

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

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**ASSEMBLY, No. 4372**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 23, 2023

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Committee Substitute for Assembly Bill No. 4372.

This substitute bill, “The Elections Transparency Act,” requires independent expenditure committees to report campaign contributions in excess of \$7,500 and all expenditures; requires candidates and various committees to report campaign contributions in excess of \$200; increases campaign contribution limits; and makes various changes to campaign contribution reports and other requirements. The bill establishes a cumulative reporting requirement for independent expenditure committees and further modifies the definitions of independent expenditure and independent expenditure committee. The bill also modifies the definition of electioneering communication.

Under current law, candidate committees, joint candidates committees, political committees, continuing political committees, political party committees, and legislative leadership committees are required to file with the Election Law Enforcement Commission (ELEC) a report of all contributions in the form of moneys, loans, paid personal services, or other things of value made to it and all expenditures made, incurred, or authorized by it in furtherance of the nomination, election, or defeat of any candidate, or in aid of the passage or defeat of any public question, or to provide political information on any candidate or public question. This bill requires candidates and various committees to report campaign contributions in excess of \$200. This bill changes from “within 48 hours” to “within 72 hours” the timing established under current law for candidates and committees to report certain contributions and expenditures that occur within a certain number of days before an election, except that the bill requires contributions received and expenditures made between the seventh day prior to an election and the day of the election to be reported “within 24 hours.” However, the “within 72 hours” requirement begins on the 15th day prior to a primary, general, municipal, school or special election, and the “within 24 hours” requirement begins on the 7th day prior to the primary, general,

municipal, school or special election for continuing political committees, political party committees, and legislative leadership committees. The bill requires candidate committees and joint candidates committees to file cumulative quarterly reports, and independent expenditure committees to file cumulative reports.

The bill deletes the ability of campaign treasurers to report by telegram certain contributions and expenditures, and instead requires their reporting by electronic transmission.

This bill also doubles the statutory maximum contribution limits, and increases those limits further for State political party committees, legislative leadership committees, and county political party committees. The bill also provides for the index used by ELEC to adjust limits to be applied every two years for campaigns other than gubernatorial. Under the bill, those limits would reset every two years. Under the bill, ELEC would also be permitted to adjust the campaign contribution limits pursuant to the index, without the need for legislation to do so. The bill also updates to 2021 levels, already indexed by ELEC, the contribution amounts eligible for matching funds and the maximum public funding amounts available for gubernatorial candidates under the public financing program, along with related program thresholds.

Under the bill, whenever any candidate declares a candidacy for any election and establishes a candidate committee, a joint candidates committee, or both, as the case may be, for the purpose of receiving contributions and making expenditures in connection with that election, the candidate must only accept from each entity permitted to make contributions to the candidate an amount not greater than the maximum contribution limit permitted by law to be made by the entity to the candidate for that election, even if the candidate declares a candidacy and establishes the committee or committees before the election year in which the candidate will run for office. The bill prohibits an entity from making additional contributions to a candidate for any election beyond the maximum contribution permitted by law.

The bill directs ELEC to create and maintain a database containing information that business entities are required to disclose and report to the commission under current law, concerning contributions made by the business entity and any contribution made during the duration of a public entity contract held by the business entity. Under the bill, a business entity who fails to disclose a contribution or the existence of a public contract would be subject to a fine of not less than \$250.

The bill also requires ELEC, within one year following the effective date, to make technical updates to its campaign contributions and expenditures reporting database to improve the performance and usability of the database. The bill requires the Legislature to appropriate to ELEC any funds necessary for the database improvements.

The bill sunsets any local ordinances, resolutions, or regulations limiting the awarding of public contracts to business entities that have made a contribution and limiting the contributions that the holders of a contract can make during the term of a contract. The bill would subject local units to the provisions of current law and this bill. This provision of the bill would affect such ordinances, resolutions, or regulations of a county, municipality, independent authority, board of education, or fire district, as appropriate. The bill also amends the current law public contract provisions to remove the prohibition against business entity contributions to the State committee of a political party; the State committee of the political party of a presiding officer of either or both houses of the Legislature and to a legislative leadership committee; to any county committee of a political party; and to any municipal committee of a political party. This bill retains the public contract prohibitions against business entity contributions to candidates in such State, county, and municipal governmental capacities. The bill extends to State Executive Branch contracts the “fair and open process” exemption that applies to contracts in the Legislative Branch, counties, and municipalities. The bill also amends the definition of “fair and open process” to include a contract awarded through public bidding or competitive contracting.

This bill provides that expenses incurred by the holder of a public office or a candidate or committee for litigation or legal costs arising from campaign activities would be permitted to be paid from campaign contribution funds.

The bill allows the two major political parties in this State and their respective county political party committees to create a segregated depository account, separate from any campaign depository account, to be deemed as the “housekeeping account.” Under the bill, the purpose of the housekeeping account would be to pay eligible expenses for non-political purposes including, but not limited to, legal activity, accounting, compliance, human resources, collective bargaining, capital expenses such as mortgage payments, rent, utilities, and taxes, and expenses related to county, State, or national political party conventions. The two major political parties in this State and their respective county political party committees would also be permitted to raise funds for deposit into the housekeeping account, except that the maximum contribution or limit on the funds raised from any given person, candidate, or committee would be equivalent to double the amounts established for the State committee of a political party or the county committee of a political party. The bill permits gubernatorial campaigns to utilize the funds deposited in a political party housekeeping account for any non-political expenditures incurred following the election in which the gubernatorial candidates participated, and those non-political expenditures would not be considered an in-kind contribution. Under the bill, following the effective date, any enforcement action brought by the ELEC for any

violations under current law would be subject to a statute of limitations of two years following the occurrence of the alleged violation. The statute of limitations would apply retroactively to any alleged violations occurring prior to the effective date of the bill.

The bill also provides that, following the date of enactment, the position of executive director of ELEC would require appointment by the Governor, with the advice and consent of the Senate. The executive director would serve at the pleasure of the Governor. The executive director would receive an annual salary to be fixed and established by the Governor, which would not exceed \$175,000, and would be required to devote their entire time and attention to the duties of the office. If an executive director has not been confirmed by the Senate, the Governor may appoint an acting executive director to temporarily fill the role.

#### MINORITY STATEMENT

By Assemblymen Bergen and McClellan

This bill is supposed to fix issues that led a federal district court to block a previous disclosure law. In 2019, the U.S. District Court Judge Brian Martinotti ruled in *Americans for Prosperity v. Grewal* that, “it is the definition of ‘political information’ that the court views as more constitutionally troubling, as it extends disclosure regimes the Supreme Court has approved of well beyond the boundaries set by *Buckley*, *McConnell*, and *Citizens United*.”

This definition remains unchanged in the legislation, and could lead to another injunction on this failed attempt at transparency.

Unfortunately, this bill is not an attempt at transparency. It is using transparency as a mask for the unmitigated greed of the New Jersey Democratic State Committee. Below are three of the most egregious portions of the deftly-named “Elections Transparency Act.”

First, the NJSDC asked the Election Law Enforcement Commission to approve a “housekeeping account” in 2021, which was definitively denied. Specifically, the party requested to accept funds for a segregated account to be used solely for non-political purposes that would not be subject to the state’s campaign contribution limits. The ELEC concluded that “risk of undue influence over the party is related to the amount of money contributed, not how those particular funds are spent.”

Money is fungible. And it could easily be used inappropriately, as separate accounts were historically before being outlawed.

Contribution limits are already drastically increasing under the bill and establishing a separate account would increase undue influence over political parties, which is what any respectable legislation regulating campaign finance should limit to the greatest extent possible. This bill serves undue influence as its master.

It is also clear that “housekeeping accounts” are in violation of the state public financing program, and the disclosure provisions of the bill may not apply to “housekeeping accounts” as section 33 is written.

Second, section 35 lowers the statute of limitations for campaign violations to 2 years following the occurrence of the alleged violation, rather than 10 years following the election in which a violation occurred.

There is good reason to maintain the current statute of limitation rules. If a violation is not reported for a year, it would expire a year later. Due process is an important part of any allegation being properly adjudicated, which can take longer than two years.

Any violation could become null before an election. An Assembly term only lasts two years and Senate and gubernatorial terms are four years. Gubernatorial elections also tend to begin long before an actual primary – sometimes two years before.

Most importantly, this section injects the ELEC to take action during an election process instead of allowing the democratic process to play out. Voters should not be unmoored by allegations that have yet to be proven. Allegations can have an unfair impact on an election, as many believe occurred during the 2016 presidential election, when allegations of the FBI investigating Secretary Hilary Clinton for inappropriate use of technology were maintained and confirmed by then-Director James Comey. To inject the ELEC into the democratic process similarly is misguided.

Third, pay-to-play laws are essentially gutted by “fair and open” loopholes in the legislation that favor the political transactions of politicians at all levels and branches of government. There have been a number of reports by the ELEC advising that the “fair and open” loophole should be closed because of its ability to evade pay-to-play laws. This bill does the opposite: it turns the loophole into a black hole.

Though there are more troubles with this legislation, the above is more than enough to validate opposition to this bill.