HB 2709 STAFF MEASURE SUMMARY

House Committee On Rules

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Meeting Dates: 2/18

WHAT THE MEASURE DOES:
Modifies definition of "independent expenditure" for purposes of campaign finance reporting statutes. Reduces amount of expenditure requiring report and period within which expenditure must be reported. Authorizes Secretary of State to impose civil penalty for incorrectly identifying expenditure as independent. Requires person subject to independent expenditure reporting requirement to keep detailed records and submit accounts to inspection. Increases maximum amount of civil penalty Secretary may impose for failing to make certain campaign finance reports or for omitting transactions. Takes effect January 1, 2020.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:
No amendment.

BACKGROUND:
Under current law, an "independent expenditure" is defined to include certain communications that are made in support of, or opposition to, a candidate or measure, but that are made independently of a candidate or political committee. When a person exceeds $750 in independent expenditures in a calendar year, the person must report the expenditures on ORESTAR within seven days. Thereafter, the person must report within 30 days of an expenditure, unless the expenditure is made within six weeks of a primary or general election, in which case additional reporting is required within seven days. Failing to file, or failing to include specified information, is punishable by a civil penalty.

House Bill 2709 makes three changes to the definition of "independent expenditure." First, the bill imports language from federal law into a definition that describes when a communication supports or opposes a clearly identified candidate or measure. The Federal Election Commission's definition of "expressly advocating" includes communications that "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates(s) because -- [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning..." 11 C.F.R. 100.22. Much of this definition is included in House Bill 2709. Second, the bill reduces a threshold necessary to classify certain communications as independent expenditures from $750 to $250, when the communications identify a particular candidate or party and are made in advance of an election, but do not expressly urge election or defeat. Third, House Bill 2709 establishes a list of activities that definitively classify certain expenditures as coordinated expenditures, rather than independent expenditures. Many of the activities are similar to regulations adopted by California's Fair Political Practices Commission, that create a rebuttable presumption of coordination in similar circumstances. See 2 CCR 18225.7 (d).

House Bill 2709 also modifies the reporting process by requiring a person who exceeds $250 in independent expenditures to file an initial report on ORESTAR and to file additional reports within seven days of any further expenditures, regardless of the proximity of an election. The bill authorizes the Secretary of State to impose a civil penalty for incorrectly classifying an expenditure as independent and increases the maximum penalty that may be imposed for failing to file certain required reports or omitting specified information. Finally, House Bill 2709 includes persons who make more than $250 in independent expenditures in recordkeeping and inspection provisions applicable to candidates and political committees. House Bill 2709 takes effect January 1, 2020.