

BY: Committee on Ways and Means

AMENDMENTS TO HOUSE BILL 93
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “Independent Expenditures” insert “and Electioneering Communications”; strike beginning with “to” in line 3 down through “issues” in line 4 and substitute “; authorizing the State Board of Elections to audit certain independent expenditure reports and certain electioneering communication reports”; in line 5, after “expenditure” insert “or electioneering communication”; in line 6, strike “independent”; in line 7, strike “campaign material that is a public communication” and substitute “certain communications”; in line 8, after “expenditure” insert “or electioneering communication”; in line 9, strike “independent expenditure”; in line 10, strike “independent”; in line 11, strike “campaign material that is a public communication” and substitute “certain communications”; in line 12, after “expenditure” insert “or electioneering communication”; in line 13, after “expenditure” insert “or electioneering communication”; in line 14, after “expenditure” insert “or electioneering communication”; in line 15, after “expenditure” insert “or disbursement for electioneering communications”; in line 16, strike “expenditure;” and substitute “expenditure or disbursement for electioneering communications; requiring that certain costs of creating and disseminating campaign material be considered in making a certain determination under this Act;”; strike beginning with “highest” in line 16 down through “of” in line 17 and substitute “treasurer or other individual designated by”; in line 17, after “expenditure” insert “or electioneering communication”; in line 19, after “expenditure” insert “or electioneering communication”; in line 20, after “expenditure” insert “or electioneering communication”; in line 21, after “expenditures” insert “or electioneering communications”; strike beginning with “any” in line 21 down through “a” in line 24 and substitute “a certain report distributed to certain individuals or post a certain”; in line 24, strike “it” and substitute “the entity”; strike beginning with “to” in line 24 down through “time” in line 26 and substitute “; requiring a person required to file an independent expenditure or electioneering communication report under this Act to

(Over)

keep certain records for a certain period of time"; strike beginning with "the" in line 27 down through "Act;" in line 28 and substitute "a delayed effective date; making the provisions of this Act severable;"; and in line 29, after "expenditures" insert "and electioneering communications".

On page 2, in line 8, after "1-101(bb)" insert "and 2-102(b)(5)"; and in line 13, after "13-306" insert "and 13-307".

AMENDMENT NO. 2

On page 2, in line 29, after "(bb)" insert "(1)"; strike beginning with "to" in line 29 down through "promote" in line 30 and substitute "EXPRESSLY ADVOCATING"; in line 30, after "a" insert "CLEARLY IDENTIFIED"; and after line 33, insert:

"(2) FOR PURPOSES OF THIS SUBSECTION, "CLEARLY IDENTIFIED"

MEANS:

(I) THE NAME OF THE CANDIDATE APPEARS;

(II) A PHOTOGRAPH OR DRAWING OF THE CANDIDATE APPEARS; OR

(III) THE IDENTITY OF THE CANDIDATE OR BALLOT ISSUE IS APPARENT BY UNAMBIGUOUS REFERENCE.

2-102.

(b) In exercising its authority under this article and in order to ensure compliance with this article and with any requirements of federal law, the State Board shall:

(5) receive, and in its discretion audit, campaign finance reports, INDEPENDENT EXPENDITURE REPORTS FILED UNDER § 13-306 OF THIS ARTICLE, AND ELECTIONEERING COMMUNICATION REPORTS FILED UNDER § 13-307 OF THIS ARTICLE;”.

On page 3, in line 4, strike “CONTRIBUTION” and substitute “DONATION”; in line 23, strike “BONA FIDE NEWS MEDIA ORGANIZATION” and substitute “BROADCASTING STATION, INCLUDING A CABLE TELEVISION OPERATOR, PROGRAMMER, OR PRODUCER, SATELLITE TELEVISION OR RADIO PROVIDER, WEB SITE, NEWSPAPER, MAGAZINE, OR OTHER PERIODICAL PUBLICATION, INCLUDING ANY INTERNET OR ELECTRONIC PUBLICATION,”; and strike beginning with “A” in line 29 down through the second “THE” in line 30 and substitute “AFTER A”.

On page 4, in line 2, after “COMMUNICATION” insert “, THE PERSON SHALL FILE AN INDEPENDENT EXPENDITURE REPORT AS REQUIRED IN THIS SECTION”; and in line 19, strike “EACH” and substitute “A”.

On page 5, in line 13, strike “CONTRIBUTION” and substitute “DONATION”; and after line 18, insert:

“(G) THE COST OF CREATING AND DISSEMINATING CAMPAIGN MATERIAL, INCLUDING ANY DESIGN AND PRODUCTION COSTS, SHALL BE CONSIDERED IN DETERMINING THE AGGREGATE AMOUNT OF INDEPENDENT EXPENDITURES MADE BY A PERSON FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION UNDER THIS SECTION.”;

and in lines 19, 24, and 32, strike “(G)”, “(H)”, and “(I)”, respectively, and substitute “(H)”, “(I)”, and “(J)”, respectively.

On page 6, after line 23, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.”.

AMENDMENT NO. 3

On page 6, after line 18, insert:

“(K) (1) A PERSON REQUIRED TO FILE AN INDEPENDENT EXPENDITURE REPORT UNDER THIS SECTION SHALL KEEP DETAILED AND ACCURATE RECORDS OF:

(I) ALL INDEPENDENT EXPENDITURES MADE BY THE PERSON FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION; AND

(II) ALL DONATIONS RECEIVED BY THE PERSON THAT ARE FOR THE PURPOSE OF FURTHERING INDEPENDENT EXPENDITURES FOR CAMPAIGN MATERIAL THAT IS A PUBLIC COMMUNICATION.

(2) RECORDS REQUIRED TO BE KEPT UNDER THIS SUBSECTION SHALL BE PRESERVED FOR 2 YEARS AFTER THE END OF THE ELECTION CYCLE IN WHICH THE PERSON FILED THE INDEPENDENT EXPENDITURE REPORT TO WHICH THE RECORDS RELATE.”;

and in line 19, strike “(J)” and substitute “(L)”.

AMENDMENT NO. 4

On page 5, in line 19, strike “HIGHEST RANKING OFFICIAL OF” and substitute “TREASURER OR OTHER INDIVIDUAL DESIGNATED BY”.

AMENDMENT NO. 5

On page 5, in line 33, strike “THAT SUBMITS REGULAR,”.

On page 6, strike beginning with “PERIODIC” in line 1 down through “SHALL” in line 2 and substitute “SHALL DO AT LEAST ONE OF THE FOLLOWING, UNLESS NEITHER ARE APPLICABLE TO THE ENTITY”.

On page 6, in line 3, strike “INCLUDE IN EACH” and substitute “IF THE ENTITY SUBMITS”; in the same line, strike “REPORT” and substitute “REPORTS”; in line 4, after “DONORS,” insert “INCLUDE IN EACH REPORT,”; in line 8, strike “AND” and substitute “OR”.

AMENDMENT NO. 6

On page 6, after line 20, insert:

“13-307.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DONATION” MEANS THE GIFT OR TRANSFER, OR PROMISE OF GIFT OR TRANSFER, OF MONEY OR OTHER THING OF VALUE TO A PERSON THAT IS MADE FOR THE PURPOSE OF FURTHERING ELECTIONEERING COMMUNICATIONS.

(3) (1) “ELECTIONEERING COMMUNICATION” MEANS A BROADCAST, CABLE, OR SATELLITE COMMUNICATION THAT:

(Over)

1. REFERS TO A CLEARLY IDENTIFIED CANDIDATE OR BALLOT ISSUE;

2. IS MADE WITHIN 60 DAYS OF AN ELECTION DAY ON WHICH THE CANDIDATE OR BALLOT ISSUE IS ON THE BALLOT; AND

3. IS CAPABLE OF BEING RECEIVED BY 50,000 OR MORE INDIVIDUALS IN THE CONSTITUENCY WHERE THE CANDIDATE OR BALLOT ISSUE IS ON THE BALLOT.

(II) "ELECTIONEERING COMMUNICATION" DOES NOT INCLUDE:

1. AN INDEPENDENT EXPENDITURE;

2. A NEWS STORY, A COMMENTARY, OR AN EDITORIAL DISSEMINATED BY A BROADCASTING STATION, INCLUDING A CABLE TELEVISION OPERATOR, PROGRAMMER, OR PRODUCER, OR SATELLITE TELEVISION OR RADIO PROVIDER THAT IS NOT CONTROLLED BY A CANDIDATE OR POLITICAL PARTY;

3. A CANDIDATE DEBATE OR FORUM; OR

4. A COMMUNICATION THAT PROPOSES A COMMERCIAL TRANSACTION.

(III) FOR PURPOSES OF THIS PARAGRAPH, "CLEARLY IDENTIFIED" MEANS:

1. THE NAME OF A CANDIDATE APPEARS;
2. A PHOTOGRAPH OR DRAWING OF A CANDIDATE APPEARS; OR
3. THE IDENTITY OF A CANDIDATE OR BALLOT ISSUE IS APPARENT BY UNAMBIGUOUS REFERENCE.

(4) (I) “PERSON” INCLUDES AN INDIVIDUAL, A PARTNERSHIP, A COMMITTEE, AN ASSOCIATION, A CORPORATION, A LABOR ORGANIZATION, OR ANY OTHER ORGANIZATION OR GROUP OF PERSONS.

(II) “PERSON” DOES NOT INCLUDE A CAMPAIGN FINANCE ENTITY ORGANIZED UNDER SUBTITLE 2, PART II OF THIS TITLE.

(B) AFTER A PERSON MAKES AGGREGATE DISBURSEMENTS OF \$10,000 OR MORE IN AN ELECTION CYCLE FOR ELECTIONEERING COMMUNICATIONS, THE PERSON SHALL FILE AN ELECTIONEERING COMMUNICATION REPORT AS REQUIRED IN THIS SECTION.

(C) (1) IF THE ELECTIONEERING COMMUNICATIONS RELATE TO A CANDIDATE, THE PERSON SHALL FILE AN ELECTIONEERING COMMUNICATION REPORT WITH THE STATE BOARD ON THE NEXT DATE A CAMPAIGN FINANCE ENTITY OF A CANDIDATE IS REQUIRED TO FILE A CAMPAIGN FINANCE REPORT UNDER § 13-309 OF THIS SUBTITLE.

(2) IF THE ELECTIONEERING COMMUNICATIONS RELATE TO A BALLOT ISSUE, THE PERSON SHALL FILE AN ELECTIONEERING COMMUNICATION

REPORT WITH THE STATE BOARD ON THE NEXT DATE A BALLOT ISSUE COMMITTEE IS REQUIRED TO FILE A CAMPAIGN FINANCE REPORT UNDER § 13-309 OF THIS SUBTITLE.

(3) AN ELECTIONEERING COMMUNICATION REPORT FILED UNDER THIS SUBSECTION SHALL INCLUDE THE INFORMATION REQUIRED BY SUBSECTION (E) OF THIS SECTION FOR THE PERIOD FROM THE BEGINNING OF THE ELECTION CYCLE THROUGH THE LAST DAY OF THE REPORTING PERIOD UNDER § 13-312 OF THIS SUBTITLE THAT PRECEDES THE REPORT FILING DATE.

(D) (1) A PERSON WHO FILES AN ELECTIONEERING COMMUNICATION REPORT UNDER SUBSECTION (C) OF THIS SECTION SHALL FILE AN ADDITIONAL ELECTIONEERING COMMUNICATION REPORT FOLLOWING A DATE ON WHICH THE PERSON MAKES AGGREGATE DISBURSEMENTS OF \$10,000 OR MORE FOR ELECTIONEERING COMMUNICATIONS FOLLOWING THE CLOSING DATE OF THE PERSON'S PREVIOUS ELECTIONEERING COMMUNICATION REPORT.

(2) AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SUBSECTION SHALL:

(I) BE FILED WITH THE STATE BOARD ON THE DATE SPECIFIED IN SUBSECTION (C)(1) AND (2) OF THIS SECTION; AND

(II) INCLUDE THE INFORMATION REQUIRED BY SUBSECTION (E) OF THIS SECTION FOR THE PERIOD FROM THE CLOSING DATE OF THE PREVIOUS ELECTIONEERING COMMUNICATION REPORT THROUGH THE LAST DAY OF THE REPORTING PERIOD UNDER § 13-312 OF THIS SUBTITLE THAT PRECEDES THE REPORT FILING DATE.

(E) AN ELECTIONEERING COMMUNICATION REPORT SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE IDENTITY OF THE PERSON MAKING DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS AND OF ANY PERSON EXERCISING DIRECTION OR CONTROL OVER THE ACTIVITIES OF THE PERSON MAKING THE DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS;

(2) THE BUSINESS ADDRESS OF THE PERSON MAKING THE DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS;

(3) THE AMOUNT AND DATE OF EACH DISBURSEMENT FOR ELECTIONEERING COMMUNICATIONS DURING THE PERIOD COVERED BY THE REPORT AND THE PERSON TO WHOM THE DISBURSEMENT WAS MADE;

(4) THE CANDIDATE OR BALLOT ISSUE TO WHICH THE ELECTIONEERING COMMUNICATIONS RELATE;

(5) THE IDENTITY OF EACH PERSON WHO MADE A DONATION TO THE PERSON MAKING THE DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS DURING THE PERIOD COVERED BY THE REPORT.

(F) FOR PURPOSES OF THIS SECTION, A PERSON SHALL BE CONSIDERED TO HAVE MADE A DISBURSEMENT FOR AN ELECTIONEERING COMMUNICATION IF THE PERSON HAS EXECUTED A CONTRACT TO MAKE A DISBURSEMENT FOR AN ELECTIONEERING COMMUNICATION.

(G) THE COST OF CREATING AND DISSEMINATING ELECTIONEERING COMMUNICATIONS, INCLUDING ANY DESIGN AND PRODUCTION COSTS, SHALL

(Over)

BE CONSIDERED IN DETERMINING THE AGGREGATE AMOUNT OF DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS MADE BY A PERSON UNDER THIS SECTION.

(H) THE TREASURER OR OTHER INDIVIDUAL DESIGNATED BY AN ENTITY REQUIRED TO FILE AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SECTION:

(1) SHALL SIGN EACH ELECTIONEERING COMMUNICATION REPORT; AND

(2) IS RESPONSIBLE FOR FILING ELECTIONEERING COMMUNICATION REPORTS IN FULL AND ACCURATE DETAIL.

(I) (1) AN INDIVIDUAL IS SUBJECT TO THE SANCTIONS THAT APPLY TO THE RESPONSIBLE OFFICERS OF A CAMPAIGN FINANCE ENTITY UNDER PART VII OF THIS SUBTITLE FOR FAILURE TO FILE PROPERLY AN ELECTIONEERING COMMUNICATION REPORT.

(2) THE FAILURE TO PROVIDE ON AN ELECTIONEERING COMMUNICATION REPORT ALL OF THE INFORMATION REQUIRED BY THIS SECTION IS DEEMED A FAILURE TO FILE AND RENDERS THE REPORT OVERDUE AS PROVIDED IN § 13-327(B) OF THIS SUBTITLE.

(J) (1) AN ENTITY REQUIRED TO FILE AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SECTION SHALL DO AT LEAST ONE OF THE FOLLOWING, UNLESS NEITHER ARE APPLICABLE TO THE ENTITY:

(I) IF THE ENTITY SUBMITS REGULAR, PERIODIC REPORTS TO ITS SHAREHOLDERS, MEMBERS, OR DONORS, INCLUDE IN EACH REPORT IN A CLEAR AND CONSPICUOUS MANNER, THE INFORMATION SPECIFIED IN SUBSECTION (E)(3) THROUGH (5) OF THIS SECTION FOR EACH DISBURSEMENT FOR ELECTIONEERING COMMUNICATIONS MADE DURING THE PERIOD COVERED BY THE REPORT THAT MUST BE INCLUDED IN AN ELECTIONEERING COMMUNICATION REPORT; OR

(II) IF THE ENTITY MAINTAINS AN INTERNET SITE, POST ON THAT INTERNET SITE A HYPERLINK FROM ITS HOMEPAGE TO THE INTERNET SITE WHERE THE ENTITY'S ELECTIONEERING COMMUNICATION REPORT INFORMATION IS PUBLICLY AVAILABLE.

(2) (I) AN ENTITY SHALL POST THE HYPERLINK REQUIRED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION WITHIN 24 HOURS OF THE ENTITY'S ELECTIONEERING COMMUNICATION REPORT INFORMATION BEING MADE PUBLICLY AVAILABLE ON THE INTERNET.

(II) THE HYPERLINK SHALL REMAIN POSTED ON THE ENTITY'S INTERNET SITE UNTIL THE END OF THE ELECTION CYCLE DURING WHICH THE ENTITY FILED AN ELECTIONEERING COMMUNICATION REPORT.

(K) (1) A PERSON REQUIRED TO FILE AN ELECTIONEERING COMMUNICATION REPORT UNDER THIS SECTION SHALL KEEP DETAILED AND ACCURATE RECORDS OF:

(I) ALL DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS MADE BY THE PERSON; AND

(Over)

(II) ALL DONATIONS RECEIVED BY THE PERSON THAT ARE FOR THE PURPOSE OF FURTHERING ELECTIONEERING COMMUNICATIONS.

(2) RECORDS REQUIRED TO BE KEPT UNDER THIS SUBSECTION SHALL BE PRESERVED UNTIL 2 YEARS AFTER THE END OF THE ELECTION CYCLE IN WHICH THE PERSON FILED THE INDEPENDENT EXPENDITURE REPORT TO WHICH THE RECORDS RELATE.

(L) THE STATE BOARD MAY ADOPT REGULATIONS AS NECESSARY TO IMPLEMENT THE REQUIREMENTS OF THIS SECTION.”.

AMENDMENT NO. 7

On page 6, strike in their entirety lines 21 through 23, inclusive; and in line 25, strike “June” and substitute “December”.