SENATE BILL 492
By Haynes

HOUSE BILL 321

By Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 10, to enact the "Voter-Owned Elections Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 10, is amended by adding the following sections as a new part thereto:

2-10-501. This part shall be known and may be cited as the “Voter-Owned Elections Act.”

2-10-502. The purpose of this part is to ensure the vitality and fairness of democratic elections in Tennessee, to the end that any eligible citizen of this state can realistically choose to seek and run for public office. It is also the purpose of this act to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in Tennessee to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized, and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this act establishes the Tennessee Democracy Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This part is available to candidates for the general assembly in elections to be held in 2012 and thereafter, and to candidates for governor in elections to be held in 2014 and thereafter. Candidates participating in this act must also comply with all other applicable election and campaign laws and rules. The registry of election finance shall administer this act and the Tennessee Democracy Fund.

2-10-503. As used in this part:

(1) “Campaign expenditure” shall not include loan payments, refunds, or contributions made by candidates to other candidates, political campaign committees, or political parties, for purposes of calculating amounts certified candidates receive;

(2) “Certified candidate” means a candidate running for office who chooses to participate in the Voter-Owned Elections Act and who is certified as a Voter-Owned Election Act candidate under § 2-10-505(e) of this part;

(3) “Contested primary election” and “contested general election” mean elections in which there are more candidates than the number to be elected;

(4) “Contribution” and “expenditure” have the same meaning as defined in § 2-10-102;

(5) “Election cycle” comprises the primary and general election for election to the same term of the same office;

(6) “Fund” means the Tennessee Democracy Fund established in § 2-10-504 of this part;

(7) “Nonparticipating candidate” means a candidate running for governor, state senator, or state representative who does not choose to participate in the Voter-Owned Election Act and who is not seeking to be certified under § 2-10-505(e) of this part;

(8) “Office” means governor, each district seat held by a state senator, or each district seat held by a state representative;

(9) “Participating candidate” means a candidate who is running for office who is seeking to be certified as a Voter-Owned Elections Act candidate under § 2-10-505(e) of this part;

(10) “Qualifying contribution” means a donation of not less than ten dollars ($10.00) and not more than one hundred dollars ($100) in the form of a check or money order payable to the candidate that is:

(A) Made by any registered voter who resides in a county served by the office the candidate is seeking;

(B) Made during the designated qualifying period and obtained through efforts made with the knowledge and approval of the candidate; and

(C) Acknowledged by a written receipt, on a multicopy form provided by the registry, which identifies the complete name, residence address, and county of residence of the contributor and the amount and date of the contribution made; states that the contributor is a registered voter who resides in a county served by the office being sought by the candidate; states that the contributor authorizes the candidate to use the contribution to qualify to receive campaign funds from the Fund; and is signed by the contributor and the candidate, or the candidate's representative.

"Qualifying contribution" also includes contributions from the candidate's own funds or those of the candidate's spouse, parents, brothers, and sisters, in any amount up to an aggregate total of one thousand dollars ($1,000) for a statewide qualifying candidate, and up to an aggregate total of five hundred dollars ($500) for a non-statewide candidate, but those funds shall not be included in the number of qualifying contributions needed to be certified under § 2-10-505 (e) of this part;

(11) "Excess qualifying contributions" means the qualifying contributions received in excess of a sum to be determined by multiplying the minimum number of qualifying contributions required for that office by the maximum dollar amount allowed for such contributions;

(12) "Qualifying period" means:

(A) For participating candidates for governor, the period beginning two-hundred seventy (270) days before the close of the filing period for candidates

running for the primary and ending thirty (30) days after the close of the filing period for candidates running for the primary;

(B) For participating candidates for state senator and state representative, the period beginning one-hundred twenty (120) days before the close of the filing period for candidates running for the primary and ending thirty (30) days after the close of the filing period for candidates for party nomination for the office; and

(13) "Registry" means the registry of election finance.

2-10-504.

(a) The Tennessee Democracy Fund is hereby established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the registry related to this part. The Fund is a special, dedicated, nonlapsing fund. Any interest generated by the Fund is credited to the Fund. The registry shall administer the Fund.

(b) Money received from the following sources shall be deposited in the Fund:

(1) Unspent Fund revenues distributed to any certified candidate who does not remain a candidate until the primary or general election for which they were distributed, or such revenues that remain unspent by a candidate following the date of the primary election or general election for which they were distributed;

(2) Voluntary donations made directly to the Fund; and

(3) Fund monies appropriated for the use of the Democracy Fund by the general assembly pursuant to subsection (c) of this section.

(c) By April 1, 2013, and every two (2) years thereafter, the registry shall prepare and provide to the state & local government committees of the senate and the house of

representatives, a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the Voter-Owned Elections Act. In its report, the registry shall set out the funds received to date, the expected needs of the Fund during the next election cycle, and the amount of the appropriation from the General Assembly that will be needed.

2-10-505.

(a)

(1) Any individual choosing to participate in the Voter-Owned Elections Act shall first file with the registry a declaration of intent to participate in this part as a candidate for a stated office. The declaration of intent shall be filed with the registry prior to or during the qualifying period, except as provided under subsection (m) of this section, according to forms and procedures developed by the registry. A candidate choosing to participate in the Voter-Owned Elections Act must submit a declaration of intent prior to collecting any qualifying contributions under this part.

(2) A candidate who files a declaration of intent shall swear or affirm that the candidate has complied with and will continue to comply with Voter-Owned Elections Act contribution and expenditure limits, and will comply with all other requirements set forth in this part or promulgated by the registry.

(b) After becoming a participating candidate as defined by § 2-10-503 of this part and prior to certification, participating candidates shall not accept contributions, except for qualifying contributions. A participating candidate may expend only from the qualifying contributions raised and shall not use other funds.

(c) Participating candidates must obtain a minimum number of qualifying contributions in order to be certified, as follows:

(1) For a candidate for governor, at least seven thousand (7,000) registered Tennessee voters shall have supported the candidacy by providing a qualifying contribution to that candidate. No more than one third (1/3) of a candidate's qualifying contributions submitted to the registry for purposes of certification shall come from registered voters who are residents of the same Congressional district;

(2) For a candidate for state senator, at least four hundred (400) registered voters shall have supported the candidacy by providing a qualifying contribution to that candidate; and

(3) For a candidate for state representative, at least two hundred (200) registered voters shall have supported the candidacy by providing a qualifying contribution to that candidate.

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(d) All participating candidates shall report qualifying contributions with the registry at least five (5) business days after the end of the qualifying period in accordance with procedures developed by the registry, except as provided under subsection (m) of this section.

(e) Upon receipt of a final submittal of the record of qualifying contributions by a participating candidate, the registry shall determine whether or not the candidate has:

(1) Signed and filed a declaration of intent to participate in this part;

(2) Submitted copies of the appropriate number of forms described in § 2-10-503(10)(C) of this part signed by contributors who are registered voters, which the registry shall verify through a random sample or other means it adopts;

(3) Qualified as a candidate as provided in the election code;

(4) Complied with expenditure restrictions; and

(5) Otherwise met the requirements for participation in this part. The registry shall certify candidates complying with the requirements of this section as soon as possible and no later than five (5) business days after final submittal of qualifying contributions.

Certified candidates shall comply with all requirements of this part after certification and throughout the primary election and general election periods. Failure to do so is a violation of this part subject to civil penalty and other appropriate action by the registry as provided in § 2-10-508 of this part.

(f) After filing a declaration of intent, a candidate shall limit campaign expenditures and debts to the qualifying contributions and the money distributed to the candidate from the Fund, provided that a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of ten percent (10%) of a candidate's base level of public financing as determined under subsection (h) of this section. All revenues from qualifying contributions, public funds, or in-kind contributions from a political party must be used for campaign-related purposes. The registry shall publish guidelines outlining permissible campaign-related expenditures. For accounting purposes, all qualifying contributions shall be spent before the candidate spends money received from the Fund. A candidate shall return to the Fund any amount that is unspent and uncommitted at the time that person ceases to be a candidate before a primary or general election for which the Fund money was distributed. A candidate shall return to the Fund any amount that was unspent and uncommitted after the date of the primary election or general election for which the Fund money was distributed.

(g) The registry shall distribute to certified candidates revenues from the Fund in amounts determined under subsection (h) of this section, minus any excess qualifying contributions, in the following manner:

(1) Within three (3) business days after certification, for candidates certified before the first Monday in February of the election year, revenues from the Fund as if the candidates are in an uncontested primary election.

(2) Within three (3) business days after certification, for primary election candidates certified on or after the first Monday in February of the election year, revenues from the Fund according to whether the candidate is in a contested or uncontested primary election, reduced by any amounts previously distributed under subdivision (g)(1).

(3) Within the earlier of the following:

(A) Within three (3) business days after the primary election, or;

(B) Within three (3) business days after the certification pursuant to law of the first opposition candidate, for general election certified candidates;

revenues from the Fund according to whether the candidate is in a contested general election. No funds are distributed for uncontested general elections.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability, and safeguards the integrity of the Fund.

(h)

(1) By March 1, 2013, and no less frequently than every two (2) or four (4) years thereafter, as appropriate, the registry shall determine the amount of

funds, rounded to the nearest one hundred dollars ($100), to be distributed to participating candidates based on the type of election and office as follows:

(A) The amount of revenues to be distributed for contested primary elections is the median amount of campaign expenditures made by the candidates who reported campaign expenditures for all contested primary election races for the immediately preceding two (2) primary elections for that office; provided, that each of the following shall be considered a separate office for purposes of calculating the average:

(i) Governor;

(ii) State Senate; and

(iii) State Representative.

(B) The amount of revenues to be distributed for uncontested primary elections is the median amount of campaign expenditures made by the candidates who reported campaign expenditures for all uncontested primary election races, or for contested races if the amount is lower, for the immediately preceding two (2) primary elections for that office as defined in subdivision (h)(1)(A).

(C) The amount of revenues to be distributed for contested general elections is the median amount of campaign expenditures made by all candidates who reported campaign expenditures for contested general election races for the immediately preceding two (2) general elections for that office as defined in subdivision (h)(1)(A).

(D) No revenues shall be distributed for uncontested general elections.

(2) The median for state senate races shall be calculated using all the applicable senate races in the state. The same method shall be used for state representative races. If the immediately preceding two (2) election cycles do not contain sufficient data for the registry to determine the amount to be distributed for an office, the registry shall use data from the most recent applicable elections for that office. If no applicable elections for that office contain sufficient data, the registry shall set an amount based on data from elections for comparable offices.

(i) Any noncertified candidate who has as an opponent a certified candidate, shall report to the registry on the fortieth (40th) and twentieth (20th) days before an election a statement of the amount that the noncertified candidate intends to spend for that election, as well as the total amount raised and borrowed to date. Any entity that intends to make independent expenditures to support or oppose a certified candidate shall report to the registry on the fortieth (40th) and twentieth (20th) days before an election a statement of the amount that it intends to spend for that election, as well as the total amount raised and borrowed to date; in the event an entity determines to make an independent expenditure following such reporting dates, such information shall be reported to the registry no later than five (5) days following the date such decision is made. Any noncertified candidate with a certified opponent, or any entity making independent expenditures in support of or opposition to a certified candidate, shall report electronically to the registry within twenty-four (24) hours after the total amount of expenditures or obligations made, or funds raised or borrowed, exceeds the base level of public funding described in subsection (h) of this section. After this twenty-four hour filing, the noncertified candidate shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be made according to procedures developed by the registry.

(j) When any report or group of reports shows that funds in opposition to a certified candidate as described in this subsection exceed the amount described under subsection (h) of this section, the registry shall issue immediately to that certified candidate an additional amount equivalent to the reported excess within the limits set forth in this subsection. Funds in opposition to a certified candidate are equal to the sum of the actual or estimated expenditures or obligations made, or funds raised or borrowed, whichever is greater, by any noncertified opponent of a certified candidate and by all entities making independent expenditures in opposition to the certified candidate or in support of any noncertified opponent of that certified candidate. Total matching funds to a certified candidate in an election are limited to an amount up to two (2) times the amount described in subdivisions (h)(1) or (3), whichever is applicable.

(k) Independent candidates certified pursuant to law before noon on the first Monday in February of the election year shall be eligible for revenues from the Fund in the same amounts and at the same time as uncontested primary election candidates and general election candidates as specified in subsections (g) and (h) of this section. For independent candidates not certified by noon on the first Monday in February, the deadline for filing qualifying contributions is noon on the last Friday in June of the election year. Independent candidates certified after noon on the first Friday in February shall be eligible for revenues from the Fund in the same amounts as general election candidates, as specified in subsections (g) and (h).

(l) Notwithstanding other provisions of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations, and related activities to the registry according to procedures developed by the registry. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return all such

unspent revenues to the registry. In developing such procedures, the registry shall utilize existing campaign reporting procedures wherever practicable. The registry shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

(m) For races involving special elections, the registry shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues.

(n) The initial decision on an issue concerning qualification, certification, or distribution under this part shall be made by the executive director of the registry. The procedure for challenging that decision is as follows:

(1) A person aggrieved by a certification decision by the executive director of the registry may appeal to the full registry within three (3) business days of the certification decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five (5) business days after an appeal is properly made, and after due notice is given to the parties, the registry shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the registry's decision was improper. The registry shall rule on the appeal within three (3) business days after the completion of the hearing.

2-10-506.

(a) The registry, with the advice of the Voter-Owned Elections Advisory Council, shall administer the provisions of this part.

(b) There is established under the registry of election finance the Voter-Owned Elections Advisory Council. The Voter-Owned Elections Advisory Council shall advise the registry on the rules and opinions it adopts for the enforcement and administration of

this part and on the funding needs of the Tennessee Democracy Fund. The Voter-Owned Elections Advisory Council shall consist of five (5) members to be appointed by the governor. Appointments shall be made to reflect the broadest possible representation of Tennessee citizens striving to ensure that the commission is composed of members who are diverse in ethnicity, race, gender, geographic residency, heritage, perspective, and experience. The governor shall take into consideration recommendations made by the public and by political and other organizations. No person shall be eligible to be a member of the Council who would be ineligible to serve on a county election commission. The initial members shall be appointed by September 1, 2011. Of the initial appointees, two (2) shall be appointed for one-year terms, two (2) shall be appointed for two-year terms, and one (1) shall be appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. A person may not serve more than two (2) full terms. The Council shall elect a chair from among its membership. The chair shall serve in that capacity for one (1) year and shall be eligible for reelection. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

2-10-507. The registry is authorized to promulgate rules and issue opinions to effectuate the purposes of this part. Such rules shall include, but not be limited to, procedures for obtaining qualifying contributions, certification as a Voter-Owned Elections Act candidate, addressing circumstances involving special elections, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with the Voter-Owned Elections Act. The registry shall evaluate qualification thresholds and funding formulas for state senate, state representative, and governor, and report such evaluations to the general assembly by April 1, 2012, and every two (2) years thereafter.

All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5

2-10-508. In addition to any other penalties that may be applicable, any person who violates any provision of this part is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation. In addition to any fine, for good cause shown, a candidate found in violation of this part may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the registry makes a determination that a violation of this part has occurred, the registry shall calculate and assess the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount that has been assessed. In determining whether or not a candidate is in violation of the expenditure limits of this part, the registry may consider as a mitigating factor any circumstances out of the person's control.

SECTION 2. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act applies to elections for general assembly in 2012 and thereafter, and to elections for governor in 2014 and thereafter. For purposes of rulemaking and administration of these provisions, this act shall take effect upon becoming a law, the public welfare requiring it.