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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 13  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Grendell and Fraizer

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### SUMMARY

#### Corporation and labor organization spending, generally

- Removes Revised Code restrictions on corporations and labor organizations making political contributions or expenditures with respect to candidates, since those restrictions have been ruled unconstitutional.
- Treats a corporation or labor organization that makes political contributions or expenditures as a political contributing entity (PCE).

#### Political contributing entities

- Expands and clarifies the definition of a PCE to include any entity that makes contributions or expenditures and that is not an individual, a campaign committee, a political party, a legislative campaign fund (LCF), or a political action committee (PAC).
- Subjects certain entities that currently are not considered a PCE or another regulated political entity, such as corporations and continuing associations, to continuing law campaign finance requirements.
- Classifies a federal political committee that makes contributions or expenditures related to state or local elections in Ohio as a PCE with respect to those contributions and expenditures.
- Expands the definition of a contribution when it is made to a PCE in order to require a PCE to report the source of all donations if the PCE uses its general fund to make expenditures.
- Specifies that donors may make unlimited contributions to PACs or PCEs that make only independent expenditures or contributions to other independent-expenditure-only PACs or PCEs, consistent with federal court rulings.

- Changes the definition of an independent expenditure to include any use of funds or anything of value for that purpose, meaning that a PCE that uses its own money instead of contributions to fund an independent expenditure must report the expenditure.
- Clarifies that “independent expenditure” refers only to expenditures concerning candidates, whereas any expenditure concerning a ballot issue is labeled simply an “expenditure.”
- Requires corporations and labor organizations to report all expenditures in the same manner as other PCEs.
- Excludes internal corporate and labor organization communications that are intended only for persons such as members or employees of the entity from being considered a reportable independent expenditure.
- Makes clear that all PCEs must comply with the continuing law that requires entities that engage in political advertising to report the expenditure and to identify themselves in the advertisement as the funding source.

### **Intent statement**

- States that the General Assembly acknowledges the ruling of the U.S. Supreme Court in *Citizens United v. Federal Election Commission* that corporations and labor organizations have a First Amendment right to make independent expenditures advocating the election or defeat of candidates for office in the same manner as other entities.

### **Emergency clause**

- Declares an emergency, meaning that the bill takes effect immediately.

### **Technical changes**

- Eliminates the penalty for violating a campaign finance prohibition that no longer exists.

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## **DETAILED ANALYSIS**

### **Background on Ohio’s Campaign Finance Law**

In general, the state Campaign Finance Law is designed to require candidates and political entities to file publicly available reports about the money they accept or spend for the purpose of influencing state or local election results, to abide by certain dollar contribution limits, to disclose the source of political advertising, and to follow other campaign related regulations. It is important to note that this law does not apply to federal elections, and under the home rule provisions of the Ohio Constitution, a municipality or chartered county may have its own system for regulating campaign finance in local elections.<sup>1</sup>

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<sup>1</sup> Ohio Constitution, Article X, Section 3 and Article XVIII, Section 3.

## Political entities

Ohio's Campaign Finance Law currently categorizes political entities as follows:

- **Campaign committee** – A candidate or the candidate's campaign committee.
- **Political party** – A group recognized by the state as a political party.
- **Legislative campaign fund (LCF)** – A campaign entity associated with a caucus of the General Assembly.
- **Political action committee (PAC)** – A group of two or more persons whose primary or major purpose is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not another entity included in this list. ("Express advocacy" means a communication that contains express words advocating the nomination, election or defeat of a candidate or the adoption or defeat of a ballot question or issue.) Neither of the following are considered a political action committee:
  - A continuing association that makes disbursements for the direct costs of producing or airing electioneering communications and that does not engage in express advocacy.
  - A political club that is formed primarily for social purposes and that consists of 100 members or less, has officers and periodic meetings, has less than \$2,500 in its treasury at all times, and makes an aggregate total contribution of \$1,000 or less per calendar year.
- **Continuing association** – An association, other than a campaign committee, political party, LCF, PCE, 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. The term includes nonprofit organizations that are exempt from federal taxation under subsection (501)(c)(3), (501)(c)(4), or (501)(c)(6) of the Internal Revenue Code.
- **Political contributing entity (PCE)** – Any entity, including a corporation or labor organization, that may lawfully make contributions and expenditures and that is not an individual, a campaign committee, a political party, an LCF, a PAC, or a continuing association.

A campaign committee, political party, LCF, PAC, or PCE must report its contributions and expenditures and must abide by certain other campaign finance related requirements. But, an individual, person, or entity who *does not* fall under the definition of a campaign committee, political party, LCF, PAC, or PCE – for example, a continuing association – generally is not subject to those requirements. As a result, less information is available to the government and

the public about the political activities of organizations that do not fit into one of those definitions.<sup>2</sup>

## Contributions and expenditures

The existing Campaign Finance Law generally uses the following definitions of political contributions and expenditures for purposes of reporting requirements, contribution limits, and other provisions of law:<sup>3</sup>

- **Contribution** – A loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, or transfer of funds or 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, which contribution is made, received, or used for the purpose of influencing the results of an election.
- **Expenditure** – The disbursement or use of a contribution for the purpose of influencing the results of an election or of making a charitable donation to certain approved organizations.
- **Independent expenditure** – An expenditure by a person advocating the election or defeat of an identified candidate or candidates, that is not made with the consent of, in coordination, cooperation, or consultation with, or at the request or suggestion of any candidate or candidates or of the campaign committee or agent of the candidate or candidates.
- **Electioneering communication** – A broadcast, cable, or satellite communication that is made during the run-up to an election, refers to a clearly identified candidate, and is not coordinated with a candidate, but that does not meet the definition of an expenditure or independent expenditure, generally because it mentions the candidate but does not directly advocate the candidate’s election or defeat. Electioneering communications are sometimes referred to as “soft money” or “issue” advertising because they are political but not regulated in the same way as contributions and expenditures. Entities that make electioneering communications are subject to a separate reporting system from the system that applies to contributions and expenditures.

## Corporation and labor organization spending, generally

Existing Ohio law prohibits a corporation or labor organization from using its money or property to make political contributions or expenditures with respect to candidates or, during the 30 days before an election, to make an electioneering communication. (Corporations and labor organizations may make contributions and expenditures concerning ballot issues.) However, in 2010, the U.S. Supreme Court ruled in *Citizens United v. Federal Election*

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<sup>2</sup> R.C. 3517.01. See also R.C. 3517.10.

<sup>3</sup> R.C. 3517.01(C)(4), (5), and (16).

*Commission* that corporations and labor organizations have a First Amendment right to make unlimited independent expenditures (including electioneering communications) and that they may make unlimited contributions to other entities that make only independent expenditures.

The bill removes those Revised Code restrictions on corporations and labor organizations and instead ensures that when a corporation or labor organization does make such a contribution or expenditure, it is regulated as a PCE.<sup>4</sup>

## **Political contributing entities**

### **Expanded definition of PCE**

The bill expands and clarifies the definition of a PCE to include any entity that makes contributions or expenditures and that is not an individual, a campaign committee, a political party, an LCF, or a PAC. (Essentially, under the bill, only an individual who makes contributions or expenditures falls outside the structure of regulated entities.)

Currently, certain entities that make contributions or expenditures do not fit into the definition of any of the regulated political entities and therefore are not required to report their contributions and expenditures or comply with certain other restrictions. (Those entities are sometimes called “dark money” organizations.) By expanding the definition of a PCE to include any entity other than a campaign committee, political party, LCF, or PAC, the bill subjects those entities to the Campaign Finance Law.

For instance, the bill eliminates references to continuing associations and instead categorizes those organizations as PCEs if they make contributions or expenditures. The bill also classifies a federal political committee that makes contributions or expenditures related to state or local elections in Ohio as a PCE with respect to those contributions and expenditures. Current law allows a federal political committee to report its activities only as required under federal law and to submit copies of certain federal filings to the Secretary of State.

The following table describes several common types of entities that currently are not (or might not be) considered PCEs, but that are PCEs under the bill if they make contributions or expenditures:<sup>5</sup>

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<sup>4</sup> R.C. 3517.01(C)(24), 3517.1011, 3517.992, 3599.03, 5727.61, and 5733.61; *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010); and *American Tradition Partnership v. Bullock*, 567 U.S. 516 (2012).

<sup>5</sup> R.C. 3517.01(C)(4), (7), (16), and (24) and 3599.03, repeal of R.C. 3517.107, and conforming changes in R.C. 3517.08, 3517.10, 3517.102, 3517.105, 3517.106, 3921.22, and 4503.03.

Common types of PCEs		
Entity	Expenditures permitted under continuing law	Notes
<b>Corporations</b>		
Corporation, generally	May contribute to ballot issue committees or make expenditures about ballot issues  Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i> (see “ <b>Contributions and Expenditures</b> ,” above)	Under existing law, might not be considered a PCE because it cannot make contributions <i>and</i> expenditures  According to the Secretary of State, not currently considered a PCE <sup>6</sup>
Nonprofit corporation – 501(c)(3) charitable organization <sup>7</sup>	May contribute to ballot issue committees or make expenditures about ballot issues	Internal Revenue Code prohibits candidate related campaign activity, but does not prohibit ballot issue related campaign activity
Nonprofit corporation – 501(c)(4) social welfare organization	May contribute to ballot issue committees or make expenditures about ballot issues  Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>	Internal Revenue Code permits campaign activity, so long as that is not the organization’s primary activity
Nonprofit corporation – 501(c)(5) labor, agricultural, or horticultural organization	May contribute to ballot issue committees or make expenditures about ballot issues  Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>	Internal Revenue Code permits campaign activity, so long as that is not the organization’s primary activity

<sup>6</sup> Ohio Secretary of State, *Ohio Campaign Finance Handbook*, “[Chapter 7: Political Contributing Entities](#)” at 7-3.

<sup>7</sup> For more information about federal tax laws governing organizations’ political activities, see 26 U.S.C. 501 and 527 and Internal Revenue Service, *Common Tax Law Restrictions on Activities of Exempt Organizations* and *Political Campaign and Lobbying Activities of IRS 501(c)(4), (c)(5), and (c)(6) Organizations* (2003).

Common types of PCEs		
Entity	Expenditures permitted under continuing law	Notes
Nonprofit corporation – 501(c)(6) business league	May contribute to ballot issue committees or make expenditures about ballot issues  Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>	Internal Revenue Code permits campaign activity, so long as that is not the organization’s primary activity
Internal Revenue Code Section 527 tax exempt organization, if incorporated	May contribute to ballot issue committees or make expenditures about ballot issues  Independent expenditures about candidates are allowed under <i>Citizens United v. FEC</i>	Internal Revenue Code permits campaign activity, so long as the organization does not engage in express advocacy
Unincorporated entities		
Labor organization, if unincorporated	May contribute to ballot issue committees or make expenditures about ballot issues  Contributions to candidates or political entities and independent expenditures about candidates are allowed under <i>UAW Local Union 1112 v. Philomena</i> <sup>8</sup>	Under existing law, might not be considered a PCE because it cannot make contributions <i>and</i> expenditures  According to the Secretary of State, currently considered a PCE <sup>9</sup>
Unincorporated business or association (e.g., a partnership or limited liability company)	May contribute to candidates or ballot issue committees or make expenditures about candidates or ballot issues	Appears to meet the existing definition of a PCE, but is listed separately from PCEs in some provisions of the current Campaign Finance Law
Internal Revenue Code Section 527 tax exempt organization, if unincorporated	May contribute to ballot issue committees or make expenditures about candidates or ballot issues	Internal Revenue Code permits campaign activity, so long as the organization does not engage in express advocacy

<sup>8</sup> *UAW Local Union 1112 v. Philomena*, 121 Ohio App.3d 760, 788 (10<sup>th</sup> Dist. Ct. App. 1998).

<sup>9</sup> Ohio Secretary of State, *Ohio Campaign Finance Handbook*, “[Chapter 7: Political Contributing Entities](#)” at 7-3.

## Contributions to PCEs

### Definition of contribution

The bill expands the definition of a contribution when it is made to a PCE in order to require a PCE to report the source of donations that are not given to the PCE solely for the purpose of influencing election results, and are not used solely for that purpose, if the PCE uses its general fund to make expenditures. (As is discussed above under “**Contributions and expenditures**,” existing law generally defines a political contribution to include any transfer of a thing of value to a reporting entity that is made, received, or used for the purpose of influencing election results.)

A PCE typically is not formed solely for political purposes. For example, a nonprofit corporation that is exempt from federal taxation under subsection 501(c)(4) or 501(c)(6) of the Internal Revenue Code – a social welfare organization or a business league – cannot engage in political activity as its primary activity, but may engage in some political activity while retaining its tax-exempt status. If the organization receives a donation to its general fund, and then uses its general fund to make political expenditures, the donation might not qualify as a political contribution under current law because it is not given for the purpose of influencing election results, and the nonprofit corporation arguably would not be using that particular donation for the purpose of influencing election results. As a result, some entities might not be required to disclose the source of those funds.

Under the bill, if a PCE deposits all donations received for the purpose of influencing election results in a separate account, places only those kinds of donations in the account, and makes contributions and expenditures only from that account, then only the donations made to the PCE for the purpose of influencing election results are considered contributions, as under current law. However, if the PCE does not follow that procedure – for example, if it deposits all donations in its general fund and makes contributions and expenditures from the general fund – then *all* donations to the PCE are considered contributions, even if they were not earmarked for political purposes.<sup>10</sup>

### Contribution limits

Consistent with federal court rulings, the bill specifies that donors may make unlimited contributions to PACs or PCEs that make only independent expenditures or contributions to other independent-expenditure-only PACs or PCEs. Under continuing law, dollar contribution limits do not apply to contributions to PACs or PCEs that only make expenditures concerning ballot issues.<sup>11</sup>

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<sup>10</sup> R.C. 3517.01(C)(5) and 3517.10(A).

<sup>11</sup> R.C. 3517.102. See *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010), cert. denied by *Keating v. Federal Election Commission*, 562 U.S. 1003 (2010).



## **Expenditures by PCEs**

### **Definition of independent expenditure**

The bill changes the definition of an independent expenditure to include an expenditure *or other use of funds or anything of value* for the purpose of making an independent expenditure. The continuing definition of an expenditure includes only the use of a contribution, not money in general, in order to influence election results. (See “**Contributions and expenditures**,” above, for a fuller discussion of independent expenditures.)

With the expanded definition of independent expenditure, an entity such as a PCE that uses money or another thing of value that it *didn't* receive as a contribution to influence election results is considered to be making a reportable independent expenditure. For example, under the bill, an unincorporated business that used its profits to fund an independent political advertisement advocating the election of a candidate would be required to report that action as an independent expenditure.

The bill excludes internal corporate and labor organization communications that are intended only for persons such as members or employees of the entity from being considered a reportable independent expenditure. Current law allows a corporation or labor organization to make those internal communications for political purposes without reporting them.

Additionally, the bill clarifies that “independent expenditure” includes both expenditures concerning candidates and expenditures in support of or opposition to a ballot issue.<sup>12</sup>

### **Reporting corporation and labor organization expenditures**

Under the bill, corporations and labor organizations must report all of their expenditures in the same manner as other PCEs, instead of by submitting a separate form, as existing law requires with respect to permitted ballot issue expenditures by those entities.

### **Identification of source of political advertising by PCEs**

The bill makes clear that all PCEs must comply with the continuing law that requires entities that engage in political advertising to report the expenditure and to identify themselves in the advertisement as the funding source, in the same manner as PACs and other political entities currently must do. The existing law varies with respect to entities that are classified as PCEs under the bill based on the type of entity, as discussed above.<sup>13</sup>

## **Intent statement**

The bill states that the General Assembly acknowledges the ruling of the U.S. Supreme Court in *Citizens United v. Federal Election Commission* that corporations and labor

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<sup>12</sup> R.C. 3517.01(C)(16), 3517.105, 3517.106, and 3599.03(G).

<sup>13</sup> R.C. 3517.105.

organizations have a First Amendment right to make independent expenditures advocating the election or defeat of candidates for office in the same manner as other entities.<sup>14</sup>

### **Emergency clause**

The bill declares an emergency, meaning that it takes effect immediately and is not subject to the referendum.<sup>15</sup>

### **Technical changes**

Finally, the bill eliminates the penalty for violating a campaign finance prohibition that no longer exists.<sup>16</sup>

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## **HISTORY**

Action	Date
Introduced	02-03-21

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H0013-I-134/ts

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<sup>14</sup> Section 4 of the bill.

<sup>15</sup> Section 5 of the bill.

<sup>16</sup> R.C. 3517.992(W).