Ohio Legislative Service Commission

Bill Analysis

Bethany Boyd

Sub. H.B. 5

128th General Assembly
(As Passed by the House)

Reps. Okey and Dodd, Garrison, Ujvagi, Garland, Newcomb, Phillips, Murray, B. Williams, DeGeeter, Szollosi, Sayre, Schneider, Yuko, Luckie, Letson, S. Williams, R. Adams, Amstutz, Bacon, Baker, Balderson, Batchelder, Belcher, Blair, Blessing, Book, Boose, Boyd, Bubp, Burke, Carney, Celeste, Chandler, Coley, Combs, Daniels, DeBose, Derickson, Dolan, Domenick, Driehaus, Dyer, Evans, Fende, Foley, Gardner, Gerberry, Goodwin, Goyal, Grossman, Hackett, Hall, Harris, Harwood, Heard, Hite, Hottinger, Jones, Jordan, Koziura, Lehner, Lundy, Maag, Mallory, Mandel, Martin, McClain, McGregor, Mecklenborg, Moran, Morgan, Oelslager, Otterman, Patten, Pillich, Pryor, Ruhl, Sears, Skindell, Slesnick, Snitchler, Stautberg, Stebelton, Stewart, Uecker, Wachtmann, Weddington, Winburn, Yates, Zehringer

BILL SUMMARY

- Permits a person who has been elected or appointed to an elective office, other than a judicial office, to establish a transition fund to receive donations and to pay costs incurred for transition activities and inaugural celebrations.

- Specifies that a transition fund may be established only after the officeholder has been elected or appointed to office, but not later than December 31 after the officeholder's election at a general election or 45 days after the officeholder's election at a special election or appointment to fill a vacancy.

- Permits a campaign committee and any person, including a for-profit corporation, to make a donation to a transition fund.

- Limits to $10,000 the amount that may be donated to a transition fund for the joint offices of Governor and Lieutenant Governor, and limits to $2,500 the amount that may be donated to a transition fund of any other officeholder.

- Prohibits the treasurer of a transition fund from making disbursements from the fund (1) for any purpose other than to pay the costs of transition activities and inaugural celebrations, (2) for any political contribution, (3) to reimburse the

beneficiary of the transition fund for the beneficiary's personal expenses, or (4) for the purpose of influencing the results of any election.

- Specifies that a transition fund may remain in existence not longer than 120 days.

- Permits donations to and disbursements from a transition fund to be made only during the fund's existence, and specifies that costs incurred for transition activities and inaugural celebrations that are to be paid for with moneys from the fund must be incurred only during the fund's existence.

- Requires the treasurer of a transition fund to file donation and disbursement statements with the Secretary of State by electronic means not later than January 15 of the year following the general election at which the officeholder was elected, or, if the officeholder was elected at a special election or appointed to office, the 65th day after the fund is created, documenting all donations made to, and disbursements made from, the fund during the reporting period.

- Thereafter, requires an update by the 15th day of each month to reflect donations received and disbursements made in the interim.

- Establishes penalties for treasurers who fail to file donation and disbursement statements or who knowingly fail to report, or knowingly misrepresent, donations and disbursements that are required to be reported.

- Generally expands the provisions of the Campaign Finance Law applicable to the electronic filing of campaign finance statements to also apply to donation and disbursement statements filed by electronic means.

- Requires the treasurer of a transition fund to dispose of any assets remaining in the fund not later than the 120th day after the fund is created by refunding donations to individuals or by giving the amount to a charity that is exempt from federal income tax.

- Requires the transition fund treasurer to dispose of assets remaining in the fund within 30 days after the completion of the canvass of election returns for the applicable office, if it is determined that the beneficiary of the transition fund was not elected.

- Requires the treasurer of a transition fund to file a final donation and disbursement statement and a termination statement not later than 120 days after the fund is created, or not later than 35 days after the completion of the canvass if the beneficiary of the transition fund was not elected, which statement must include any

disbursements made to dispose of the fund's assets, and specifies that the fund ceases to exist upon the filing of the termination statement.

- Requires the Secretary of State to specify, by rule, the form of the termination statement.

- Requires the Secretary of State to examine donation and disbursement statements, and permits the Secretary of State to file a complaint with the Ohio Elections Commission regarding violations of the bill's provisions.

- Authorizes the Ohio Elections Commission to recommend legislation and render advisory opinions regarding transition accounts.

CONTENT AND OPERATION

Purpose and establishment of a transition fund

The bill permits a person who has been or who may have been elected to any elective office, other than a judicial office, or who has been appointed to any elective office, other than a judicial office, to establish a transition fund to receive donations and to pay costs incurred for transition activities and inaugural celebrations. "Costs incurred for transition activities and inaugural celebrations" means legitimate and verifiable costs that are incurred for ordinary and necessary activities associated with (1) the transfer of power or authority from one officeholder to another following a general or special election or appointment to office, or (2) ceremonies, events, or activities commemorating the commencement of a term or the commencement of an unexpired term of an officeholder. "Costs incurred for transition activities and inaugural celebrations" includes, but is not limited to, costs incurred for office expenses; salaries for transition personnel; consulting fees; and food, beverages, and entertainment at an inaugural celebration. (R.C. 3517.1014(A) and (B).)

To establish a transition fund, an officeholder must file a statement with the Secretary of State establishing the fund and designating a treasurer for the fund. The Secretary of State must specify, by rule, the form of the statement. (R.C. 3517.1014(B)(1)(a).) A transition fund may be established not earlier than (1) the day after the day of the election at which the person seeks election to office if, based on the number of ballots outstanding for that election and the unofficial election results, it is mathematically possible for the person to have been elected to that office, or (2) the day after the day the person was appointed to fill a vacancy in an unexpired term of an elective office (R.C. 3517.1014(B)(2)). If a transition fund is established, it must be established not later than (1) December 31 of the year in which the election was held, if the officeholder was elected at a general election, (2) 45 days after the day of the

election, if the officeholder was elected at a special election, or (3) 45 days after the day of the appointment, if the officeholder was appointed to an unexpired term of an elective office (R.C. 3517.1014(B)(3)).

The treasurer must terminate the transition fund not later than 120 days after the fund is established. Donations may be accepted for and deposited into, and disbursements may be made from, a transition fund, only during the fund's existence. Costs incurred for transition activities and inaugural celebrations that are to be paid for with moneys from the fund must be incurred only during the fund's existence. (R.C. 3517.1014(B)(1)(b).)

Donations to a transition fund

Any campaign committee and any person, including a for-profit corporation, is permitted to make a donation to a transition fund (R.C. 3517.1014(C)(1)(a)).[1] A "donation" is a gift, subscription, loan, advance, or deposit of money, or anything of value, that is specifically designated and used to defray any costs incurred for transition activities and inaugural celebrations and that is not used for the purpose of directly influencing the election of any candidate for any office (R.C. 3517.1014(A)(1)). An officeholder is prohibited from accepting a donation unless the officeholder has established a transition fund and the donation is deposited to the credit of that fund. (R.C. 3517.1014(C)(2).)

Although any person is permitted to make a donation to a transition fund, the amount that may be donated, and the amount that the fund may accept, is limited. The following table identifies the limits the bill applies to donations made to and received by a transition fund (R.C. 3517.1014(C)(1) and (C)(3)).

	Transition fund of the joint offices of Governor and Lieutenant Governor	Transition fund of any other officeholder
Amount that a campaign committee or person may donate	$10,000	$2,500
Amount that a treasurer of a transition fund or officeholder may accept	$10,000	$2,500

[1] A donation to a transition fund is not considered a contribution for the purpose of the Campaign Finance Law, and thus, a corporation is not prohibited from making such a donation (R.C. 3517.01(B)(5)(h) and 3599.03(A)(1) and (D)(4)).

A campaign committee or person who makes a donation in excess of the applicable limit must be fined three times the amount donated that exceeds the limit. Similarly, an officeholder or treasurer of a transition fund that accepts a donation in excess of the applicable limit must be fined an amount equal to three times the amount accepted that exceeds the limit. (R.C. 3517.992(EE).)

Disbursements from a transition fund

Even though the bill permits transition funds to be established to receive donations and to pay costs incurred for transition activities and inaugural celebrations, it prohibits the treasurer of a transition fund from making a disbursement from the fund for a purpose other than to pay costs incurred for those activities and celebrations. The bill also specifically prohibits the treasurer from making a disbursement from the fund to make a contribution to a campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity or for the purpose of influencing the results of any election.

The treasurer of a transition fund is permitted to reimburse the beneficiary of the transition fund for costs incurred for transition activities and inaugural celebrations, but the treasurer must not make disbursements to reimburse any of the beneficiary's personal expenses. (R.C. 3517.1014(G).)

Reporting donations and disbursements

The treasurer of a transition fund is required to keep a strict account of all donations to, and all disbursements from, the fund, and must deposit all monetary donations received into a separate bank or financial institution account established solely for the fund. The treasurer is required to file, by electronic means of transmission to the office of the Secretary of State, a full, true, and itemized statement describing each donation received and each disbursement made from the fund not later than 4 p.m. of the following dates (R.C. 3517.1014(D)(1) and (2)):

- January 15 of the calendar year following the general election at which the officeholder was elected, or, if the officeholder was elected at a special election or appointed to office, the 65th day after the transition fund is created, to reflect donations received and disbursements made from the creation of the fund to the close of business on the fifth day before the statement is required to be filed.

- The 15th day of each subsequent month of the fund's existence, to reflect donations received and disbursements made from the close of business on the last day reflected in the last previously filed statement to the close of business on the fifth day before the statement is required to be filed.

Each donation and disbursement statement must contain the following information (R.C. 3517.1014(D)(3)):

(1) The full name and address of the treasurer filing the statement and the full name and address of the officeholder who is the beneficiary of the transition fund;

(2) The balance in the transition fund brought forward from the most recently filed statement, if any;

(3) A statement of donations received, which must include the month, day, and year on which each donation was received; the full name and street address of each donor; the nature of each donation, if other than money; the value of each donation in dollars and cents; and, if applicable, the name of the donor's current employer or, if self-employed, the donor's occupation and the name of the donor's business;

(4) A statement of disbursements, which must include the name and address of the recipient of each disbursement; the date and amount of each disbursement; the purpose for which each disbursement was made; and the date the transition fund incurred the cost for which the disbursement was made; and

(5) The balance remaining in the fund.

The bill prohibits the treasurer of a transition fund from knowingly failing to file a required donation and disbursement statement and from knowingly failing to report, or knowingly misrepresenting, a donation or disbursement that is required to be reported on a donation and disbursement statement (R.C. 3517.1014(E)). A treasurer who fails to file the required statement must be fined not more than $100 for each day the treasurer fails to file the statement (R.C. 3517.992(A)(2)). If the treasurer knowingly fails to report or knowingly misrepresents a donation or disbursement, the treasurer must be fined not more than $10,000 or, if the treasurer is a person who was nominated or elected to public office, the person must forfeit the nomination or election (R.C. 3517.992(C)).

Upon request, the Secretary of State must issue a receipt for each donation and disbursement statement that is filed (R.C. 3517.1014(F)).

The Secretary of State is required to maintain a record of the filing of each donation and disbursement statement for at least ten years. The statement is open to public inspection in the Secretary of State's office. (R.C. 3517.1014(F).)

Electronic filing provisions

Because the donation and disbursement statement must be filed electronically with the office of the Secretary of State, the bill amends various provisions of law that are generally applicable to the electronic filing of campaign finance statements. For example, current law requires the Secretary of State to prescribe the methodology, protocol, and data file structure for electronically filed campaign finance statements and requires the Secretary of State to assess the need for training regarding those electronic requirements. The bill expands these provisions to apply also to donation and disbursement statements filed by treasurers of transition funds. The bill generally mirrors the electronic filing provisions of current law, by requiring the Secretary of State to:

- Prescribe the appropriate methodology, protocol, and data file structure for electronically filed donation and disbursement statements (R.C. 3517.10(C)(6)(b));

- Assess the need for training regarding electronic filing of donation and disbursement statements by treasurers of transition funds and, if the Secretary of State determines training to be necessary, providing training to those treasurers (R.C. 3517.10(C)(6)(c));

- Prescribe the manner of immediately acknowledging the receipt of donation and disbursement statements and the manner of preserving the information in those statements (R.C. 3517.10(D)(6));

- Make information in donation and disbursement statements available online to the public through the Internet (R.C. 3517.10(D)(7), 3517.106(I), and 3517.11(B)(3)(b));

- Store on computer the information contained in donation and disbursement statements (R.C. 3517.106(B)(5));

- Make available to treasurers of transition funds computer programs that are compatible with the Secretary of State's electronic storage system (R.C. 3517.106(C)(1)); and

- Prescribe, by rule, one or more techniques by which a person who electronically transmits a donation and disbursement statement may electronically sign that statement (R.C. 3517.106(H)).

The bill also mirrors current law in that it:

- Requires libraries to maintain links to the Secretary of State's online campaign finance database on their publicly accessible computers that are connected to the Internet (R.C. 3517.106(J));

- Provides an affirmative defense to a complaint that a treasurer of a transition fund failed to electronically file a required donation and disbursement statement by the applicable deadline if the Secretary of State's electronic filing system was inaccessible (R.C. 3517.106(K)); and

- Specifies that the laws applying to the filing of amended statements or addenda, amendments, or corrections of them electronically also apply to the filing of donation and disbursement statements (R.C. 3517.11(B)(3)(a)).

Disposal of remaining transition fund money or assets

After the payment of all costs incurred for transition activities and inaugural celebrations, the treasurer of a transition fund is required to dispose of any money or assets remaining in the fund prior to terminating the fund. The assets must be disposed of by doing either of the following (R.C. 3517.1014(H)(1)):

- Giving the amount, pro rata, to all persons who made donations to the transition fund as a refund of all or part of their donations; or

- Giving the amount to a charitable corporation that is exempt from federal income taxation.

The treasurer must dispose of the assets before filing a final statement of donations, which must be filed not later than 120 days after a transition fund has been established. (R.C. 3517.1014(I).)

If, upon completion of the canvass of election returns for the election at which the beneficiary of a transition fund seeks office, it is determined that the beneficiary has not been elected to that office, the treasurer of the beneficiary's transition fund must dispose of all assets remaining in the fund. The assets must be disposed of in the manner described above for funds remaining in an elected candidate's transition fund after all costs incurred for transition activities and inaugural celebrations have been paid. The funds must be disposed of within 30 days after the completion of the canvass of election returns. (R.C. 3517.1014(H)(2).)

In disposing of the assets of a transition fund, the treasurer is prohibited from refunding to a campaign committee any donation received from that campaign committee (R.C. 3517.1014(H)(3)).

If the treasurer of a transition fund fails to dispose of assets remaining in the fund prior to the 120th day after the transition fund is created, or within 30 days after the completion of the canvass of election returns, as the case may be, any assets remaining in the transition fund must be given to the Treasurer of State for deposit into the Ohio Elections Commission Fund (R.C. 3517.992(Y)(2)).

Final statement and termination statement

Not later than 120 days after the fund has been established, or, not later than 35 days after a determination that the beneficiary of a transition fund has not been elected to office, the treasurer of the transition fund is required to file a final statement of donations and disbursements with the Secretary of State. That final statement must include any disbursements made to dispose of assets remaining in the transition fund; i.e., refunds given to persons who made donations to the fund or amounts given to charitable corporations, as applicable. (R.C. 3517.1014(I).)

In addition, a termination statement must be filed with the final statement of donations and disbursements. The bill requires the Secretary of State to specify, by rule, the form of the termination statement. The rule must require that a copy of all available statements from the bank or financial institution that held transition fund moneys be filed with the termination statement. The bank or financial institution statements must contain a zero balance confirming that all fund moneys were disposed of prior to the transition fund's termination. If final bank or financial institution statements are not available at the time the termination statement is filed, the rule must require the transition fund treasurer to (1) state in the termination statement that all transition fund moneys were disposed of prior to the transition fund's termination, and (2) file with the Secretary of State copies of the final bank or financial institution statements within five days after the treasurer receives those statements.

Upon the filing of the termination statement, the transition fund ceases to exist. (R.C. 3517.1014(I).)

Enforcement of the transition fund law

When donation and disbursement statements regarding transition funds are filed with the Secretary of State, the Secretary of State is required to examine the statement for completeness and accuracy and must determine, by rule, when an addendum, amendment, or other correction to a donation and disbursement statement, or an

amended donation and disbursement statement, must be filed (R.C. 3517.11(B)(3)(a)(v) and (B)(4)(a)).

If the Secretary of State determines that a officeholder or treasurer of a transition fund is in violation of the bill's provisions, the Secretary of State may file a complaint with the Ohio Elections Commission. The Ohio Elections Commission must hear and rule on the complaint in the same manner as the Commission hears other cases alleging violations of the Campaign Finance Law. In determining whether to give a complaint an expedited hearing, the Commission may consider whether the complaint relates to the late filing of a donation and disbursement statement, unreported donation and disbursement information, or an incomplete statement. (R.C. 3517.154.)

The bill also authorizes the Ohio Elections Commission to recommend legislation and render advisory opinions regarding transition funds (R.C. 3517.153).

HISTORY

ACTION	DATE
Introduced	02-17-09
Reported, H. Elections & Ethics	05-13-09
Passed House (97-0)	05-27-09

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