



Ohio Legislative Service Commission

Bill Analysis

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S.B. 10

128th General Assembly
(As Introduced)

Sen. Widener

BILL SUMMARY

- Permits a person who has been elected or appointed to state office to establish a transition fund to receive donations and to pay costs incurred for transition activities and inaugural celebrations.
- Specifies that a transition fund may be created after the unofficial election results are announced, if the outstanding ballots are insufficient to change the election results; after the canvass of election returns is completed, if the outstanding ballots at the time the unofficial results were announced could have changed the unofficial election results; or after the person has been appointed to fill a vacancy.
- Permits any person, including a for-profit or nonprofit corporation to make a donation to a transition fund.
- Limits to \$25,000 the amount that a person may donate to a single transition fund.
- Prohibits for-profit and nonprofit corporations from making any disbursement to pay costs incurred for transition activities and inaugural celebrations unless the disbursement is a donation to a transition fund.
- Prohibits the treasurer of a transition fund from making disbursements from the fund (1) for any cost other than the costs of transition activities and inaugural celebrations, (2) for any political contribution, or (3) to reimburse the beneficiary of the transition fund for the beneficiary's personal expenses.
- Requires the treasurer of a transition fund to file donation and disbursement statements with the Secretary of State by electronic means of transmission on the 65th and 125th days after the transition fund is created, documenting all donations made to, and disbursements made from, the fund during the reporting period.

- Establishes penalties for treasurers who fail to file required donation and disbursement statements or who knowingly fail to report, or knowingly misrepresent, donations and disbursements that are required to be reported.
- Generally expands the provisions of the Campaign Finance Law applicable to the filing of campaign finance statements by electronic means of transmission to also apply to donation and disbursement statements filed by electronic means of transmission.
- Requires the treasurer of a transition fund to dispose of any assets remaining in the fund not later than the 120th day after the fund is created by giving the amount to the Ohio Elections Commission Fund, by refunding donations to individuals, or by giving the amount to a charity that is exempt from federal income tax.
- Requires the treasurer of a transition fund to file a final donation and disbursement statement not later than 125 days after the fund is created, which statement must include any disbursements made to dispose of the fund's assets, and specifies that the fund ceases to exist upon the filing of that statement.
- Requires the Secretary of State to examine donation and disbursement statements filed under the bill, and permits the Secretary of State to file a complaint with the Ohio Elections Commission regarding violations of the bill's provisions.
- Authorizes the Ohio Elections Commission to recommend legislation and render advisory opinions regarding transition accounts.

CONTENT AND OPERATION

Purpose and establishment of a transition fund

The bill permits a person who has been elected or appointed to a state office to establish a transition fund to receive donations and to pay costs incurred for transition activities and inaugural celebrations.¹ "Costs incurred for transition activities and inaugural celebrations" means legitimate and verifiable costs that are incurred for ordinary and necessary activities associated with (1) the transfer of power or authority from one state officeholder to another following a general or special election or appointment to office or (2) ceremonies, events, or activities commemorating the

¹ A "state office" means the joint offices of Governor and Lieutenant Governor or the office of Secretary of State, Auditor of State, Treasurer of State, Attorney General, member of the General Assembly, or Chief Justice or Justice of the Supreme Court (R.C. 3517.1014(A)(4)).

commencement of a term or the commencement of an unexpired term of a state officeholder. (R.C. 3517.1014(A) and (B).)

To establish a transition fund, a state officeholder must file a statement with the Secretary of State establishing the fund and designating a treasurer for the fund. The Secretary of State must specify, by rule, the form of the statement. (R.C. 3517.1014(B)(1).) The fund may be established (R.C. 3517.1014(B)(2)):

- After the unofficial results of the election at which the person seeks election to state office have been announced, if the number of ballots outstanding for that election are insufficient to change the unofficial election results;
- After the canvass of the election returns has been completed for the election at which the person seeks election to state office, if the number of ballots outstanding for that election after the unofficial results of the election were announced were sufficient to potentially change the unofficial election results; or
- After the person has been appointed to fill a vacancy in an unexpired term of a state office.

Donations to a transition fund

Any person, including a for-profit corporation or a nonprofit corporation, is permitted to make a donation to a transition fund (R.C. 3517.1014(C)(1)(a)). A "donation" is a gift, subscription, loan, advance, or deposit of money, or anything of value, that is specifically designated and used to defray any costs incurred for transition activities and inaugural celebrations and that is not used for the purpose of directly influencing the election of any candidate for any office (R.C. 3517.1014(A)(1)). A state officeholder is prohibited from accepting a donation unless the state officeholder has established a transition fund and the donation is deposited to the credit of that fund. (R.C. 3517.1014(C)(2).)

A donation to a transition fund is not considered a contribution for the purpose of the Campaign Finance Law, and thus, a corporation is not prohibited from making such a donation (R.C. 3517.01(B)(5)(h) and 3599.03(A)(1) and (D)(4)). While the bill thus permits a for-profit or nonprofit corporation to make a donation to a transition fund, the bill includes prohibitions regarding the use of corporate funds for transition purposes. Under the bill, for-profit and nonprofit corporations are prohibited from making any disbursement to pay any costs incurred for transition activities and inaugural celebrations unless the disbursement is a donation to a transition account. A for-profit

or nonprofit corporation that violates this prohibition must be fined an amount equal to three times the amount disbursed. (R.C. 1701.96 and 1702.85.)

And, although any person is permitted to make a donation to a transition fund, the amount that may be donated, and the amount that the fund may accept, is limited. Under the bill, no person may make a donation or donations to any one transition fund aggregating more than \$25,000. Similarly, a state officeholder or the treasurer of a transition fund is prohibited from accepting a donation or donations from any one person aggregating more than \$25,000. (R.C. 3517.1014(C)(1)(b) and (C)(3).) A person who makes a donation in excess of the \$25,000 limit must be fined three times the amount donated that exceeds \$25,000. Similarly, a state officeholder or treasurer of a transition fund that accepts a donation in excess of the \$25,000 limit must be fined an amount equal to three times the amount accepted that exceeds \$25,000. (R.C. 3517.992(E).)

Disbursements from a transition fund

As previously mentioned, the bill permits transition funds to be established to receive donations and to pay costs incurred for transition activities and inaugural celebrations. The bill prohibits the treasurer of a transition fund from making a disbursement from the fund for a purpose other than to pay costs incurred for transition activities and inaugural celebrations. The bill also specifically prohibits the treasurer of a transition fund from making a disbursement from the fund to make a contribution to a campaign committee, political action committee, legislative campaign fund, political party, or political contributing entity.

The treasurer of a transition fund is permitted to reimburse the beneficiary of the transition fund for costs incurred for transition activities and inaugural celebrations, but the treasurer must not make disbursements to reimburse any of the beneficiary's personal expenses. (R.C. 3517.1014(G).)

Reporting donations and disbursements

The treasurer of a transition fund is required to keep a strict account of all donations to the fund and all disbursements from the fund (R.C. 3517.1014(D)(1)). The treasurer is required to file, by electronic means of transmission to the office of the Secretary of State, a full, true, and itemized statement describing each donation received and each disbursement made from the fund not later than 4 p.m. of the following dates (R.C. 3517.1014(D)(2)):

- The 65th day after the transition fund is created, to reflect donations received and disbursements made from the creation of the fund to the close of business on the fifth day before the statement is filed;

- The 125th day after the transition fund is created, to reflect donations received and disbursements made from close of business on the last day reflected in the last previously filed statement to the close of business on the fifth day before the statement is filed.

Each donation and disbursement statement must contain the following information (R.C. 3517.1014(D)(3)):

(1) The full name and address of the treasurer filing the statement and the full name and address of the state officeholder who is the beneficiary of the transition fund;

(2) A statement of donations received, which must include the month, day, and year on which each donation was received; the full name and address of each donor; the nature of each donation, if other than money; and the value of each donation in dollars and cents;

(3) A statement of disbursements, which must include the name and address of each recipient of the disbursement; the date of each disbursement; the amount of each disbursement; and the purpose for which each disbursement was made;

(4) The balance remaining in the fund.

The bill prohibits the treasurer of a transition fund from knowingly failing to file a required donation and disbursement statement and from knowingly failing to report, or knowingly misrepresenting, a donation or disbursement that is required to be reported on a donation and disbursement statement (R.C. 3517.1014(E)). A treasurer who fails to file the required statement must be fined not more than \$100 for each day the treasurer fails to file the statement. If the treasurer knowingly fails to report or knowingly misrepresents a donation or disbursement, the treasurer must be fined not more than \$10,000 or, if the treasurer is a person who was nominated or elected to public office, the person must forfeit the nomination or election. (R.C. 3517.992(A)(2) and (C).)

Upon request, the Secretary of State must issue a receipt for each donation and disbursement statement that is filed (R.C. 3517.1014(F)).

The Secretary of State is required to maintain a record of the filing of each donation and disbursement statement for at least ten years. And a donation and disbursement statement is open to public inspection in the Secretary of State's office. (R.C. 3517.1014(F).)

Electronic filing provisions

Because the donation and disbursement statement must be filed electronically with the office of the Secretary of State, the bill amends various provisions of law that are generally applicable to the electronic filing of campaign finance statements. For example, current law requires the Secretary of State to prescribe the methodology, protocol, and data file structure for electronically filed campaign finance statements and requires the Secretary of State to assess the need for training regarding those electronic requirements. The bill expands these provisions to apply also to donation and disbursement statements filed by treasurers of transition funds. The bill generally mirrors the electronic filing provisions of current law by doing all of the following:

- Requiring the Secretary of State to prescribe the methodology, protocol, and data file structure for electronically filed donation and disbursement statements (R.C. 3517.10(C)(6)(b));
- Requiring the Secretary of State to assess the need for training regarding electronic filing of donation and disbursement statements by treasurers of transition funds and, if the Secretary of State determines training to be necessary, providing training to those treasurers (R.C. 3517.10(C)(6)(c));
- Requiring the Secretary of State to prescribe the manner of immediately acknowledging the receipt of donation and disbursement statements and the manner of preserving the information in those statements (R.C. 3517.10(D)(6)(a) and (b));
- Requiring the Secretary of State to make information in donation and disbursement statements available online to the public through the Internet (R.C. 3517.10(D)(7), 3517.106(I), and 3517.11(B)(3)(b));
- Requiring the Secretary of State to store on computer the information contained in donation and disbursement statements (R.C. 3517.106(B)(5));
- Requiring the Secretary of State to make available to treasurers of transition funds computer programs that are compatible with the Secretary of State's electronic storage system (R.C. 3517.106(C)(1));
- Requiring the Secretary of State to prescribe, by rule, one or more techniques by which a person who electronically transmits a donation and disbursement statement may electronically sign that statement (R.C. 3517.106(H));

- Requiring libraries to maintain links on their publicly accessible computers that are connected to the Internet to the Secretary of State's online campaign finance database (R.C. 3517.106(J));
- Providing an affirmative defense to a complaint that a treasurer of a transition fund failed to electronically file a required donation and disbursement statement by the applicable deadline if the Secretary of State's electronic filing system was inaccessible (R.C. 3517.106(K)); and
- Specifying that the provisions of law applying to the filing of donation and disbursement statements electronically also apply to the filing of addenda or amended statements (R.C. 3517.11(B)(3)(a)).

Final statement and conclusion of a transition fund

After the payment of all costs incurred for transition activities and inaugural celebrations, the treasurer of a transition fund is required to dispose of any assets remaining in the fund not later than the 120th day after the fund is created. The assets must be disposed of by doing any of the following (R.C. 3517.1014(H)(1)):

- Giving the amount to the Treasurer of State for deposit into the state treasury to the credit of the Ohio Elections Commission Fund;
- Giving the amount to individuals who made donations to the transition fund as a refund of all or part of their donations; or
- Giving the amount to a charitable corporation that is exempt from federal income taxation.

If the treasurer of a transition fund fails to dispose of assets remaining in the fund prior to the 120th day after the transition fund is created, any assets remaining in the transition fund must be given to the Treasurer of State for deposit into the Ohio Elections Commission Fund (R.C. 3517.992(Y)(2)).

Not later than 125 days after the fund is created, the treasurer of the transition fund is required to file a final statement of donations and disbursements with the Secretary of State. That final statement must include any disbursements made to dispose of assets remaining in the transition fund. Upon the filing of that statement, the transition fund ceases to exist. (R.C. 3517.1014(H).)

Enforcement

As previously discussed, donation and disbursement statements regarding transition funds must be filed with the Secretary of State. The Secretary of State is

required to examine the statement for completeness and accuracy and must determine, by rule, when an addendum, amendment, or other correction to a donation and disbursement statement, or an amended donation and disbursement statement, must be filed (R.C. 3517.11(B)(3)(a)(v) and (B)(4)(a)).

If the Secretary of State determines that a state officeholder or treasurer of a transition fund is in violation of the bill's provisions, the Secretary of State may file a complaint with the Ohio Elections Commission. The Ohio Elections Commission must hear and rule on the complaint in the same manner as the Commission hears other cases alleging violations of the Campaign Finance Law. In determining whether to give a complaint an expedited hearing, the Commission may consider whether the complaint relates to the late filing of a donation and disbursement statement, unreported donation and disbursement information, or an incomplete statement. (R.C. 3517.154.)

The bill also authorizes the Ohio Elections Commission to recommend legislation and render advisory opinions regarding transition accounts (R.C. 3517.153).

HISTORY

ACTION	DATE
Introduced	02-10-09

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