
OLR Bill Analysis

sHB 5528

AN ACT CONCERNING CHANGES TO THE PUBLIC FINANCING ACT AND OTHER ELECTION LAWS.

SUMMARY:

This bill modifies state election laws affecting campaign finance, the Citizens' Election Program (CEP), and the State Elections Enforcement Commission (SEEC). Principally, the bill:

1. expands reporting and disclaimer requirements for independent expenditures;
2. defines "electioneering communications," and establishes reporting and disclaimer requirements for them similar to those required for independent expenditures;
3. defines "campaign-related disbursements" and "covered transfers," and establishes reporting requirements for them;
4. for qualified gubernatorial candidates participating in the CEP, increases the primary election grant from \$1.25 million to \$2.5 million and the general election grant from \$6 million to \$9 million (§ 15);
5. raises the limits on various contributions from individuals, political committees (known as PACs), and party committees to other PACs and party committees;
6. extends the restriction on organization expenditures for party candidate listings made to benefit the primary campaign of legislative candidates who participate in the CEP ("participating candidates") to legislative candidates who do not participate in the CEP ("nonparticipating candidates"); and
7. increases the limits on organization expenditures made to

benefit the general election campaign of participating legislative candidates and applies them to nonparticipating legislative candidates.

The bill makes conforming changes. Among other things, it conforms the expenditure exemption for volunteer services to the parallel contribution exemption that PA 11-48 made for volunteer services. It thus specifies that the exemption applies when individuals provide volunteer services to party committees, PACs, slate committees, and candidate committees, including those for participating and nonparticipating candidates, and covers all travel expenses a volunteer incurs (§ 3).

Finally, the bill makes technical changes, including replacing the terms “campaign treasurer” with “treasurer” and “deputy campaign treasurer” with “deputy treasurer” throughout the election statutes.

EFFECTIVE DATE: Upon passage, and applicable to reporting and disclosing electioneering communications made on or after that date.

CAMPAIGN FINANCE DEFINITIONS (§§ 1-4 & 6)

State campaign finance laws regulate campaign expenditures and contributions, including who can make or accept them and when. The bill establishes reporting and disclosure requirements for “campaign-related disbursements,” which it defines as (1) independent expenditures, (2) electioneering communications, or (3) covered transfers.

The bill defines “electioneering communication” as any communication that refers to one or more clearly identified candidates on or after January 1st during the election year and that is broadcast by radio, television, satellite, or the Internet, or printed in a newspaper, magazine, or on a billboard.

It defines “covered transfer” as any transfer or payment of funds, by an entity that is required to disclose spending, in an aggregate of \$1,000 or more in the two years after the initial transfer or payment to a recipient who uses the money to make a campaign-related

disbursement.

Existing law defines “independent expenditure” as an expenditure that is made without the consent, coordination, or consultation of a (1) candidate or candidate’s agent, (2) candidate committee, (3) PAC, or (4) party committee. It creates a rebuttable presumption that certain expenditures are not independent expenditures and thus, are coordinated and considered contributions for campaign finance purposes. The bill expands the rebuttable presumption to cover expenditures made:

1. by a person or an entity to hire a person or entity to assist with campaign organization, financing, accounting, strategy, law, media, telephone banking or polling, and the hired person worked for the candidate in the same election cycle, but not necessarily at the same time as working for the person or entity doing the hiring, providing the same or similar assistance for such candidate and
2. with the express or tacit encouragement of the candidate or the candidate’s agents by a political committee, group, or person who previously served as an operative or consultant for a candidate in the current election cycle or prior election cycle or any group established or acting with the express or tacit encouragement of the candidate or the candidate’s agents.

By law, an “entity” is an organization, corporation, cooperative association, limited partnership, professional association, limited liability company, or limited liability partnership, whether organized in this or another state. The bill specifies that entities include both for-and not-for-profit corporations as well as client lobbyists.

The bill expands the definition of “lawful purposes of the committee” for legislative leadership committees’ and PACs’ permissible expenditures (see BACKGROUND). For the former, it includes spending funds to defray members’ costs associated with legislative or constituency-related business that the state does not pay for or reimburse. (Legislative caucus committees may already spend

funds for these purposes.) For the latter, it includes promoting a political party, including party-building activities that are expressly exempt from being considered organization expenditures. Under the bill, “party building activities” include political meetings, conferences, events, conventions, and their associated expenses.

BOARD AUTHORIZATIONS FOR CAMPAIGN-RELATED DISBURSEMENTS (§ 16)

The bill requires the governing board, if any, of an entity incorporated, organized, or operating in this state to vote to pre-authorize each campaign-related disbursement it makes over \$4,000. Prior to the vote, the board must be informed of the money’s specific use, including whether it may target or benefit a candidate. No later than 48 hours after the vote, the entity must (1) publicly disclose on its website individual board members’ votes and details on the expenditure and (2) file the required disclosure report with the SEEC (see REPORTING REQUIREMENTS below).

After making or obligating to make an independent expenditure or electioneering communication, the entity must do at least one of the following:

1. include in any periodic financial or activity report to its shareholders, members, or donors the (a) identity of the individual making any campaign-related disbursement and his or her business address; (b) disbursement’s amount, date, and recipient; (c) candidates or ballot issues to which the disbursement is related; and (d) identity of individuals who donated over \$1,000 to the entity for campaign-related disbursements during the period that the report covers or
2. provide a link on the its website to the disclosure reports it has filed with the SEEC.

REPORTING REQUIREMENTS (§ 8)

The bill subjects individuals, entities, and committees making electioneering communications to the same reporting requirements as existing law establishes for those making independent expenditures. It

also establishes additional requirements for both.

Existing law requires an individual, entity, or committee that makes or obligates to make an independent expenditure or expenditures exceeding \$1,000 in the aggregate to promote the success or defeat of a statewide office or legislative candidate in a primary or general election campaign to electronically file a report with the SEEC. The report is filed under penalty of false statement, which is a class A misdemeanor. Anyone can file a complaint with the SEEC alleging a false report or statement, or that a report was not filed at all. The SEEC must promptly decide the complaint.

The bill extends this requirement to electioneering communications and requires the report to identify the candidate or candidates to which a communication refers.

Deadlines

The bill changes the deadlines for filing independent expenditure reports and sets the same ones for electioneering communication reports. The individual, entity, or committee must file the report within 24, rather than 48, hours of any independent expenditure or electioneering communication made more than 90 days before the primary or general election. If the expenditure or communication is made 90 days or less before the primary or general election, the report must be filed within 12, rather than 24, hours.

Payments from General Treasury vs. Segregated Bank Account

The bill requires an entity to disclose slightly different information in its reports to the SEEC based on whether it pays for an independent expenditure or electioneering communication from its general treasury or a segregated bank account consisting only of direct donations. In both cases, if a donor restricts his or her donation, and the entity consents and segregates it into an account not used for campaign-related disbursements, the donor's identity need not be disclosed (i.e., restricted donor).

General Treasury. With certain exceptions, entities that pay for

independent expenditures or electioneering communications out of their general treasury must disclose in their reports the sources of all donations, including dues payments, (1) of \$1,000 or more and (2) made on or after January 1st during the year in which there will be an election for the office for which the benefitting candidate is running. The report must disclose the amount of each donation and the aggregate amount given. The entity need not disclose funds received in a commercial transaction or as an investment.

Segregated Account. Entities that pay for independent expenditures or electioneering communications out of a segregated bank account must disclose in their reports (1) donors who gave an aggregate of \$1,000 or more on or after January 1st during the year in which there will be an election for the office for which the benefitting candidate is running, (2) each donation amount, and (3) the aggregate amount given.

DISCLAIMER REQUIREMENTS (§ 13)

By law, printed, video, and audio political communications paid for by people or committees must include certain attributions, which the bill refers to as disclaimers. The bill expands this law to cover electioneering communications.

Generally, it requires individuals making electioneering communications to disclose their name and address (see COMMENT) and entities making them to (1) disclose their top-five unrestricted donors, (2) provide a website listing all unrestricted donors and their addresses, and (3) list their contributors or donors as individuals. The bill does not define “donation” or “donor,” but presumably they are not considered “contributions” and thus, not subject to other campaign finance reporting laws.

Table 1 shows the bill’s requirements for specified types of electioneering communications.

Table 1: Electioneering Communications Disclaimer Requirements

Type of Electioneering Communication	Disclaimer Requirement
Audio communication broadcast by radio, Internet, or satellite	<p>The communication must end with an audio statement that has the words “paid for by” and:</p> <ol style="list-style-type: none"> 1. for an individual, his or her name and address or 2. in all other cases, (1) the top five donors to the entity making the communication other than donors that restrict their donation from being used for campaign-related disbursement and (2) a website address that lists all donors, including their addresses, that are subject to campaign finance reporting requirements.
Video communication broadcast by television, Internet, or satellite	<p>The communication must end with a clearly visible statement, for at least four seconds, that has the words “paid for by” and:</p> <ol style="list-style-type: none"> 1. for an individual, his or her name and address or 2. in all other cases, (1) the top five donors to the entity making the communication other than donors that restrict their donation from being used for campaign-related disbursement and (2) a website address that lists all donors, including their addresses, that are subject to campaign finance reporting requirements.
Print communication that appears in a newspaper, magazine, or billboard	<p>The communication must bear on its face the words “paid for by” and:</p> <ol style="list-style-type: none"> 1. for an individual, his or her name and address or 2. in all other cases, (1) the top five donors to the entity making the communication other than donors that restrict their donation from being used for campaign-related disbursement and (2) a website address that lists all donors, including their addresses, that are subject to campaign finance reporting requirements.

Disclosing Individual Contributors and Donors

In addition to the requirements in Table 1, the bill requires entities

making an independent expenditure or electioneering communication to list their contributors or donors as individuals. If a contributor or donor is another entity that made a covered transfer to the receiving entity, then the individual contributors or donors to the entity making the transfer must be (1) disclosed in the required website listing and (2) listed as top five contributors or donors, if applicable. Under the bill, a “covered transfer” is any transfer or payment of funds, by an entity that is required to disclose spending, in an aggregate of \$1,000 or more in the two years after the initial transfer or payment to a recipient who uses the money to make a campaign-related disbursement.

Slate Promotions

The bill specifies that disclaimers by individual candidates are not required for any print, television, or social media promotion by a party committee for a slate of candidates. Rather, the party committee must use the appropriate disclaimer as required by existing law and the bill. Under the bill, “social media” means an electronic medium where users may create and view user-generated content, such as uploaded or downloaded videos or still photographs, blogs, video blogs, podcasts, or instant messages.

Groups of Two or More Individuals

Existing law requires groups of two or more individuals acting together that spend up to \$1,000 for a printed communication supporting or opposing a referendum question to include a disclaimer. A business entity, organization, or association must include the words “paid for by,” the name of the chief executive officer, and the name of the entity, organization, or association. The bill additionally requires them to list their top five unrestricted donors and include a website address listing all their unrestricted donors.

CONTRIBUTIONS (§§ 5, 7, & 9 - 12)

Exemptions

The law places limits on contributions made to benefit candidate committees, party committees, and PACs and subjects the contributions to campaign finance reporting requirements. However, it

creates exemptions for certain items and services under the definition of contribution. Thus, these items and services need not be reported as contributions.

The bill exempts from the definition of contribution and thus from reporting requirements, the use of offices, telephones, computers, and similar equipment provided by a party, legislative caucus, or legislative leadership committee that serve as headquarters or in the headquarters for the committee. (The bill also eliminates a provision under current law that includes as an “organization expenditure” office equipment provided by such a committee – see EXPENDITURES below.)

Increased Limits

The bill raises limits on certain contributions from individuals, PACs, and party committees to other PACs and party committees, as Tables 2 through 5 show.

Table 2: Individual Contribution Limits

<i>Recipient</i>	<i>Current Law</i>	<i>The Bill</i>
State Central Committee	\$5,000	\$10,000
Town Committee	1,000	5,000
Legislative Leadership or Legislative Caucus Committee	1,000	2,000
Most other PACs (except a referendum PAC, labor PAC, exploratory committee, or slate committee for justice of the peace in a primary)	750	1,000

Table 3: Business PAC and Labor PAC Contribution Limits

<i>Recipient</i>	<i>Current Law</i>	<i>The Bill</i>
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State Central Committee	\$7,500	\$15,000
Town Committee	1,500	3,000
Legislative Leadership or Legislative Caucus Committee	2,000	4,000

Table 4: State Central Committee Contribution Limits

<i>Recipient</i>	<i>Current Law</i>	<i>The Bill</i>
Legislative Leadership or Legislative Caucus Committee	\$10,000	\$20,000
Most other PACs (except an exploratory committee or referendum PAC)	2,500	5,000

**Table 5: Legislative Leadership and Legislative Caucus
Committee Contribution Limits**

<i>Recipient</i>	<i>Current Law</i>	<i>The Bill</i>
Any other PAC	\$2,000	\$4,000

Deposits

The bill extends the deadline by which treasurers must deposit contributions into the committee's depository account from no later than 14 days to no later than 20 days after receiving the contribution.

ORGANIZATION EXPENDITURES (§§ 1 & 14)

By law, organization expenditures are made by legislative caucus, legislative leadership, or party committees for the benefit of candidates or their committees. They are not considered campaign contributions, but the law places restrictions and limits on those made to benefit legislative candidates participating in the CEP.

The bill:

1. raises the limits;
2. applies the same restrictions and limits to organization expenditures made to benefit nonparticipating legislative candidates;
3. eliminates one type of organization expenditure (for office equipment); and
4. makes changes to what qualifies as another type of organization expenditure (i.e., party candidate listing).

Restrictions and Limits

For primary campaigns, the law prohibits committees from making organization expenditures for party candidate listings made to benefit participating legislative candidates. The bill places the same restriction on party candidate listings made to benefit the primary campaign of nonparticipating legislative candidates.

For general election campaigns, current law limits the value of allowable organization expenditures to \$10,000 and \$3,500 for participating candidates for state senator and state representative, respectively. The bill raises these limits to \$20,000 and \$7,000, respectively, and applies them to nonparticipating legislative candidates.

Office Equipment

The bill eliminates from the definition of “organization expenditure” the use of offices, phones, computers, and similar equipment that do not result in an additional cost to the party, legislative caucus, or legislative leadership committee. It instead creates a contribution exemption for similar activities (see CONTRIBUTIONS above). Thus, as noted above, payments for these activities need not be reported.

Party Candidate Listings

By law, a party candidate listing is a communication that identifies one or more candidates and meets several criteria (e.g., distributed through public advertising, mail, or electronic mail). The bill eliminates the current requirement that party candidate listings treat all candidates in the listing substantially similarly. It instead allows these listings to contrast candidates with their opponents.

PENALTIES (§§ 8, 17 & 19)

Reporting Violations

The bill establishes (1) two separate penalties for failure to file an electioneering communication report and (2) an additional penalty for failure to file an independent expenditure report. It is unclear which would apply and under what circumstances (see COMMENT).

First, the bill applies the law's penalties for failure to file an independent expenditure report to failure to file an electioneering communication report. This means failure to file a report for a communication (1) made more than 90 days before the primary or general election carries a civil penalty of up to \$5,000 and (2) made 90 days or less before the primary or general election carries a civil penalty of up to \$10,000. A knowing and willful failure to file is punishable by an additional fine of up to \$5,000, up to five years in prison, or both.

Next, the bill authorizes the SEEC to levy a civil penalty of up to two times the amount of any independent expenditure or electioneering communication that a person or entity (1) fails to disclose or (2) for which it fails to include a proper disclaimer. It also authorizes the SEEC to hold any successor entity or donors liable if the entity cannot be held liable.

Joint Liability

The bill makes the candidate and treasurer jointly and severally liable for paying any penalty the SEEC levies if it finds that the candidate committee made a prohibited coordinated expenditure. If the candidate is a participating CEP candidate, he or she must return grant money in an amount that the SEEC determines.

BACKGROUND

Legislative Caucus and Legislative Leadership Committees

By law, a majority of a party's members from one house of the General Assembly can designate a single legislative caucus committee. The House speaker and majority leader and the Senate president pro tempore and majority leader may establish one legislative leadership committee each. The House and Senate minority leaders may establish two each.

COMMENTS

Disclaimer Requirements for Individuals

It appears the bill's disclaimer requirements for individuals may conflict with the U.S. Supreme Court's holding in *McIntyre v. Ohio Elections Commission*, No. 93-986, 63 LW 4279, an Ohio case involving the distribution of anonymous campaign literature. In *McIntyre*, the Court struck down a law that prohibited the preparation and distribution of material that did not contain the name and address of the individual issuing it. It held that the law abridged the First Amendment right of free speech with such a broad prohibition against anonymous leaflets.

Penalties

Under the bill, the SEEC has the authority to levy two separate civil penalties for failure to disclose or file a report for an independent expenditure or electioneering communication. It appears both penalties apply to the same violation.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 10 Nay 5 (03/29/2012)