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Bill Analysis
Legislative Service Commission

S.B. 214

125th General Assembly
(As Introduced)

Sens. Randy Gardner, Dann, Coughlin, Jacobson, DiDonato, Hottinger, Harris, Fedor, Nein, Hagan, Spada, Blessing, Fingerhut, Stivers, Miller

BILL SUMMARY

- Requires "disclosure of electioneering communications statements" to be filed with respect to disbursements made for the direct costs of producing and airing electioneering communications aggregating in excess of \$10,000 during any calendar year, with regard to candidates for the office of Justice or Chief Justice of the Supreme Court.
- Specifies the information that must be included in those statements and establishes the timeframe and manner in which they must be filed.
- Establishes a fine of \$10,000 plus \$1,000 for each day of violation for persons who fail to timely file disclosure of electioneering communications statements.
- Generally applies the provisions of the Campaign Finance Law that are applicable to campaign finance statements filed by electronic means of transmission to disclosure of electioneering communications statements.
- Defines terms applicable to the regulation of electioneering communications.
- Eliminates obsolete Campaign Finance Law procedures that applied to the filing with a board of elections of campaign finance statements on paper or on computer disk by certain candidates for the office of member of the General Assembly prior to March 1, 2004.
- Declares an emergency.

CONTENT AND OPERATION

Regulation of electioneering communications regarding Supreme Court candidates

Definitions

The bill defines the following significant terms for the purpose of regulating electioneering communications (sec. 3517.1011(A)):

(1) "Broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television station, or satellite system.

(2) "Contribution" has the same meaning as in the Campaign Finance Law, except that any 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 decedent's estate, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, that is made, received, or used to pay the direct costs of producing or airing electioneering communications must be considered to be made, received, or used for the purpose of influencing the results of an election.

(3) "Disclosure date" means both of the following: the first date during any calendar year by which a person makes disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000, and any other date during a calendar year by which a person makes disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date for the same calendar year.

(4) "Electioneering communication" means any broadcast, cable, or satellite communication that refers to a clearly identified candidate for the office of Justice or Chief Justice of the Supreme Court and that is made within 60 days before the general election for the office for which the candidate seeks election or within 30 days before the primary election for the office for which the candidate seeks nomination. "Electioneering communication" does not include any of the following:

- A communication that is publicly disseminated through a means of communication other than a broadcast, cable, or satellite television or radio station. For example, "electioneering communication" does not include communications appearing in print media, including a

newspaper or magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and other written materials, including mailings; communications over the Internet, including electronic mail; or telephone communications.

- A communication that appears in a news story, commentary, or editorial distributed through the facilities of any broadcast, cable, or satellite television or radio station, unless those facilities are owned or controlled by any political party, political committee, or candidate.
- A communication that constitutes an expenditure or an independent expenditure under the Campaign Finance Law.
- A communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of a person sponsoring the debate or forum.

(5) "Political committee" means any of the following:

- Any committee, club, association, or other group of persons that, during a calendar year, receives contributions aggregating in excess of \$1,000 or makes expenditures aggregating in excess of \$1,000.
- Any separate segregated fund.
- Any state, county, or local committee of a political party that, during a calendar year, receives contributions aggregating in excess of \$5,000, makes payments that do not constitute contributions or expenditures aggregating in excess of \$5,000, or makes contributions or expenditures aggregating in excess of \$1,000.

(6) "Publicly distributed" means aired, broadcast, cablecast, or otherwise disseminated for a fee.

(7) "Refers to a clearly identified candidate" means that the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference to the person, such as "the Chief Justice" or "Justice," or through an unambiguous reference to the person's status as a candidate.

Disclosure of electioneering communications statements

Time of filing and statement contents. Every person who makes a disbursement or disbursements for the direct costs of producing and airing



electioneering communications aggregating in excess of \$10,000 during any calendar year must file a disclosure of electioneering communications statement within 24 hours of each disclosure date (sec. 3517.1011(C)(1)). A person must be considered to have made a disbursement if the person has entered into a contract to make the disbursement (sec. 3517.1011(B)).

The disclosure of electioneering communications statement must contain all of the following information (sec. 3517.1011(C)(1)):

- The identity of the person making the disbursement, of any person sharing or exercising direction or control over the activities of that person, and of the custodian of the books and accounts of the person making the disbursement.
- The principal place of business of the person making the disbursement, if not an individual.
- The amount of each disbursement of more than \$200 during the period covered by the statement and the identity of the person to whom the disbursement was made.
- The nominations or elections to which the electioneering communications pertain, and the names, if known, of the candidates identified or to be identified.
- If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals who are U.S. citizens or nationals or lawfully admitted for permanent residence directly to the account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of \$500 or more to the segregated bank account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this provision prohibits or may be construed to prohibit the use of funds in such a segregated bank account for a purpose other than electioneering communications.
- If the disbursements were paid out of funds not described in the previous paragraph, the names and addresses of all contributors who contributed an aggregate amount of \$500 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

Any person who makes a contribution for the purpose of funding the direct costs of producing or airing an electioneering communication must provide the person's full name and address to the recipient of the contribution at the time the contribution is made (sec. 3517.1011(D)).

Electronic filing and public access requirements. The Secretary of State must prescribe the appropriate methodology, protocol, and data file structure for the filing of disclosure of electioneering communications statements by electronic means of transmission to the Secretary of State's office; the manner of immediately acknowledging, with date and time received, and preserving the receipt of those statements; and the manner for electronically signing those statements (secs. 3517.10(C)(6)(b) and (D)(6), 3517.106(H), and 3517.1011(C)(2)). The Secretary of State also must assess the need for training regarding the filing of these statements. If, in the opinion of the Secretary of State, training is necessary, the Secretary of State must arrange for voluntary training programs for persons required to file these statements. (Sec. 3517.10(C)(6)(c).) Finally, the Secretary of State must store on computer the information contained in these statements (sec. 3517.106(B)(2)).

Existing provisions of the Campaign Finance Law that are generally applicable to the filing of campaign finance statements by electronic means of transmission and to the preservation of statements so filed also apply to disclosure of electioneering communications statements (sec. 3517.11(B)(3)(a)). For example, existing law requires the Secretary of State to make information that the Secretary of State must store on computer available on computer at the Secretary of State's office so that individuals may obtain access to that information. Since the bill requires the information in disclosure of electioneering communications statements to be stored on computer by the Secretary of State, this existing law provision would require the Secretary of State to also make that information available on computer at the Secretary of State's office. (Sec. 3517.106(C)(2).)

Subject to the Secretary of State having implemented, tested, and verified the successful operation of any system the Secretary of State prescribes for the filing of campaign finance statements by electronic means of transmission, acknowledging and preserving the receipt of statements so filed, and digitally signing statements so filed, a person must file a disclosure of electioneering communications statement by electronic means of transmission to the Secretary of State's office. Within five business days after the Secretary of State receives such a statement, the Secretary of State must make the contribution and disbursement information in it available online to the public through the Internet. (Secs. 3517.10(D)(7), 3517.106(I), and 3517.1011(C)(2).)

If a filed disclosure of electioneering communications statement is found to be incomplete or inaccurate after its examination for completeness and accuracy,

the person must file by electronic means of transmission to the Secretary of State's office any addendum, amendment, or other correction to the statement that provides the information necessary to complete or correct the statement or, if required by the Secretary of State, an amended statement. The Secretary of State must determine by rule when such an addendum, amendment, or other correction or such an amended statement must be filed. Within five business days after the Secretary of State receives an addendum, amendment, other correction, or amended statement, the Secretary of State must make the contribution and disbursement information in it available online to the public through the Internet. (Secs. 3517.10(D)(7), 3517.106(I), 3517.1011(C)(2), and 3517.11(B)(3)(a) and (b).)

Penalty and affirmative defense. Anyone who fails to file a required disclosure of electioneering communications statement generally must be fined an amount equal to the sum of \$10,000 plus \$1,000 for each day of violation (secs. 3517.1011(C) and 3517.992(BB)). But, to a complaint or charge against a person for the failure to file by electronic means of transmission a disclosure of electioneering communications statement, the bill establishes an affirmative defense that all of the following apply to the person (sec. 3517.106(K)):

(1) The person attempted to file the statement by electronic means of transmission prior to the deadline.

(2) The person was unable to file by electronic means of transmission due to an expected or unexpected shutdown of the whole or part of the electronic campaign finance statement-filing system, such as for maintenance or because of hardware, software, or network connection failure.

(3) The person filed the statement by electronic means of transmission within a reasonable period of time after being unable to so file it under the circumstance described in (2) above.

Initial filing of statements. In the first disclosure of electioneering communications statement that a person files after the bill's effective date, only those contributions received or disbursements made on or after the bill's effective date are required to be reported (Section 3).

Elimination of obsolete Campaign Finance Law filing provisions

The bill eliminates obsolete provisions of the Campaign Finance Law that specify procedures under which certain candidates for the office of member of the General Assembly were permitted to file their campaign finance statements on paper or on computer disk with a board of elections before March 1, 2004 (secs. 3517.10, 3517.106(F), and 3517.11). It also technically revises several provisions

of the Campaign Finance Law that relate to the filing of (1) campaign finance statements by campaign committees of candidates for the office of member of the General Assembly and (2) "independent expenditures" campaign finance statements (sec. 3517.106(F) and (G)).

HISTORY

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Introduced	03-25-04	pp. 1666-1667

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