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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Seitz

S. Ben Fogle, Attorney

SUMMARY

Campaign finance changes

- Eliminates a requirement that certain candidates dispose of excess funds before filing to run for office.
- Allows the Ohio Elections Commission to declare a campaign committee or political action committee (PAC) terminated, even if it has an outstanding balance, if certain conditions are met.
- Permits the Commission to declare a campaign committee or PAC “in compliance” so that it may continue in existence.

Ohio Elections Commission

- Allows members of the Ohio Elections Commission to serve up to two consecutive terms of 4 years rather than unlimited nonconsecutive terms of 5 years.
- Clarifies that Commission members may be removed by the authority that appointed them for reasons specified under continuing law.
- Requires Commission members to be attorneys in good standing in Ohio.
- Permits Commission members to participate in meetings and hearings remotely so long as a majority are present in person, and other conditions are met.
- Codifies a requirement that the Commission follow the Ohio Rules of Civil Procedure and the Ohio Rules of Evidence.
- Clarifies that the Commission must dismiss a complaint that is not based on personal knowledge, with leave to refile the complaint and instructions on how to do so.
- Provides that if a complaint is filed a second time without personal knowledge, it must be dismissed with prejudice.

DETAILED ANALYSIS

Campaign finance changes

Disposal of excess campaign funds

The bill eliminates provisions of law that limit the amount of money certain candidates' campaign committees may have on hand at the beginning of a campaign and that require them to dispose of any excess funds.

Under current law, a candidate for Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, member of the State Board of Education, or member of the General Assembly may only have a certain amount of cash on hand as of the person's filing deadline to become a candidate for that office. (The law does not apply to Ohio Supreme Court candidates.) This restriction applies in two circumstances, described below.

First, existing law requires a candidate to dispose of excess funds if the candidate, during the prefiling period, accepted contributions that exceed the contribution limits that apply to the current candidacy. The prefiling period is the period ending on the candidate's filing deadline and beginning on the latest date of the following:

- January 1 immediately following the general election in which that office was last on the ballot;
- January 1 immediately following the general election in which the candidate was last a candidate for any office;
- The first day of the month following the primary election in which the candidate was last a candidate for any office.

For example, this situation might arise if the candidate previously ran for an office for which contribution limits do not apply, such as a municipal office, and continued to accept contributions after that campaign ended. Or, a candidate might accept contributions to an exploratory committee before deciding which office to seek, and then decide to seek an office for which contribution limits apply. In this case, current law requires the candidate to dispose of the amount the candidate accepted from each donor in excess of the contribution limit.

Second, under existing law, a candidate is prohibited from beginning the campaign with an amount of cash and campaign assets on hand that exceeds the applicable carry-in limit, which is:

- \$35,000 for a candidate for the Ohio House of Representatives or the State Board of Education;
- \$100,000 for a candidate for the Ohio Senate;
- \$200,000 for a candidate for Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, or Attorney General.

Current law allows candidates to dispose of excess funds by giving the excess to the Treasurer of State for deposit into the Ohio Elections Commission Fund; by issuing refunds to

individual donors; or by giving the money to a nonprofit corporation that is exempt from federal income taxation under subsection 501(c) of the Internal Revenue Code. (The bill retains and relocates references to the disposal of excess funds in that manner under other continuing-law circumstances where a candidate or other entity may be allowed or required to do so.)

The candidate must file a report identifying the excess funds or contributions and indicating the manner in which the candidate disposed of them. The candidate may not appear on the ballot until the candidate has properly disposed of the funds. The candidate also must file a declaration of filing-day finances, identifying the candidate's campaign assets and contributions as of the day of filing.

The bill eliminates these provisions, meaning that the candidate may enter a campaign with an unlimited amount of funds, so long as the candidate does not accept any contributions that exceed the limits that apply to the candidate at the time the contribution is made.¹

Termination of a committee

Under current law, a campaign committee or political action committee (PAC) may only be declared terminated if it has no outstanding balance and no outstanding obligations. The bill permits two additional methods of termination: (1) for a committee that files for termination, but has an outstanding balance that it cannot reconcile and (2) for a committee for which a responsible party cannot be located, in which case the Ohio Elections Commission can terminate the committee of its own accord.

Under the bill, a campaign committee or PAC that files for termination may be declared terminated, even if it has money on hand, if the following conditions are met:

- The committee has no outstanding obligations;
- The person responsible for operation of the committee attests, by an affidavit under penalty of election falsification, that the person has used the person's best efforts to correct or identify the errors preventing the person from disposing of the excess funds, and otherwise winding up the committee's affairs and reducing the balance to zero; and
- If the balance is greater than \$2,000, a certified public accountant has verified that, after reasonable efforts, reconciliation is not possible.²

For example, a committee might have \$5,000 on hand that it accepted from an entity that no longer exists. In that case, there may be no one to whom the funds may be returned.

¹ R.C. 3517.109, repealed and 3517.102. Conforming changes in R.C. 3517.081, 3517.1011, 3517.154, and 3517.992.

² R.C. 3517.158(A).

The bill also allows the Commission to declare a committee terminated if, after a reasonable effort at searching, the Commission determines that the only person responsible for the operation of the campaign committee or PAC has died or is unavailable for another reason.³

Declaring a committee compliant

The bill creates a new procedure in which a campaign committee or PAC can apply to the Ohio Elections Commission to be declared in compliance with the law, and to have a balance declared, so that it may continue in operation. For instance, if a committee has been inactive for a period of years and has not filed campaign finance statements, but has money in the bank, the committee might wish to resume its activities.

First, the committee must file a statement under penalty of election falsification, declaring its desire to be declared in compliance with the Campaign Finance Law.⁴ The Commission must prescribe the form. If the exact balance on hand cannot be ascertained, the person responsible for the operation of the committee must submit an affidavit, under penalty of election falsification, attesting that the person has used the person's best efforts to correct or identify the errors preventing a balance on hand from being ascertained.

The Commission must declare the committee in compliance, and declare a new balance on hand for the committee, if either of the following conditions is met:

- The balance is or appears to be \$2,000 or less and a reasonably approximate balance can be determined;
- The balance is more than, or appears to be more than, \$2,000, and a certified public accountant verifies that the exact balance cannot be determined, but a reasonably approximate balance can be determined.⁵

Ohio Elections Commission

The bill makes changes to the law governing the Ohio Elections Commission, which hears complaints related to violations of or noncompliance with the Campaign Finance Law. Under continuing law, the Commission is composed of seven members, with three belonging to each party and one independent member. The six partisan members are appointed by the Governor, and the seventh independent member is appointed by those six members.

Commission membership

The bill limits members to a maximum of two consecutive four-year terms on the Commission. Current law permits a member to serve an unlimited number of five-year terms, so long as those terms are not consecutive. Members currently serving five-year terms are permitted to finish out those terms, and then must be replaced by a member who serves a

³ R.C. 3517.158(B).

⁴ R.C. 3517.08 through 3517.13, not in the bill.

⁵ R.C. 3517.158(C).

four-year term. The bill also requires Commission members to be attorneys in good standing in Ohio.⁶

Additionally, the bill clarifies how a Commission member is removed. Continuing law prohibits Commission members from holding or being a candidate for public office, serving on a committee supporting or opposing a candidate or ballot issue, being a lobbyist, or engaging in various other activities that create a conflict of interest. Current law, however, does not specify how a member is removed if the member violates this provision. The bill requires that the member be removed following an administrative hearing. If the member is a partisan member, the Governor must remove the member. If the member is an independent member, the six partisan members (who appointed the member) must remove the member.⁷

Remote meetings and hearings

The bill permits the Commission to establish a policy allowing Commission members to attend meetings and hearings remotely, through electronic means. Each member must be present in person in at least half of the meetings each year, and a majority of members must be present in person at any meeting or hearing. All votes taken at a meeting in which a member is remotely attending must be taken by roll call vote. Any member who plans to attend the meeting remotely must notify the chairperson at least 48 hours before the meeting, unless there is a declared emergency.

The bill also clarifies that a member attending a meeting or hearing remotely is considered present for purposes of the Open Meetings Law, is counted for the purposes of establishing a quorum, and may vote at the meeting.⁸

Commission procedures

The bill codifies an existing administrative rule that requires the Commission to follow the Ohio Rules of Civil Procedure and the Ohio Rules of Evidence in all instances in which those rules do not conflict with the Commission's own procedural rules. The Rules of Civil Procedure and the Rules of Evidence, adopted by the Ohio Supreme Court, provide numerous requirements for court hearings and other legal proceedings. For example, Rules 4 through 4.7 of the Rules of Civil Procedure outline the acceptable methods of serving a person with notice of legal proceedings, and Rule 802 of the Rules of Evidence prohibits the use of hearsay as evidence in a proceeding.⁹

⁶ R.C. 3517.152(A), (B), and (D).

⁷ R.C. 3517.152(C) and (F).

⁸ R.C. 3517.152(G)(2), (4), and (5).

⁹ R.C. 3517.152(G)(3) and Ohio Administrative Code 3517-1-01. See also Ohio Supreme Court, [Ohio Rules of Civil Procedure \(PDF\)](#) and [Ohio Rules of Evidence \(PDF\)](#), available at supremecourt.ohio.gov under "Ohio Rules of Court."

Complaints based on personal knowledge

Under continuing law, a complaint filed with the Commission alleging a violation of the Campaign Finance Law must be made by affidavit, on personal knowledge, unless the complaint is filed by the Secretary of State or a board of elections. “Personal knowledge” is a principle of evidence, meaning a person’s knowledge of a fact gained through the person’s own observation or experience, as distinguished from a belief based on what someone else has said.¹⁰

The bill provides that if a complaint is made based on an affidavit that fails to indicate that it is based on personal knowledge, the Commission must dismiss the complaint without prejudice – meaning the person is allowed to refile the complaint – with instructions on how to refile the complaint. If the person refiles the complaint and still fails to indicate personal knowledge, the Commission must dismiss the complaint with prejudice – meaning that it cannot be refiled.¹¹

HISTORY

Action	Date
Introduced	03-08-22

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¹⁰ *Black’s Law Dictionary* (10th Ed. 2014).

¹¹ R.C. 3517.153.