

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3863

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 14, 2013

The Assembly State Government Committee reports favorably and with committee amendments Assembly Bill No. 3863.

The purpose of this bill is to require disclosure of the contributions received and the expenditures made by committees or organizations that are not affiliated or coordinated with a candidate, the candidate committee or joint candidates committee, or both, or a committee organized to support or oppose a public question.

Under the bill, as amended, such a committee or organization is referred to as an independent expenditure-only committee and defined as an organization organized under section 527 of the federal Internal Revenue Code or under paragraphs (4), (5) or (6) of subsection c. of section 501 of the federal Internal Revenue Code, or any other organization organized under federal law that the commission determines is essentially similar to such organizations and does not fall within the definition of any other organization subject to the provisions of current law. Such a committee would not include any organization organized under paragraph (3) of subsection c. of section 501 of the federal Internal Revenue Code. The term "independent expenditure" is defined as an expenditure that is made to support or oppose a candidate for nomination or election to public office without the cooperation, knowledge, or prior consent of, or without coordination or consultation with, or without the request, suggestion or behest of, a candidate or any person or committee acting on behalf of a candidate, or an expenditure that is made to support or oppose the passage of a public question without the cooperation, knowledge, or prior consent of, or without coordination or consultation with, or without the request, suggestion or behest of any person or committee supporting or opposing a public question, or an expenditure that is made to fund a communication that, when taken as a whole, expressly advocates the nomination, election or defeat of a clearly identified candidate or expressly advocates supporting or opposing a public question, or is the functional equivalent of express advocacy.

The bill requires an independent expenditure-only committee to:

1) register with the Election Law Enforcement Commission (ELEC) if it makes an independent expenditure of at least \$1,400 in the aggregate during a calendar year;

2) make a cumulative report on a quarterly basis, on a form prescribed by ELEC, of all contributions in the form of moneys, loans, paid personal services, or other thing of value made to it, and of all independent expenditures made, incurred, or authorized by it during the period ending 48 hours preceding the date of the report and beginning on the date on which the first of those contributions was received or the first of those expenditures was made, whichever occurred first;

3) appoint a single treasurer who is to be responsible for certifying the correctness of each report filed with ELEC and maintaining all records of contributions and independent expenditures for a period of not less than four years;

4) file a cumulative report on the 29th day and the 11th day preceding and the 20th day following the election for which contributions were received and independent expenditures were made by the committee;

5) provide an itemized accounting of all receipts relative to any contribution of \$2,500 or more received, or independent expenditures of at least \$1,400 in the aggregate made by an independent expenditure-only committee, which includes the name and mailing address of each contributor contributing to such committee and the amount contributed by each;

6) file notice with ELEC within 48 hours of a contribution of \$2,500 or more received between the 13th day before an election and the date of the election, and any independent expenditure made during that period;

7) provide that no person serving as the chairman of a political party committee or a legislative leadership committee may serve as the chairperson of an independent expenditure-only committee, or as its treasurer, or be involved in the management, control or formation of an independent expenditure-only committee;

8) require each independent expenditure-only committee to establish an account that is separate and segregated from any other bank account established by the committee and use that account whenever it makes independent expenditures or receives contributions to promote the election or defeat of any candidate for elective public office or the passage or defeat of any public question voted on by the voters of this State;

9) provide that if any communication is made by an independent expenditure-only committee after January 1 of the calendar year of a primary, general, nonpartisan municipal, local or regional school board or fire district election to nominate or elect candidates for election or re-election to those offices, and in the case of a run-off or special election during the period beginning on the date on which the

announcement with respect to such election is made and ending on the date of the election, or with regard to a public question, the communication must be reported to ELEC pursuant to the current law regarding election communications; and

10) provide that any communication from an independent expenditure-only committee that, when taken as a whole, expressly advocates the nomination, election or defeat of a clearly identified candidate or expressly advocates supporting or opposing a public question, or is the functional equivalent of express advocacy, must contain a clear statement that the expenditure was made without the cooperation, knowledge, or prior consent of, or without coordination or consultation with, or without the request, suggestion or behest of, a candidate or any person or committee acting on behalf of a candidate, or that the expenditure was made to support or oppose the passage of a public question without the cooperation, knowledge, or prior consent of, or without coordination or consultation with, or without the request, suggestion or behest of any person or committee supporting or opposing a public question.

COMMITTEE AMENDMENTS

The committee amended that bill to 1) supplement the definition of an “independent expenditure,” as used in the bill, to include an expenditure that is made to fund a communication that expressly advocates the election or defeat of a candidate, or advocates support for or the defeat of a public question, or is the functional equivalent of express advocacy; 2) remove the requirement that an independent expenditure-only committee that receives a contribution of \$2,500 or more in the aggregate during a calendar year must register with the Election Law Enforcement Commission; and 3) increase the reporting threshold of an independent expenditure by an independent expenditure-only committee from at least \$1,200 to at least \$1,400 in the aggregate during a calendar year.

MINORITY STATEMENT

by Assemblyman C. J. Brown and Assemblywoman Simon

We strongly support transparency in political contributions and spending, for both candidate elections and public question campaigns. The sponsors of this bill are to be commended for their attention to transparency issues, but the bill raises important questions – some technical, some practical, some constitutional – that have not been answered sufficiently during the short discussion before the committee.

This bill does not simply deal with the “big money” in politics that is of concern to many people; rather, regulation begins when a group spends \$1400 in a single year, which amounts to less than four dollars

per day. When the state proposes to regulate small groups spending small amounts of money, speaking out about the issues of the day without even expressly advocating the support or defeat of a candidate or public question, lawmakers owe it to these community activists to ensure the regulation does not trample on their rights or have an undue chilling effect on free expression. We are not satisfied that this has been done.

Members of potentially affected groups have informed us of their concerns that disclosure of their donors will, in fact, have a chilling effect by possibly exposing them to threats and intimidation; even if no such threats occur, the reasonable fear of them is enough to chill participation and expression. While we cannot merely take this testimony at face value, neither can we dismiss it out of hand without further examination.

In addition, we have no information on the potential fiscal impact of this bill. The Election Law Enforcement Commission, which would be responsible for administering the bill, presently has vital core missions overseeing existing disclosure laws for candidates, various types of political committees, lobbyists and others. Further examination is needed to determine whether the additional regulation of small community groups spending four dollars a day to communicate on public issues would take too much attention away from those core missions. The actuality or appearance of corruption among lobbyists, candidates and political committees must remain the paramount concern of the commission.

For these reasons, we withhold our support from this bill at the present time.