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Bill Analysis

Sub. S.B. 214

125th General Assembly
(As Passed by the Senate)

Sens. Randy Gardner, Dann, Coughlin, Jacobson, DiDonato, Hottinger, Harris, Fedor, Nein, Hagan, Spada, Blessing, Fingerhut, Miller, Robert Gardner, Zurz, Roberts, Mumper

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 not more than $10,000 plus not more than $1,000 for each day of violation for person who knowingly fails 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.

- Generally subjects to the Campaign Finance Law's or the bill's contribution limits any contribution that is made, received, or used to pay the direct costs of producing or airing electioneering communications.

- Applies specified penalties to individuals or political entities making or accepting contributions to pay the direct costs of producing or airing electioneering communications in violation of those contribution limits.

- Prohibits for-profit corporations and labor organizations from using treasury funds for the purpose of paying the direct costs of producing or airing electioneering communications.

- Requires each electioneering communication to include a specified statement identifying the person making the disbursement for it and indicating that it is not authorized by a candidate or his or her campaign committee.

- 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.

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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, <u>and</u> 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) "Person" has the same meaning as in the Revised Code's General Provisions but does not include a for-profit corporation or a labor organization.[1]

(6) "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, does any of the following: 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.

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

(8) "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 (see definition above) 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)).

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[1] *Generally for all provisions of the Revised Code, the definition of "person" is: an individual, corporation, business trust, estate, trust, partnership, and association (sec. 1.59(C)--not in the bill).*

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

- The full name and address 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 that person.

- 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 full names and addresses of all contributors who contributed an aggregate amount of $250 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 full names and addresses of all contributors who contributed an aggregate amount of $250 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).)

Filing-related penalty and affirmative defense. Anyone who knowingly fails to file a required disclosure of electioneering communications statement generally must be fined not more than $10,000 plus not more than $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).

Contributions for electioneering communications

General rule. The bill generally subjects any contribution that is made, received, or used to pay the direct costs of producing or airing electioneering communications to the Campaign Finance Law's contribution limits; that law prescribes various limits upon contributions that may be made during specified time periods by individuals, political action committees, campaign committees, political parties, state candidate funds of state or county political parties, legislative campaign funds, or political contributing entities and that may be accepted by specified campaign committees, state or county political parties for their state candidate funds, legislative campaign funds, political action

committees, or political contributing entities. (Sec. 3517.1011(E)(1); sec. 3517.102(B) and (C)--not in the bill.)

Supplement to general rule. The bill also prohibits a person from making a contribution or contributions aggregating more than $5,000 in a calendar year to a *continuing association* for the purpose of paying the direct costs of producing or airing electioneering communications. Correspondingly, it prohibits a continuing association from accepting from any one person a contribution or contributions aggregating more than $5,000 in a calendar year for that purpose. A continuing association is an association that is not a campaign committee, political party, legislative campaign fund, political contributing entity, or labor organization, that is intended to be a permanent organization that has a primary purpose other than supporting or opposing specific candidates, political parties, or ballot issues, and that functions on a regular basis throughout the year. (Sec. 3517.1011(E)(2); sec. 3517.01(B)(4)--not in the bill.)

Contribution-related penalties. Existing law's penalties applicable to contributions made or accepted in violation of the Campaign Finance Law's contribution limits will apply to contributions made or accepted to pay the direct costs of producing or airing electioneering communications in violation of the "***General rule***" described above (sec. 3517.992(I) and (J)). And, a person who violates the bill's supplemental prohibition against making contributions in excess of $5,000 in the aggregate to a continuing association for that purpose must be fined an amount equal to three times the amount contributed in excess of the aggregate $5,000 limit; a continuing association that accepts contributions in excess of $5,000 in the aggregate from any one person for that purpose in violation of the bill's other supplemental prohibition must be fined an amount equal to three times the amount accepted in excess of the aggregate $5,000 limit (sec. 3517.992(CC)(1) and (2)).

Miscellaneous prohibition. The bill prohibits for-profit corporations and labor organizations from using treasury funds for the purpose of paying the direct costs of producing or airing electioneering communications (sec. 3517.1011(G)).

Electioneering communications--required statement

The bill requires each electioneering communication to include a specified statement. It must appear or be presented in a clear and conspicuous manner that (1) clearly indicates that the electioneering communication is not authorized by the candidate or the candidate's campaign committee and (2) clearly identifies the person making the disbursement for the electioneering communication in accordance with the Campaign Finance Law's existing provisions governing the identification of the source of political publications for or against a candidate. (Sec. 3517.1011(F); sec. 3517.20--not in the bill.)

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

ACTION	DATE	JOURNAL ENTRY	
Introduced	03-25-04	pp.	1666-1667
Reported, S. State & Local Gov't & Veterans Affairs	04-28-04	p.	1775
Passed Senate (31-1)	04-28-04	pp.	1824-1825

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