

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 12-117—HB 5556 (VETOED)**

*Emergency Certification*

**AN ACT CONCERNING CHANGES TO CAMPAIGN FINANCE LAWS  
AND OTHER ELECTION LAWS**

**SUMMARY:** This act modifies state election laws affecting campaign finance, the Citizens' Election Program (CEP), the State Elections Enforcement Commission (SEEC), and certain nominating and absentee voting procedures. Principally, the act:

1. expands reporting, disclaimer, and attribution requirements for independent expenditures;
2. expands the definition of expenditure;
3. exempts from the definition of "independent expenditure," expenditures of up to \$250 in the aggregate made by a human being acting alone to benefit a candidate for a single election;
4. defines "campaign-related disbursements" and "covered transfers" and establishes reporting requirements for them;
5. raises the limits on various contributions from individuals to political committees (known as PACs) and party committees and raises the aggregate limit on contributions an individual can make in a single election cycle;
6. specifies that the \$1,000 payment the law allows CEP candidates to pay their treasurers from surplus funds is in addition to any payments made to the treasurer under a written services agreement (§ 15);
7. requires a PAC's treasurer, rather than its chairperson, to report most changes to information on the registration statement it files with the SEEC (the chairperson remains responsible for filing the initial statement and reporting any committee officer changes) (§§ 13 & 16);
8. allows military and overseas voters to return their voted absentee ballots by fax or email;
9. authorizes candidate committees, other than those for participating CEP candidates, to distribute surplus funds to charitable 501(c)(19) (veterans') organizations following an unsuccessful primary or election (§15); and
10. authorizes the SEEC to waive penalties associated with certain reports that were due in January 2012 and modifies what constitutes a timely filing.

The act also makes several conforming changes, including conforming the expenditure exemptions for uncompensated volunteer services and the costs associated with hosting a house party to the parallel contribution exemptions that PA 11-48 made for these services and costs (§§ 2 & 3).

Finally, the act makes technical changes, including replacing the terms "campaign treasurer" with "treasurer" and "deputy campaign treasurer" with

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“deputy treasurer” throughout the campaign finance statutes (§§ 1 & 12).  
EFFECTIVE DATE: Upon passage

### §§ 1-3 & 6 — CAMPAIGN FINANCE DEFINITIONS

State campaign finance laws regulate campaign expenditures and contributions, including who can make and accept them and when. The act changes both definitions.

Prior law defined “expenditure,” in part, as any advertisement that (1) refers to one or more clearly identified candidates; (2) is broadcast by radio or television, other than on a public access channel, or appears in a newspaper, magazine, or on a billboard; and (3) is broadcast or appears during the 90-day period preceding a primary or an election.

The act expands the definition to include communications, not only advertisements, and those that are broadcast by public access channel, satellite, Internet, or as a paid-for telephone communication or sent by mail.

Prior law also defined “expenditure,” in part, as any gift, subscription, loan, advance, payment, or deposit of money or anything of value made “on behalf” of a political party. The act expands the definition to cover anything of value that promotes either the success or defeat of a political party, not just those made on one’s behalf. It makes the same change to the definition of “contribution.” It specifies that any gift, subscription, loan, advance, payment, or deposit of money or anything of value that promotes either the success or defeat of a political party, not just those made on one’s behalf, is considered a contribution.

The act establishes reporting and disclosure requirements for “campaign-related disbursements,” which it defines as (1) independent expenditures or (2) covered transfers. 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.

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 act specifies that entities include both for- and not-for-profit corporations and 501(c) and 527 organizations.

The act 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 could already spend funds for these purposes.) For the latter, it includes promoting a political party, including party—building activities. Under the act, “party building activities” include political meetings, conferences, events, conventions, and their associated expenses.

The law defines “social media” as 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. Previously,

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this definition applied only in the context of certain *de minimis* activities that are exempt from the definition of contribution. The act applies the definition to all state campaign finance laws.

### INDEPENDENT EXPENDITURES

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 act expands the definition of independent expenditure and changes the reports' deadlines and required information.

#### *§ 4 — Definitions*

Prior law defined "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. The act exempts from this definition expenditures of up to \$250 in the aggregate made by a human being acting alone to benefit a candidate for a single election.

The law creates a rebuttable presumption that certain expenditures are not independent expenditures and, thus, are coordinated and considered contributions for campaign finance purposes. The act expands the rebuttable presumption to cover expenditures made by a person or an entity on or after January 1<sup>st</sup> in an election year that benefit a candidate when the person or entity has hired (1) an individual as an employee or consultant and the individual was an employee of, or consultant to, the candidate during any part of the 18-month period preceding the expenditure or (2) a campaign-related vendor that has been hired by the candidate during the same election cycle.

Under the act, "campaign-related vendors" include vendors that provide polling, mail design, mail strategy, political strategy, general campaign advice, or phone banking services.

#### *§ 8 — Reporting Deadlines*

The act establishes earlier deadlines for filing independent expenditure reports. It requires the individual, entity, or committee to file these reports within 24, rather than 48, hours after making, or obligating to make, an independent expenditure more than 90 days before the primary or general election. If the expenditure is made 90 days or less before the primary or general election, the report must be filed within 12, rather than 24, hours after making or obligating to make the expenditure.

#### *§ 8 — Information that Must be Disclosed*

The act requires an entity to disclose slightly different information in its reports to the SEEC based on whether it pays for an independent expenditure from its general treasury or a segregated bank account consisting only of direct donations. For a nonprofit entity, whether making an independent expenditure

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from its general treasury or a segregated account, if a donor restricts his or her donation from being used for a campaign-related disbursement, and the entity consents and puts it into an account not used for these disbursements, the donor's identity need not be disclosed ("restricted donor"). The identity of a donor who does not restrict his or her donation to a nonprofit entity must be disclosed if it meets the criteria described below ("unrestricted donor").

*Segregated Account.* If an entity makes an independent expenditure from a segregated bank account, it must disclose in its reports (1) donors who gave an aggregate of \$1,000 or more on or after January 1<sup>st</sup> during the year in which there will be an election for the office for which the candidate who was the subject is running, (2) each donation amount, and (3) the aggregate amount given by each unrestricted donor. A segregated account cannot accept transfers of funds from the entity.

*General Treasury.* If an entity makes an independent expenditure from its general treasury on or after January 1<sup>st</sup> during the year in which there will be an election for the office for which the candidate who was the subject is running, it must disclose in its reports the sources of all donations to the treasury, including dues payments, of \$1,000 or more in the aggregate. The act does not specify or limit the period of time during which the donations must have occurred.

The report must disclose the amount of each donation and the aggregate given. The entity need not disclose funds received in a commercial transaction or as an investment.

### § 10 — BOARD AUTHORIZATIONS FOR CAMPAIGN-RELATED DISBURSEMENTS

The act 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 that exceeds \$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 publicly disclose on its website each board member's vote and details on the expenditure. It must also file the required disclosure report electronically with the SEEC.

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

1. include in any regular 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 amount, date, and recipient; (c) candidates or ballot issues to which the disbursement is related; and (d) identity of individuals who donated more than \$1,000 to the entity for campaign-related disbursements during the period that the report covers or
2. provide a link on its website to the disclosure reports it has filed with the SEEC.

### § 9 — DISCLAIMER AND ATTRIBUTION REQUIREMENTS

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By law, printed, video, and audio political advertisements must include certain attributions, which the act refers to as disclaimers. Since independent expenditures are not, by definition, considered contributions, the act makes a technical change to the independent expenditure disclaimer provisions by substituting “donation” for “contribution” and “donor” for “contributor.”

The act also expands certain disclaimer requirements. Generally, it:

1. requires all entities that are permitted to make independent expenditures, not only 501(c) and 527 organizations, to list at least five of their top unrestricted donors (contributors under prior law), provided the donors gave an aggregate amount of at least \$1,000, and requires the list to cover two years, rather than one year;
2. requires all entities making independent expenditures to also provide an address of a website listing all unrestricted donors who gave an aggregate of \$1,000 or more and the donors’ addresses; and
3. expands the disclaimer requirements to cover individuals, not only entities.

Additionally, under prior law, the independent expenditure disclaimer requirements applied only to advertisements that (1) promoted a candidate’s election or defeat, (2) promoted or opposed a political party, or (3) solicited funds for a political party or PAC. Under the act, they apply to any communication that refers to one or more clearly identified candidates.

By law, “individual” means a human being, sole proprietorship, or a professional service corporation owned by a single human being. Under the act, the individual disclaimer requirements do not apply to expenditures (1) made by a human being acting alone, (2) in an amount of \$250 or less in the aggregate, and (3) that benefit a candidate for a single election (see “independent expenditure” definition, § 4).

Table 1 lists each type of independent expenditure and its disclaimer requirements under prior law and the act. When a disclaimer is on a flyer or leaflet, or in a newspaper, magazine or similar literature, the act requires it to be printed in at least an eight-point, uniform font.

**Table 1: Disclaimer Requirements under Prior Law and the Act**

<i>Type of Independent Expenditure</i>		<i>Disclaimer Requirements</i>	
<i>Prior Law</i>	<i>The Act (lists changes, otherwise the same)</i>	<i>Prior Law</i>	<i>The Act (lists changes, otherwise the same)</i>
Written communication, including one that is typed, printed, or web-based	Includes billboards	The material must bear upon its face: <ul style="list-style-type: none"> <li>● “Paid for by” and the name of the entity, the chief executive officer (CEO) or equivalent, and the principal business address;</li> <li>● “This message was made</li> </ul>	<ul style="list-style-type: none"> <li>● Adds individuals and requires them to include “Paid for by” and their name and address</li> <li>● Requires all entities, not just 501(c) and 527 tax-exempt organizations, to include at least five of the unrestricted donors who gave</li> </ul>

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		<p>independent of any candidate or political party," and</p> <ul style="list-style-type: none"> <li>● In the case of a 501(c) or a 527 tax-exempt organization, "Top Five Contributors," followed by a list of the five people or entities making the largest reportable contributions during the previous 12 months</li> </ul>	<p>an aggregate of \$1,000 or more and whose aggregate donations during the two years preceding the expenditure are the largest</p> <ul style="list-style-type: none"> <li>● Requires entities to provide an address to a website listing all unrestricted donors who gave an aggregate of \$1,000 or more and the donors' addresses</li> </ul>
Television or Internet video advertising	Adds videos broadcast by satellite	<p>The end of the advertisement must show, for at least four seconds:</p> <ul style="list-style-type: none"> <li>● a clearly identifiable image of the entity's CEO or equivalent;</li> <li>● a simultaneous, personal audio message, stating "I am (name of entity's CEO or equivalent), (title) of (entity). This message was made independent of any candidate or political party, and I approved its content;" and</li> <li>● In the case of a 501(c) or a 527 tax-exempt organization, a written message stating "The top five contributors to the organization responsible for this advertisement," followed by a list of the five people or entities making the largest reportable contributions during the previous 12 months</li> </ul>	<ul style="list-style-type: none"> <li>● Adds individuals and requires them to include a clearly identifiable image of themselves</li> <li>● Requires all entities, not just 501(c) and 527 tax-exempt organizations, to include a written message listing at least five of the unrestricted donors who gave an aggregate of \$1,000 or more and whose aggregate donations during the two years preceding the expenditure are the largest</li> <li>● Requires entities to provide an address to a website listing all unrestricted donors who gave an aggregate of \$1,000 or more and the donors' addresses</li> </ul>
Radio or Internet audio advertising	Adds audio communication broadcast by satellite	<p>The communication must end with a personal audio statement by the CEO or equivalent:</p> <ul style="list-style-type: none"> <li>● identifying the entity paying for the expenditure;</li> </ul>	<ul style="list-style-type: none"> <li>● Adds individuals and requires them to identify themselves</li> <li>● Requires all entities, not just 501(c) and 527 tax-exempt</li> </ul>

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		<ul style="list-style-type: none"> <li>• indicating that the message was made independent of any candidate or political party, using the following form: "I am (name of entity's CEO or equivalent), (title) of (entity). This message was made independent of any candidate or political party, and I approved its content;" and</li> <li>• In the case of a 501(c) or a 527 tax-exempt organization, an audio message stating (1) "The top five contributors to the organization responsible for this advertisement," followed by a list of the five people or entities making the largest reportable contributions during the previous 12 months or (2) an audio message providing a website that lists the same if the advertisement is 30 seconds or less</li> </ul>	<p>organizations, to list at the end at least five of the unrestricted donors who gave an aggregate of \$1,000 or more and whose aggregate donations during the two years preceding the expenditure are the largest</p> <ul style="list-style-type: none"> <li>• Requires entities to provide an address to a website listing all unrestricted donors who gave an aggregate of \$1,000 or more and the donors' addresses</li> </ul>
<p>"Robo Calls" (i.e., automated telephone calls)</p>	<p>Adds non-automated telephone calls</p>	<ul style="list-style-type: none"> <li>• The narrative of the telephone call must identify the entity and its CEO or equivalent.</li> <li>• In the case of a 501(c) or a 527 organization, the narrative must also include a message stating, "The top five contributors to the organization responsible for this telephone call are," followed by a list of the five people or entities making the largest reportable contributions during the previous 12 months</li> </ul>	<ul style="list-style-type: none"> <li>• Requires all entities, not just 501(c) and 527 tax-exempt organizations, to include in the narrative at least five of the unrestricted donors who gave an aggregate of \$1,000 or more and whose aggregate donations during the two years preceding the expenditure are the largest</li> <li>• Requires entities to provide an address of a website listing all unrestricted donors who gave an aggregate of \$1,000 or more and the donors' addresses</li> </ul>

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## *Disclosing Individual Donors*

In addition to the requirements in Table 1, the act requires entities making independent expenditures to list their donors as individuals. If a donor is another entity that made a covered transfer to the receiving entity, then the individual donors to the entity making the transfer must be listed in the required website listing. Additionally, if an unrestricted donor to the entity making the covered transfer is also one of the top five donors to the entity making the independent expenditure, then the disclaimer must list at least five of the top donors to the entity making the covered transfer.

## *Slate Promotions*

The act 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 act.

## *Referenda*

Existing law requires a business entity, organization, or association that makes or incurs an expenditure for a printed communication supporting or opposing a referendum question to include a disclaimer with the words “paid for by,” the name of the chief executive officer, and the name of the entity, organization, or association. The act additionally requires them to (1) list at least five of their unrestricted donors whose aggregate donations during the two years preceding the expenditure are in the five largest amounts and (2) include a website address listing all their unrestricted donors along with their addresses.

## CONTRIBUTIONS

### *§§ 2 & 3 — 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. Thus, these items and services need not be reported as contributions.

The act exempts from the definition of contribution the use of (1) offices that serve as headquarters and (2) telephones, computers, and similar equipment provided by a party, legislative caucus, or legislative leadership committee for the committee. (The act also eliminates a provision under prior law that included office equipment provided by such a committee as an “organization expenditure”—see ORGANIZATION EXPENDITURES below.)

### *§ 7, 18 & 19 — Increased Limits*

Prior law prohibited an individual from contributing more than \$15,000 in the aggregate during a single primary and election to (1) candidate committees, (2)

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exploratory committees, and (3) slate PACs for justice of the peace in a primary. The act increases this aggregate contribution limit to \$30,000. The act also removes the \$15,000 aggregate limit on labor PAC contributions to party committees and PACs other than exploratory or referendum committees.

The act increases the limits on contributions from individuals to most PACs and party committees, as Table 2 shows.

**Table 2: Individual Contribution Limits**

<i>Recipient</i>	<i>Prior Law</i>	<i>The Act</i>
State Central Committee	\$5,000	\$10,000
Town Committee, Legislative Leadership Committee, 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

### *§ 5 — Deposits*

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

## ORGANIZATION EXPENDITURES

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 act:

1. eliminates one type of organization expenditure (for office equipment) and
2. makes changes to what qualifies as another type of organization expenditure (i.e., party candidate listing).

### *§§ 1 & 2 — Office Equipment*

The act 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.

### *§ 1 — 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 act (1) eliminates the previous requirement that party candidate listings treat all candidates in the communication substantially similarly and (2) allows these listings to contrast candidates with their opponents.

OTHER CAMPAIGN FINANCE REPORTING REQUIREMENTS

§§ 14 & 17 — *Eliminated Reports*

The act eliminates certain campaign finance reporting requirements for specified candidates and committees, which Table 3 shows. The candidates and committees remain responsible for filing termination reports when they dissolve.

**Table 3: Eliminated Campaign Finance Statements**

<b>Section</b>	<b>Candidate or Committee</b>	<b>Eliminated Reporting Requirement</b>
§ 14	Special election candidate and exploratory committees	Quarterly campaign finance reports
§ 14	Candidates in a municipal election who do not qualify for ballot access	Campaign finance report on the 7th day preceding the election
§§ 14 & 17	Candidates in a state election who do not qualify for ballot access	(1) Campaign finance report on the 7th day preceding the election and (2) weekly supplemental campaign finance statements under the CEP
§ 14	Candidates who are unsuccessful in a primary	Periodic campaign finance reports following the primary

§ 14 — *State Central Committees*

Prior law required state central committees to file campaign disclosure statements on the 12<sup>th</sup> day preceding any regular or special election. For special elections, the act limits the requirement to those for which the committee makes or receives a contribution or expenditure. It retains the requirement for all regular elections.

The act also extends this reporting requirement to primaries and referenda for which a state central committee makes or receives a contribution or expenditure. The statement must be complete as of the 19<sup>th</sup> day preceding the election, primary, or referendum.

§ 17 — *Supplemental Campaign Finance Statement Schedule*

By law, a candidate committee in a primary or general election with at least one candidate participating in the CEP must file supplemental weekly campaign finance statements according to a specified schedule. The act extends, by one week, the deadline for filing the initial supplemental statement.

Under the act, candidate committees must file the initial supplemental statement for a primary on the second, rather than the first, Thursday following the July filing deadline for quarterly campaign finance statements (generally July 10). Similarly, for a general election, they must file on the second, rather than the first, Thursday following the October filing deadline for quarterly campaign finance statements (generally October 10).

§§ 20 — ENDORSEMENTS

Under the act, a party endorsement for a (1) candidate running for a municipal office to be voted on at a municipal election, (2) town committee member, or (3) the municipal office of state senator or representative (i.e., in a single-town legislative district) is valid only when the candidate’s name appears on the party’s

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enrollment list within the senatorial or assembly district in which he or she will run.

### §§ 23-25 — MILITARY AND OVERSEAS ABSENTEE VOTING

The act allows active duty members of the armed forces, their spouses or dependent family members living where they are stationed, and other U. S. citizens living or traveling outside the country on election or primary day to return their voted absentee ballots by email or fax, beginning with the August 14, 2012 primary. The law already allows these military and overseas voters to request and receive absentee ballots electronically.

When military and overseas voters return their completed ballots electronically, they must include (1) the cover sheet as required by the act and (2) if applicable, the secretary of the state-prescribed certification. (In order for the ballot to be counted, the law requires military and overseas voters who request and receive an absentee ballot electronically to return them with a signed certification.)

Under the act, these ballots are counted with other absentee ballots if they are received by the time polls close. To be counted, the voter must not also mail a hard copy.

By June 1, 2012, the act requires the secretary of the state to prescribe a cover sheet for transmitting completed absentee ballots electronically. The cover sheet must provide instructions for returning the ballot and include the elector's name, telephone number, and fax number or email address from which the ballot is sent. The cover sheet must include the following statement:

“I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot only to the extent that the appropriate election official must receive and process my ballot.

Signature: .... Date: ....”

The act's provisions apply to two types of overseas absentee ballots. The first is a blank ballot that members of the armed forces and their family members living with them may, due to military contingencies, use to vote in a regular election and that town clerks must make available beginning 90 days before the election (before the candidates and questions to be voted on are known). For this ballot, town clerks subsequently send the list of candidates and questions as soon as it is available.

The second is a blank ballot that any elector living or traveling abroad or members of the armed forces and their family members living with them may use to vote in a primary or regular election. Town clerks send this together with the list of candidates and questions to be voted on as soon as it is available.

### PENALTIES

#### § 11 — *Joint Liability*

The act makes a candidate, his or her treasurer, and his or her agent, if applicable, jointly and severally liable for paying any penalty the SEEC levies if it finds that a prohibited expenditure is coordinated with the candidate, his or her

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committee, or agent. If the candidate is a participating CEP candidate, he or she must return grant money in an amount that the SEEC determines.

### *§ 22 — Penalties for January 2012 Filings*

The act authorizes the SEEC to waive any penalty it imposed because a campaign finance report was not received in a timely manner when (1) the filing was due to be received by the SEEC in January 2012 and (2) the commission determines that the treasurer's actions were such that the filing reasonably should have been received on or before the applicable deadline.

### *§ 26 — Timely Submission to SEEC*

The act prohibits the SEEC from levying a penalty on a treasurer for failing to file a hard copy of a campaign finance statement in a timely manner if the treasurer (1) has a copy of the statement time stamped by the SEEC showing timely receipt or (2) has a return receipt from the U.S. Postal Service or a similar receipt from a commercial delivery service confirming timely receipt.

## 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.

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