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Bill Analysis
Legislative Service Commission

S.B. 303

124th General Assembly
(As Introduced)

Sens. Fingerhut, Herington, Ryan, DiDonato, Hagan, Shoemaker, Roberts

BILL SUMMARY

- Creates a one-business-day campaign finance statement that must be filed regarding certain contributions received beginning on the 12th day before a primary or general election by campaign committees of statewide candidates and General Assembly candidates, state and county political parties, and issue advocacy entities.
- Requires campaign committees of statewide candidates to file required two-business-day statements for specified contributions received between the 19th and the 13th day before a primary or general election.
- Defines an "issue advocacy entity" 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.
- Imposes contribution limits upon issue advocacy entities similar to those established for political contributing entities.
- Requires issue advocacy entities to file campaign finance statements regarding contributions made or received and expenditures made 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" of a candidate, 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.
- Limits all transfers or contributions of cash or cash equivalents from the state candidate funds of state or county political parties to the campaign committees of statewide candidates, Senate candidates, and House candidates to \$2,500 for each primary and general election period.
- Prohibits the campaign committees of statewide candidates, Senate candidates, and House candidates from accepting more than \$2,500 in contributions (including in-kind contributions) from the state candidate fund of a state or county political party during a primary or general election period.
- Prohibits specified officeholders and candidates from accepting contributions unless the fund from which a contribution is made (1) is maintained for the express purpose of influencing the results of an election and (2) is subject to the reporting requirements of the Campaign Finance Law.
- Prohibits statewide candidates and General Assembly candidates from knowingly conspiring with contributors or potential contributors in an attempt to conceal or misrepresent contributions given or received, the original source or final destination of contributions given or received, expenditures made, or any other information required to be reported.



- Prohibits county political parties from making contributions to a statewide candidate or to a General Assembly candidate if the political party has, during the same reporting period, accepted a contribution from a contributor who would be prohibited from making a contribution directly to that candidate.
- Generally prohibits a state agency or department or a political subdivision from awarding contracts of more than \$500 to an individual, partnership, association, estate, trust, corporation, or business trust if certain affiliated individuals made contributions exceeding \$1,000 to any state or county political party within the two previous calendar years.
- Establishes associated penalties for each of the new Campaign Finance Law prohibitions.
- Prohibits statewide candidates and General Assembly candidates from holding the office of chairperson or the office of treasurer of a controlling committee, of a central committee, or of an executive committee of a state or county political party.
- Deletes obsolete provisions that previously permitted certain campaign finance statements to be filed by fax or on computer disk.
- 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 January 1, 2004.

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CONTENT AND OPERATION

Campaign finance reporting requirements

In general

Existing law requires certain entities 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 covered entities 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.

Filing schedule for campaign finance statements

Every political party 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).

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.¹ 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).)

¹ "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,

The campaign committee of a statewide candidate has an additional filing requirement applicable to certain contributions received within the 19 days before, and on the day of, a primary or general election. During the period beginning on the 19th day before a primary election at which a statewide candidate seeks nomination to office and extending through the day of that election, each time the candidate's campaign committee (1) files a "personal funds notice" or is no longer subject to the Campaign Finance Law's contribution limitations because an opponent's campaign committee has filed a personal funds notice, and (2) then receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor to exceed \$2,500, the campaign committee must file a two-business-day statement reflecting that contribution. During the period beginning on the 19th day before a general election at which a statewide candidate seeks election to office and extending through the day of that election, each time the candidate's campaign committee receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor to equal or exceed \$2,500 (or exceed \$500 with respect to campaign committees of candidates for the office of Justice or Chief Justice of the Supreme Court), the campaign committee must file a two-business-day statement reflecting that contribution. A two-business-day statement must be filed not later than two business days after receipt of the contribution. (Sec. 3517.10(A).)

Filing of one-business-day statements by specified entities

Campaign committees of statewide and General Assembly candidates. In addition to the existing required campaign finance statements, the bill establishes a new type of statement applicable to certain entities. During the period beginning on the 12th day before a primary or general election at which a candidate for statewide office or a candidate for the office of member of the General Assembly seeks nomination or election to office and extending through the day of that election, each time the candidate's campaign committee receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor to equal or exceed \$2,500 (or exceed \$500 for campaign committees for candidates for the office of Justice or Chief Justice of the Supreme Court), the campaign committee must file a one-business-day statement reflecting that contribution. Contributions required to be reported on a one-business-day statement for a primary election also must be included in the postprimary statement filed by that campaign committee. One-business-day statements must be filed not later than one business day after the receipt of the contribution. A campaign committee must file any required one-business-day statement by electronic means of transmission if the campaign committee is required to file

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)).



other campaign finance statements by those means under existing law. (Secs. 3517.10(A) and (C)(7) and 3517.11(B)(3)(a).)

The bill retains the requirement for statewide candidates to file two-business-day statements regarding certain contributions received beginning on the 19th day before an election. Unlike existing law, however, two-business-day statements under the bill must only be filed for contributions received from the 19th through the 13th day before an election. Beginning with the 12th day before an election, those candidates must file the new one-business-day statement. (Sec. 3517.10(A).)

State and county political parties and issue advocacy entities. The bill also requires the newly created issue advocacy entities (see "**Issue advocacy entities**," below), as well as state and county political parties, to file one-business-day statements. During the period beginning on the 12th day before an election and extending through the day of the election, each time an issue advocacy entity or state or county political party receives a contribution from a contributor that causes the aggregate amount of contributions received from that contributor to equal or exceed the maximum permissible contribution under the Campaign Finance Law, the entity or party must file a one-business-day statement reflecting that contribution. Contributions required to be reported on a one-business-day statement for a primary election also must be included in the postprimary statement filed by the entity or party. One-business-day statements must be filed not later than one business day after the receipt of the contribution. An issue advocacy entity or state or county political party must file any required one-business-day statements by electronic means of transmission if the entity or party is required to file other campaign finance statements by those means. (Secs. 3517.10(A) and (C)(7) and 3517.11(B)(3)(a).)

Prohibitions and penalties. The bill specifies that none of the following shall fail to file a complete and accurate required one-business-day statement (sec. 3517.13(A)(3)):

- A campaign committee of a statewide candidate;
- A campaign committee of a candidate for the office of member of the General Assembly;
- An issue advocacy entity;
- A state political party;
- A county political party.

Any of these entities that fails to file a complete and accurate required one-business-day statement must be fined not more than \$100 for each day of violation (sec. 3517.992(A)(1) and (3)).

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)(4), (8), (21), and (22)).²

Application of the Campaign Finance Law

In general. 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. (Sec. 3517.10(A) and (F)(4).) (See **COMMENT.**)

Contribution limitations. The bill imposes contribution limits on issue advocacy entities similar to those imposed on political contributing entities. Thus, under the bill, contributors may make, and *issue advocacy entities may accept*, contributions up to and including \$5,000 from any one individual, and \$2,500 from any one campaign committee, political party, issue advocacy entity, political

² *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).)*

action committee, or political contributing entity, in a calendar year. (Sec. 3517.102(B)(1)(h), (2)(f), (3)(f), (4), (7)(f), and (8)(f) and (C)(7)(a) and (b).) These limitations, however, do not apply to a contribution made by a political action committee, a political contributing entity, or an issue advocacy entity to an issue advocacy entity that is affiliated with the political action committee, political contributing entity, or issue advocacy entity. Two or more political action committees, political contributing entities, or issue advocacy entities are affiliated if they are established, financed, maintained, or controlled by the same corporation, organization, labor organization, continuing association, or other person, including any parent, subsidiary, division, or department of that corporation, organization, labor organization, continuing association, or other person. (Sec. 3517.102(B)(2)(f), (7)(f), and (8)(f) and (C)(7)(b).) For the purpose of these limitations, all contributions made by, and all contributions accepted from, issue advocacy entities that are so established, financed, maintained, or controlled, are considered to have been made by or accepted from a single issue advocacy entity (sec. 3517.102(D)(1)(c)).

As with the limits imposed on the contributions an issue advocacy entity receives, comparable limits to those imposed on political contributing entities apply to contributions *made by issue advocacy entities*. The bill permits issue advocacy entities to make, and the associated recipients to accept, contributions up to and including the following amounts (sec. 3517.102(B)(8) and (C)(1), (2), (3), (4), (5), and (7)):

- \$2,500 to the campaign committee of any statewide candidate, any Senate candidate, or any House candidate in a primary election period or a general election period;
- \$5,000 to any one county political party for the party's state candidate fund or to any one legislative campaign fund in a calendar year;
- \$15,000 to any one state political party for the party's state candidate fund in a calendar year;
- \$2,500 to another issue advocacy entity, a political action committee, or a political contributing entity in a calendar year.³

³ *This limitation does not apply to an issue advocacy entity that makes a contribution to, or an issue advocacy entity, political contributing entity, or political action committee that accepts a contribution from, an issue advocacy entity that is affiliated with it. An issue advocacy entity is affiliated with another issue advocacy entity or with a political action committee or a political contributing entity if they are both established, financed,*

An issue advocacy entity that makes contributions in excess of the permitted amount must be fined an amount equal to three times the amount contributed in excess of the limit (sec. 3517.992(I)(6)).

Campaign finance statements aspects. 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 in the same manner as those provisions apply to political contributing entities (secs. 3517.01(B)(16) and (17), 3517.08(C), 3517.09(B) and (C), 3517.092(A)(6), 3517.10(A), (B), (C), (D), (E), and (F)(1), 3517.105(B) and (C), 3517.106(B), (C), (E)(2) and (3), and (K), 3517.108(B), 3517.11(A), 3517.13(A)(3), (G)(2), (O), (Q), (W), and (X), 3517.152(F), 3517.155(A), 3517.20(A)(2), (3), (5), and (6) and (B), 3517.23, and 3517.992(I)(6), (J)(4), and (Z)).

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

maintained, or controlled by, or if they both are, the same corporation, organization, labor organization, continuing association, or other person, including any parent, subsidiary, division, or department of that corporation, organization, labor organization, continuing association, or other person. (Sec. 3517.102(B)(8)(f), (C)(7), and (D)(1)(c).)

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**.)

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.⁴ The bill does not change any details relative to 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. (Secs. 3517.01 and 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 (secs. 3517.01(B)(17)(b) and 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**.)

⁴ 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)).

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 publications 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 nomination, election, or defeat of a candidate. (See **COMMENT.**)

Limitations on contributions from political party state candidate funds

Existing law imposes limits on the amount of contributions that individuals and certain entities may make or receive. For example, individuals are prohibited from making contributions to the campaign committee of a statewide candidate aggregating more than \$2,500 in a primary election period or in a general election period (sec. 3517.102(B)(1)(a)). The bill changes some of these existing contribution limits with respect to the state candidate funds of state and county political parties.

Specifically, existing law permits transfers or contributions of cash or cash equivalents to be made from the state candidate fund of a state or county political party to a designated state campaign committee in the following amounts (sec. 3517.102(B)(6)(b) and (C)(6)(a)):⁵

⁵ A "transfer or contribution of cash or cash equivalents" does not include in-kind contributions. Thus, in-kind contributions may be made in excess of these limits.

- \$500,000 to the campaign committee of any statewide candidate;
- \$100,000 to the campaign committee of any one Senate candidate;
- \$50,000 to the campaign committee of any one House candidate.

However, if the campaign committee of a House or Senate candidate is not a designated state campaign committee, no more than an aggregate of \$2,500 in contributions per primary or general election period may be made to that campaign committee from the state candidate fund of a county political party (sec. 3517.102(B)(6)(a)).

The bill limits all transfers or contributions of cash or cash equivalents made to campaign committees of statewide candidates, Senate candidates, and House candidates from the state candidate fund of a state or county political party to \$2,500 per primary or general election period. The distinction between designated state campaign committees and other campaign committees is eliminated for the purpose of this contribution limitation; all transfers or contributions of cash or cash equivalents from a state candidate fund of a state or county political party are limited to \$2,500 per campaign committee per primary or general election period. (Sec. 3517.102(B)(6)(a).)

The bill does not change the exception for in-kind contributions, so that a state or county political party appears to be permitted to make in-kind contributions from a state candidate fund to the campaign committees of statewide candidates, Senate candidates, or House candidates in excess of the \$2,500 limit (sec. 3517.102(B)(6)(a) and (c)). However, the bill prohibits the campaign committees of statewide candidates, Senate candidates, and House candidates from accepting contributions exceeding \$2,500 from a state candidate fund of a state or county political party (sec. 3517.102(C)(1), (2), and (3).) Thus, although a political party would not violate the law by making in-kind contributions exceeding the \$2,500 limit, campaign committees accepting such in-kind contributions would violate the applicable limits and thereby be subject to the Campaign Finance Law's penalty provisions.

*In the case of contributions to or from a **state political party**, "designated state campaign committee" means a campaign committee of a statewide candidate, statewide officeholder, Senate candidate, House candidate, or member of the General Assembly. In the case of contributions to or from a **county political party**, "designated state campaign committee" means a 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).)*

New Campaign Finance Law prohibitions and associated penalties

Acceptance of contributions from funds not maintained solely for the purpose of influencing the results of an election

The bill generally prohibits all of the following from accepting contributions unless the fund from which the contribution is made (1) is maintained for the express purpose of influencing the results of an election and (2) is subject to the reporting requirements of the Campaign Finance Law (sec. 3517.13(X)):

- A state elected officer;
- A member of the General Assembly;
- A statewide candidate;
- The campaign committee of a statewide candidate;
- A candidate for the office of member of the General Assembly;
- The campaign committee of a candidate for the office of member of the General Assembly.

This provision applies to the acceptance of contributions made from any fund of a campaign committee, of a national, state, or county political party, of a political action committee, of a political contributing entity, of an issue advocacy entity, or of a legislative campaign fund (sec. 3517.13(X)). Any state elected officer, member of the General Assembly, candidate, or campaign committee that accepts a contribution in violation of this provision must be fined an amount equal to three times the amount accepted (sec. 3517.992(P)(2)).

Conspiring to conceal or misrepresent the original source or final destination of contributions, expenditures made, and other information

Existing law prohibits any person from knowingly concealing or misrepresenting contributions given or received, expenditures made, or any other information required to be reported under the Campaign Finance Law (sec. 3517.13(G)). The bill retains this prohibition and also prohibits a statewide candidate or candidate for the office of member of the General Assembly from knowingly conspiring with a contributor or potential contributor in an attempt to conceal or misrepresent contributions given or received, the original source or final destination of contributions given or received, expenditures made, or any other information required to be reported under the Campaign Finance Law (sec. 3517.13(Y)). A candidate who violates this new prohibition must be fined not

more than \$10,000 or, if the offender is a person who was nominated or elected to public office, must forfeit the nomination or the office to which the person was elected, or both (sec. 3517.992(C)).

Contributions made by county political parties that accept contributions from certain contributors

Existing law prohibits certain individuals and entities from making contributions to candidates. For example, foreign nationals are prohibited from making contributions, expenditures, independent expenditures, or promises to make any of those in support of or in opposition to a candidate for any elective office in the state (sec. 3517.13(W)(1)--unchanged by the bill). The bill prohibits a county political party from making any contributions to a statewide candidate or a candidate for the office of member of the General Assembly if the political party has, during the same reporting period, accepted a contribution or contributions from a contributor who would be prohibited from making a contribution directly to that candidate (sec. 3517.13(Z)). Any county political party making a contribution in violation of this provision must be fined an amount equal to three times the amount contributed (sec. 3517.992(P)(3)).

State agencies and departments, and political subdivisions, contracting with political contributors

The bill generally prohibits a state agency or department or any political subdivision from awarding any contract for the purchase of goods costing more than \$500 or services costing more than \$500 to any individual, partnership, association, estate, or trust if any of the following people have made, as an individual, one or more contributions totaling more than \$1,000 to any state or county political party within the two previous calendar years (sec. 3517.13(I)(2)):

- The individual or the individual's spouse;
- Any partner or partner's spouse;
- Any shareholder or shareholder's spouse;
- Any administrator or administrator's spouse;
- Any executor or executor's spouse;
- Any trustee or trustee's spouse.

A similar prohibition applies under the bill to contracts with a corporation or business trust. A state agency or department or any political subdivision generally is prohibited from awarding any contract for the purchase of goods

costing more than \$500 or services costing more than \$500 to a corporation or business trust if an owner of more than 20% of the corporation or trust, or the spouse of such an owner, has made, as an individual, one or more contributions totaling more than \$1,000 to any state or county political party within the two previous calendar years. In making this determination, only owners for all of the two-year period must be taken into consideration. (Sec. 3517.13(J)(2).)

Anyone awarding a contract in violation of either of these prohibitions must be fined not more than \$1,000, and the awarded contract must be rescinded if the terms of the contract have not yet been performed (sec. 3517.992(R)).

These contract restrictions do not apply to any of the following (sec. 3517.13(I)(2), (J)(2), (M), and (N)(2)):

- Contracts let by competitive bidding, contracts incidental to contracts let by competitive bidding, or contracts by force account;
- Contracts awarded by the Board of Commissioners of the Sinking Fund, municipal legislative authorities, boards of education, boards of county commissioners, boards of township trustees, or other boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other entities created by law, by the Supreme Court or courts of appeals, by county or municipal courts consisting of more than one judge, or by a division of any court if the division consists of more than one judge, so long as the members of the specified entity act collectively in the award of contracts for goods or services;
- Actions of the Controlling Board;
- Contributions of a partner, shareholder, administrator, executor, trustee, or owner of more than 20% of a corporation or business trust made before the person held any of those positions or after the person ceased to hold any of those positions in the partnership, association, estate, trust, corporation, or business trust; and contributions of the person's spouse made before the person held any of those positions, before the two were married, or after the granting of a decree of divorce, dissolution of marriage, or annulment, or the granting of an order in an action brought solely for legal separation.

Certain candidates prohibited from holding specified state and county political party offices

Existing law specifies requirements regarding the election and composition of certain offices and committees of state and county political parties. For example, all members of controlling committees of a major or intermediate political party generally must be elected by direct vote of the party members (sec. 3517.02). Other requirements, such as the number of committee members of a particular gender, also are specified in existing law (sec. 3517.03).

The bill retains each of the existing law requirements for the election and composition of state and county political party controlling committees, but it adds provisions prohibiting statewide candidates and candidates for the office of member of the General Assembly from holding the office of chairperson or the office of treasurer of a controlling committee, of a central committee, or of an executive committee of a state or county political party (secs. 3517.02, 3517.03(D), 3517.04, and 3517.05).

Miscellaneous technical provisions

Deletion of obsolete filing provisions

Existing law 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. (Secs. 3517.10, 3517.106(E), (F), and (G), and 3517.11.) The bill eliminates applicable statutory references to filing by fax or on computer disk, as these methods of filing are no longer permitted as of January 1, 2001, and January 1, 2003, respectively (secs. 3517.10, 3517.106(F), and 3517.11).

The bill also eliminates a conditional filing fee that must be imposed on certain 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 by computer disk with the appropriate board of elections (secs. 3517.106(F)(3) and 3517.11(A)(2)). Since the campaign committees responsible for paying the fee are required, under existing law, to file their campaign finance statements by electronic means of transmission to the Secretary of State's office on and after January 1, 2003, these provisions will be obsolete prior to the bill's effective date.

Existing law (unchanged by the bill) will continue to permit or 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) and 3517.992(P)(1).)

Effective date

The bill's provisions described in this analysis take effect January 1, 2004 (Section 3 of the bill).

COMMENT

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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-22-02	p. 2072
S0303-I.124/jc		

