 candidate or campaign committee, and thus is not required to be reported under the Campaign Finance Law, if the purpose of that expenditure is either of the following (sec. 3517.08(C)):

- For the staff and maintenance of the association's or entity'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 continuing associations and political contributing entities to include in their campaign finance statements information regarding expenditures made for any of these purposes (sec. 3517.08(C)).

Mens rea standard for failing to file a campaign finance statement

Existing law (unchanged by the bill) prohibits any person, other than a campaign committee, from *knowingly* failing to file a required campaign finance statement.[4] Campaign committees are not subject to the "knowingly"

---

[4] *"Person" includes an individual, corporation, business trust, estate, trust, partnership, and association (sec. 1.59(C)--not in the bill).*

R.C. 2901.22 (not in the bill) explains culpable mental states ("means rea") for criminal offenses in Ohio. A person acts "knowingly," regardless of his or her purpose,

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 existing law, state and county political parties and legislative campaign funds do not have to "knowingly" fail to file a required campaign finance statement to be in 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 $100 for each day of violation (sec. 3517.992(B)(1) and (2)).

Electioneering communication

Definition

The bill defines a new type of election-related communication and imposes specific campaign finance reporting requirements on that type of communication. An "electioneering communication" is defined as any broadcast, cable, or satellite communication, any distribution of printed materials, or any telemarketing activity that meets all of the following requirements (sec. 3517.1011(A)(3)):

(1) It refers to the name, image, or likeness of a candidate.

(2) It occurs on the day of or during the 60 days preceding an election at which the candidate's name appears on the ballot.

(3) It is not otherwise reported as a contribution or an expenditure under the Election Law.

(4) It does not appear in a news story, commentary, or editorial distributed through the facilities of any broadcast station or newspaper, unless those facilities

---

when the person is aware that his or her conduct will probably cause a certain result or will probably be of a certain nature. This mental state is different from "purposely" acting, which involves a specific intent to cause a certain result or to engage in certain conduct.

are owned or controlled by any political party, legislative campaign fund, political action committee, political contributing entity, campaign committee, or candidate.

(5) It is not made by any club, group, association, or organization to its membership, and it is not generally distributed or broadcast to electors unless they are members of that club, group, association, or organization.[5]

Campaign finance reporting requirements

Any person or entity engaging in electioneering communication is required to file with the Secretary of State a full, true, and itemized statement under penalty of election falsification (see **COMMENT** 1).[6] The statement must be filed not later than five days after the first instance of electioneering communication occurs, and thereafter must be filed once every seven days through the day of the election (see **COMMENT** 2). The Secretary of State must prescribe the form of the statement, which must include all of the following (sec. 3517.1011(B)):

- The name and address of the person or entity disbursing funds to purchase or fund the electioneering communication;

- A detailed accounting of all gifts used to purchase or fund the communication. The accounting must include the dollar amount or value of each gift, the date of the gift's receipt, and the name and address of any person or entity making a gift. If the gift is from an individual and exceeds $100, the accounting also must include the name of the individual's current employer, if any, or the individual's occupation, if the person is self-employed.

- The name and office sought of the candidate whose name, image, or likeness was used in the communication;

- A detailed accounting of all disbursements used to purchase or fund the communication, including the date and amount of all disbursements and the name and address of the recipient of each disbursement.

---

[5] *"Club, group, association, or organization" does not include a political party.*

[6] *Whoever commits election falsification is guilty of a felony of the fifth degree (sec. 3599.36--not in the bill).*

Related provisions

The bill permits disbursements used to engage in electioneering communication to be made from a segregated fund established for that purpose. Any person or entity may establish such a fund. Any gifts received by and any disbursements made from a segregated fund must be reported in accordance with the electioneering communication reporting requirements. (Sec. 3517.1011(C).)

The bill also permits any person or entity otherwise prohibited from making a "contribution" to make a gift to fund an electioneering communication (sec. 3517.1011(D)). For example, a foreign national who is prohibited under the Campaign Finance Law from making a direct contribution to a candidate's campaign is permitted, under the bill, to make a gift to fund an electioneering communication that refers to the name, image, or likeness of that candidate or that candidate's opponent.

A "gift" for purposes of the bill's provisions discussed above is defined as a gift, subscription, loan, advance, or deposit of money, or anything of value given to any person or entity that is used to defray any cost for the purchase or funding of electioneering communications (sec. 3517.1011(A)(1)).

Levin accounts

In general

The bill permits any person, including a for-profit or nonprofit corporation, but not including a public utility, to make a gift to a political party's Levin account, if the gift is specifically designated and used to defray costs incurred for voter registration, voter identification, get-out-the-vote, or generic campaign activities and is not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for office (sec. 3517.1012(B)(1)).[7] (See **COMMENT** 3 and 4.) All gifts to a Levin account are limited to an aggregate amount of $10,000 per calendar year given by any one donor.[8] This $10,000 limit is in addition to any contribution limit described in the

---

[7] *A "gift" means a gift, subscription, loan, advance, or deposit of money, or anything of value given to a state or county* ***major*** *political party that is specifically designated and used to defray any cost incurred for voter registration, voter identification, get-out-the-vote, or generic campaign activities, and that is not used for the purpose of directly influencing the election of any individual candidate in any particular election for any office (sec. 3517.1012(A)(1)).*

[8] *A subsequent amendment to this section is needed to identify the provisions of federal law and of the Code of Federal Regulations that establish the $10,000 limit on Levin account contributions.*

Campaign Finance Law or any other section of the Revised Code (see **COMMENT** 5). (Sec. 3517.1012(B)(2) and (3).)

All gifts given under this provision must be deposited in an account separate from other funds and must be maintained in that separate account. The account must be designated a Levin account, and moneys in it may be used only for voter registration, voter identification, get-out-the-vote, or generic campaign activities (sec. 3517.1012(D)). Before receiving any gifts to a Levin account, a political party must appoint a treasurer and file, on a form the Secretary of State prescribes, a designation of that appointment. The designation must include the full name and address of the political party for which the person has been appointed treasurer and must be filed with the official with whom the political party is required to file Levin account statements (see "***Reporting requirements***," below). A political party that has filed a designation of treasurer prior to receiving a contribution or making an expenditure is considered to have met the requirement of filing a designation of treasurer for the purpose of receiving gifts to a Levin account. (Sec. 3517.1012(H)(1) and (3).)

Reporting requirements

Each state or county political party that receives a gift to a Levin account must file, on a form the Secretary of State prescribes, a full, true, and itemized statement describing the gift and the manner in which it was disbursed. The statement must be made under penalty of election falsification and must be filed not later than 4 p.m. on January 31 of each year to reflect gifts received and disbursed during the immediately preceding calendar year. (Sec. 3517.1012(C)(1).)

The statement is required to contain all of the following information (sec. 3517.1012(C)(2)):

- The full name and address of the state or county political party filing the statement and of the party's treasurer;

- A description of each gift received, which must include (1) the month, day, and year on which it was received, (2) the full name and address of each donor, (3) its nature, if it is not money, (4) its value in dollars and cents, and (5) an itemization of the manner in which each disbursement of it was made (see below);

- The total value of gifts received and gifts disbursed during the reporting period.

Within that statement, the *itemization* of the manner in which each *disbursement* of a gift was made must include all of the following: (1) the name and address of the recipient, (2) the date of the disbursement, (3) its amount, and (4) the method by which it was made, such as by cash or check (sec. 3517.1012(C)(2)(b)(v)). A political party's treasurer must keep a strict account of all gifts required to be reported under this provision (sec. 3517.1012(H)(2)).

State political parties must file their required Levin account statements with the Secretary of State, and county political parties must file those statements with the board of elections of the county in which the party is located (sec. 3517.1012(E)). Upon request, the Secretary of State or a board of elections with which a Levin account statement is filed must issue a receipt for each statement. The Secretary of State or board of elections must maintain a record of the filing for at least six years, and all statements must be open to public inspection in the office in which they are filed. (Sec. 3517.1012(I).)

Prohibitions and penalties

The bill prohibits a state or county political party from failing to file a required Levin account statement. Additionally, a state or county political party is prohibited from knowingly failing to report or knowingly misrepresenting a gift required to be reported on a Levin account statement. (Sec. 3517.1012(F).) Furthermore, a state or county political party cannot expend or use a gift received for a Levin account for a purpose other than to defray a cost incurred for voter registration, voter identification, get-out-the-vote, or generic campaign activities (sec. 3517.1012(G)). (See **COMMENT** 3 and 4.) And, as previously mentioned, persons contributing to a Levin account are restricted in a calendar year to making contributions in an aggregate amount of $10,000 (sec. 3517.1012(B)(2)). (See **COMMENT** 5.)

Under existing law, the penalty for violating any provision of the Campaign Finance Law for which no penalty is provided is a fine of not more than $1,000. Thus, *a political party* failing to file a required Levin account statement, knowingly failing to report or knowingly misrepresenting a gift required to be reported on a statement, or expending or using a gift received for a Levin account for other than permitted purposes, or *a person* contributing more than $10,000 to a Levin account in a calendar year, could potentially be fined up to $1,000 for each violation. (Sec. 3517.992(Z).)

Miscellaneous provisions

Deletion of obsolete filing provisions

Existing law, as previously mentioned, phases in the electronic filing of campaign finance statements over a period of time. During the phase-in process, other methods of filing, including filing by fax, on computer disk, or on paper, are permitted. (See the previous discussions under "***Filing location for General Assembly candidates***" and "***Electronic filing with the Secretary of State's office by other entities***," above.) (Secs. 3517.10, 3517.105, 3517.106(E), (F), and (G), and 3517.11.)

The bill eliminates applicable statutory references to *non*electronic methods of filing for entities that will be required under the bill to file their campaign finance statements by electronic means of transmission to the Secretary of State's office (secs. 3517.10, 3517.105, 3517.106(E), (F), and (G), and 3517.11). In doing so, it also eliminates a *conditional filing fee*, which may be imposed on campaign committees of candidates for the office of member of the General Assembly that file their campaign finance statements other than by electronic means of transmission to the Secretary of State's office or computer disk with the appropriate board of elections, and a requirement that boards of elections receiving paper filings from those campaign committees forward one copy of those filings to the Secretary of State (secs. 3517.106(F)(3) and 3517.11(A)(2)). Since those campaign committees will be filing their campaign finance statements by electronic means of transmission to the Secretary of State's office on and after the bill's effective date, these provisions will be obsolete.

Existing law (unchanged by the bill) will continue to require other entities, such as campaign committees of candidates for county offices, to file their campaign finance statements in paper format with a board of elections (sec. 3517.11).

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 a certain fine must be imposed upon any "legislative candidate fund" that violates a specific statutory provision. 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).)

COMMENT

1. Because the bill attempts to regulate political speech, in the form of "electioneering communication," beyond that expressly advocating the election or defeat of a particular candidate, its electioneering communication provisions may be violative of and unenforceable under the First Amendment to the United States Constitution. If enacted, the bill potentially could be challenged on the following First Amendment grounds:

(a) It requires campaign finance statements to be filed for communications that reach 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) It is unclear what may be considered a candidate's "image" or "likeness," and what constitutes ownership or control of a newspaper or broadcast station, so that individuals or entities might restrict their speech beyond what is necessary to avoid the filing of campaign finance statements. For example, it is unclear whether a media company would be engaging in electioneering communication, and thus required to filed specified statements, if it broadcast an endorsement of a candidate and that candidate owned stock in either that media company or a parent of that company. Courts may find a statute to be unconstitutionally vague if it fails to make clear whether it regulates a particular person's conduct.

2. It is unclear in the bill what constitutes the "first instance of electioneering communication," such that a person or entity making the communication must file a statement detailing the funding of that communication (sec. 3517.1011(B)(2)). If an advertising contract, for example, is entered into before or during the regulated time period before an election, does the "first instance" of electioneering communication occur when the contract is agreed to or when the resulting advertisements are aired within the regulated time period? Either of these occurrences could potentially be considered the "first instance" of electioneering communication, and, thus, unless the bill is clarified by subsequent amendment, it seems likely that further interpretation by a court will be necessary to determine whether a particular occurrence triggers the bill's reporting requirements.

3. Several terms in the bill pertaining to Levin accounts are undefined. Thus, it is not clear what constitutes "voter identification" or "generic campaign" activities (sec. 3517.1012). By leaving these terms in particular undefined, the bill is ambiguous whether certain activities may or may not be legally funded from a Levin account.

4. Due to differences in the bill's wording regarding gifts made to Levin accounts, one proposed provision conflicts with the rest of the proposed provisions regarding whether those gifts may be used only to defray costs for voter registration, voter identification, get-out-the-vote, or generic campaign activities (hereafter, "costs"), or whether those gifts may be used partially for the purpose of directly influencing the election of individual candidates in particular elections. Division (B)(1) of section 3517.1012 permits any person, other than a public utility, to make donations to Levin accounts if the gifts are designated and used to defray any of the costs mentioned above and are not used "solely" for the purpose of directly influencing the election of an individual candidate. Thus, the wording of division (B)(1) seems to indicate that gifts to Levin accounts may be partially used to directly influence the election of individual candidates. This implication of permitted partial use for directly influencing an election conflicts with the remainder of the section, such as division (A)(1)'s definition of a "gift" itself and division (D) which states that "moneys in a Levin account shall be used only for voter registration, voter identification, get-out-the-vote, or generic campaign activities."

5. The contribution limit applicable to entities making gifts to a Levin account is unclear. The bill specifies that the $10,000 limitation on gifts to a Levin account is "in addition to any contribution limit described" in the Campaign Finance Law or another Revised Code section (sec. 3517.1012(B)(3)). The language may be construed to mean that the total limitation on all gifts and contributions may not exceed $10,000, or that gifts in the amount of $10,000 may be made to a Levin account in addition to any contributions otherwise made under the Campaign Finance Law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-12-02	p. 2005

h0632-i.124/kl