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Bill Analysis

Version: As Reported by House Government Oversight

Primary Sponsor: Rep. Seitz

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SUMMARY

- Prohibits a foreign national from knowingly making, or promising to make, a campaign contribution or expenditure or a disbursement for the direct cost of producing or airing an electioneering communication, except for an independent expenditure regarding a local ballot issue.
- Prohibits individuals and certain entities from knowingly soliciting or accepting a contribution or expenditure from a foreign national or making a contribution or expenditure using funds the person knows were received from a foreign national for political purposes.
- Prohibits any person from knowingly aiding or facilitating a violation described above.
- Provides criminal and financial penalties for violations of the bill.
- Gives the Attorney General exclusive authority to investigate and prosecute violations of the bill.

DETAILED ANALYSIS

Foreign national campaign spending

The bill leaves in place the current statute governing campaign spending by foreign nationals, which is located in R.C. 3517.13(W), and instead enacts a new section of law on the topic that supersedes R.C. 3517.13(W). Under the bill, any complaint that alleges a violation of R.C. 3517.13(W) must be treated as instead alleging a violation of the bill's provisions. The bill

* This analysis was prepared before the report of the House Government Oversight Committee appeared in the House Journal. Note that the legislative history may be incomplete.

prohibits all of the activities that are currently prohibited under R.C. 3517.13(W), as well as imposing some additional prohibitions and increased penalties.¹

Making prohibited contributions and expenditures

The bill prohibits a foreign national from knowingly doing any of the following, either directly or indirectly:

- Making a contribution or expenditure in support of or opposition to a candidate for any elective office in Ohio, including an office of a political party. (This provision is continuing law.)
- Making a contribution or expenditure in support of or opposition to a statewide ballot issue, regardless of whether the ballot issue has yet been certified to appear on the ballot. (It appears that the bill would not prohibit a foreign national from making an independent expenditure regarding a local ballot issue – for example, by paying for ads for or against a levy issue without coordinating with a political entity in doing so.)
- Making a contribution to any of the following:
 - A candidate, campaign committee, political action committee (PAC), political contributing entity (PCE), legislative campaign fund, state candidate fund, political party, or separate segregated fund;
 - Any committee created to support or oppose a ballot issue;
 - To the maximum extent permitted by law and by the U.S. and Ohio Constitutions, a continuing association. (Under continuing law, a continuing association is a permanent organization, typically a nonprofit corporation, that has a primary purpose other than supporting or opposing specific candidates, political parties, or ballot issues and that is not regulated as another type of political entity. A common example of a continuing association is a 501(c)(4) social welfare organization.)
- Making a disbursement for the direct cost of producing or airing an electioneering communication. (Under continuing law, electioneering communications, sometimes known as issue ads, are run during campaign season and refer to an identified candidate, but they stop short of “express advocacy.” For example, an issue ad might state that a candidate is a good person without actually saying that viewers should vote for the candidate. Electioneering communications are not considered campaign expenditures, but some reporting requirements do apply to them.)
- Promising, either expressly or implicitly, to make a contribution, expenditure, or disbursement described above.

Under the bill, whoever knowingly violates the prohibitions described above is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on any subsequent

¹ R.C. 3517.121(E).

offense. The violator also must be fined an amount equal to three times the amount involved in the violation or \$10,000, whichever amount is greater. Current law imposes that fine, but does not include any misdemeanor or felony penalty.²

The continuing-law maximum penalty for a first degree misdemeanor is six months in jail and a \$1,000 fine. For a fifth degree felony, the maximum penalty is 12 months in prison and a \$2,500 fine.³

Accepting prohibited contributions

Further, the bill prohibits any of the following persons, directly or indirectly, from knowingly soliciting, accepting, or receiving any funds from a foreign national for any purpose described above, or from knowingly making a contribution or expenditure using any funds the person knows were received from a foreign national for such a purpose:

- An individual;
- A candidate, campaign committee, PAC, PCE, legislative campaign fund, state candidate fund, political party, or separate segregated fund;
- Any committee created to support or oppose a ballot issue;
- To the maximum extent permitted by law and by the U.S. and Ohio Constitutions, a continuing association.

Existing law only prohibits a candidate, campaign committee, PAC, PCE, legislative campaign fund, state candidate fund, political party, or separate segregated fund from soliciting or accepting a contribution or expenditure from a foreign national. In 2021, the Ohio Elections Commission (OEC) issued an opinion that this provision of current law prevents a foreign national from participating in any ballot issue campaign in Ohio.⁴ However, under continuing law, it is not clear whether the committee in charge of a statewide initiative or referendum petition is considered a PAC for purposes of that prohibition. Such a committee would appear to fit the general definition of a PAC,⁵ but the section of law specifically governing those committees does not refer to them as PACs.⁶ The bill expands the prohibition to include all

² R.C. 3517.121(A)(1), (B), and (F)(1). See also R.C. 3517.01(C)(4), 3517.1011, 3517.13(W), and 3517.992, not in the bill.

³ R.C. 2929.14, 2929.18, 2929.24, and 2929.28, not in the bill.

⁴ Ohio Elections Commission, [Advisory Opinion 2021ELC-05 \(PDF\)](#) (December 16, 2021), available at elc.ohio.gov under “Advisory Opinions,” “Advisory Opinions by Year.”

⁵ Under R.C. 3517.01(C)(8), a PAC is “a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy,” that is not another type of regulated political entity. However, certain exceptions apply.

⁶ R.C. 3517.12, not in the bill.

ballot issue committees, regardless of whether they are considered a PAC or another type of regulated political entity.

The bill specifies that whoever violates the prohibitions described above is guilty of a first degree misdemeanor on a first offense and a fifth degree felony on any subsequent offense. The violator also must be fined an amount equal to three times the amount involved in the violation or \$10,000, whichever amount is greater, and must be ordered to return the amount to the foreign national. Current law imposes the fine and allows the Secretary of State to order the violator to return the amount, but the law does not include any misdemeanor or felony penalty.⁷

Aiding or facilitating violations

The bill adds a prohibition against any person knowingly aiding or facilitating a violation of any of the prohibitions described above. Whoever violates that prohibition is guilty of a first degree misdemeanor and must be fined \$1,000.⁸

Definition of “foreign national” – continuing law

Under continuing law, unchanged by the bill, “foreign national” means any of the following:⁹

- In the case of an individual, an individual who is not a U.S. citizen or national or a lawful permanent resident (green card holder);
- A government of a foreign country or of a political subdivision of a foreign country;
- A foreign political party;
- A person, other than an individual, that is organized under the laws of a foreign country or has its principal place of business in a foreign country.

This law mirrors the definition in the federal law that prohibits a foreign national from making a contribution or expenditure regarding a federal, state, or local candidate, but not regarding a ballot issue.¹⁰

⁷ R.C. 3517.121(C) and (F)(2). See also R.C. 3517.13(W)(2) and 3517.992, not in the bill.

⁸ R.C. 3517.121(D) and (F)(3).

⁹ R.C. 3517.121(A)(2). See also R.C. 3517.13(W)(3), not in the bill.

¹⁰ 52 United States Code 30121, prohibiting foreign nationals from making contributions “in connection with a federal, state, or local election.” In 2021, the Federal Election Commission determined that the federal statute does not apply to ballot issues. (Federal Election Commission, [Matter Under Review #7523](#) (2021), available at [fec.gov](https://www.fec.gov) under “Legal resources,” “Enforcement” via a search for closed MURs.)

Enforcement

The bill makes an exception to the general requirement that, before any prosecution or court proceeding may begin for a violation of the Campaign Finance Law, a complaint must be filed with the OEC. If the OEC determines that a violation has occurred, the OEC has discretion to refer the matter to a prosecutor for potential court proceedings or instead to impose an administrative fine in any amount, up to the maximum court fine.

With respect to violations of the law regarding foreign nationals, the bill instead gives the Attorney General exclusive authority to investigate and prosecute, unless the Attorney General is a victim or witness or is otherwise involved in the case. In that situation, the Attorney General must refer the matter to the prosecutor who would handle the case pursuant to an OEC referral (depending on the situation, the Franklin County Prosecutor or the county prosecutor of the most populous county in which the candidate or issue is to appear on the ballot). If the current statute governing the OEC would give the OEC discretion to choose the prosecutor, the bill instead gives that discretion to the Attorney General.

The bill requires the Attorney General to investigate an alleged violation of the bill, in consultation with the Secretary of State, upon the occurrence of either of the following:

- The submission of a written request to the Attorney General by the Governor, the Secretary of State, the General Assembly, or the OEC, alleging a violation;
- The filing of a complaint with the Attorney General by an elector of Ohio, alleging a violation.

If it appears to the Attorney General that there is probable cause to believe that a violation of the bill has occurred, the Attorney General may prosecute the violation in a court of competent jurisdiction. When proceeding under the bill, the Attorney General and any assistant or special counsel have all the rights, privileges, and powers conferred by law on county prosecutors, including the power to appear and interrogate witnesses before grand juries.¹¹

HISTORY

Action	Date
Introduced	05-28-24
Reported, H. Government Oversight	---

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¹¹ R.C. 3517.121(G) and (H). See also R.C. 3517.13(W), 3517.153, 3517.155(D), 3517.992, and 3517.993, not in the bill.