



ARIZONA STATE SENATE
Fifty-First Legislature, First Regular Session

FINAL AMENDED
FACT SHEET FOR S.B. 1454

campaign finance; in-kind contributions; disclosures

Purpose

Modifies various requirements related to campaign contributions and expenses, campaign literature and advertisements and emergency polling places. Makes omnibus changes related to planned communities and home owners associations (HOAs). Contains requirements for enactment for initiatives and referendums (Proposition 105).

Background

Elections; Campaign Finance

Arizona's Citizens' Clean Elections Act (Act), proposed by initiative petition, was approved in the November 1998 general election. The Act establishes a system to limit campaign spending and fundraising for political candidates in statewide and legislative elections. Those who wish to be "participating" Clean Elections candidates receive public financing for their election campaign and are prohibited from receiving outside funds. Arizona Revised Statutes (A.R.S.) § 16-941 prohibits participating Clean Elections candidates from accepting any contributions except \$5 qualifying contributions and specified early contributions.

According to A.R.S. § 16-901, *contribution* is defined as any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election, including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer. Similarly, *in-kind contribution* is defined as a contribution of goods, services or anything of value and not a monetary contribution. Additionally, statute defines *independent expenditure* as an expenditure by a person or political committee, other than a candidate's campaign committee, that expressly advocates the election or defeat of a clearly identified candidate. An *independent expenditure* is not considered a contribution and has the same meaning as it relates to corporations, LLC, and labor organizations (A.R.S. § § 16-914.02(M) and 16-901(5)(vi)). An expenditure cannot be considered an *independent expenditure* if there is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure (A.R.S. §16-901(14)).

Planned Communities; HOAs

An *association*, also known as an HOA, is a common interest organization to which all the owners of lots in a planned community or owners of units in a condominium must belong. HOAs are organized and established to operate shared portions of the condominium or planned community. A planned community is a real estate development that: 1) includes real estate

owned and operated by a nonprofit corporation or unincorporated association of owners; and 2) is created pursuant to a recorded declaration for the purpose of managing, maintaining or improving the property (A.R.S. § 33-1802). A condominium refers to a real estate development in which certain portions are designated for separate ownership (units) and the remainder is designated for common ownership by the unit owners. A condominium may be created by recording a declaration in the county in which the condominium is located (A.R.S. § 33-1202).

The principal distinction between condominium and planned community HOAs involves the ownership of the common areas or elements. In a condominium, each unit owner has undivided percentage interest in the common elements, which are defined as all portions of a condominium other than the units and frequently include the land, exterior walls, walkway areas and recreational areas. In a planned community, the common areas, which statute defines as improved or unimproved property that is intended for the use of owners of a residential subdivision or development and their invited guests, are owned by the HOA. These common areas often include land and buildings used as common areas.

HOAs are governed by a board of directors (Board) and the Board is given general management powers to act on behalf of the association. According to A.R.S. § 33-1808, an HOA of a planned community must not prohibit the display of a political sign by an association member on that member's property. However, an HOA is permitted to prohibit the display of political signs earlier than 71 days before the day of an election and three days after an election day. An HOA is permitted to regulate the size and number of political signs that may be placed on a member's property if the regulation is no more restrictive than any applicable city, town or county ordinance. Additionally, an HOA of a planned community is prohibited from limiting the number of political signs on a residential property but may limit the maximum aggregate number to nine square feet.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Elections; Campaign Finance

1. Expands the definition of *in-kind contribution* to include the use by a candidate's campaign committee of a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity owned by that candidate or in which the candidate has controlling interest.
2. Excludes from the definition of *personal monies* the use by a candidate's campaign committee of a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity owned by that candidate or in which the candidate has controlling interest.
3. Prohibits a participating Clean Elections candidate from using Clean Elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity owned by the candidate, or in

which the candidate has a controlling interest, subject to the affirmative vote of at least three-fourths of the members of each house of the Legislature (Proposition 105).

4. Stipulates the use of goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity owned by a participating Clean Elections candidate, or in which the candidate has a controlling interest, is deemed to be an unlawful *in-kind contribution* to the candidate, subject to the affirmative vote of at least three-fourths of the members of each house of the Legislature (Proposition 105).
5. Expands the definition of *contribution* to include the acquisition or use of campaign assets by a committee that are paid for by a candidate's personal monies, and specifies that such items are reportable by the candidate's campaign committee as a contribution to the campaign.
6. Modifies the definition of *independent expenditure* to specify that serving on a host committee for a fundraising event does not presumptively demonstrate any arrangement, coordination or direction with respect to the expenditure.
7. Extends the timeframe, from one to two years, for a political committee to obtain the required 500 \$10 contributions for certification to contribute to candidates at the higher limits.
8. Extends the timeframe, from two to four years, for a political committee to maintain its certification to contribute to candidates at the higher limits.
9. Modifies the formula with regard to the random sample of qualifying contribution forms utilized by the SOS to determine if a candidate qualifies for Clean Elections funding, subject to the affirmative vote of at least three-fourths of the members of each house of the legislature (Proposition 105).
10. Modifies disclosure requirements for campaign literature and advertisements, with regards to independent expenditures for candidates and expenditures related to ballot propositions made by political committees, in the following manner:
 - a) requires disclosure statements to include the words "paid for by" and the name of the
 - b) entity making the expenditure or independent expenditure for the literature of advertisement;
 - c) requires, for campaign literature and advertisements that advocate the election or defeat
 - d) of a candidate, a statement that the entity making the expenditure is not authorized by any
 - e) candidate or candidate's campaign committee;
 - f) requires disclosure statements included on printed material to be printed clearly and
 - g) legibly in a conspicuous manner;
 - h) requires communications broadcast on the radio to include a spoken disclosure statement at the end of the communication;
 - i) requires communications broadcast on a telecommunications system to include a spoken and written disclosure statement at the end of the communication, with certain exceptions; and

- j) requires communications broadcast on a broadcast on a telecommunications system to include a written disclosure statement in letters displayed in a height that is equal to or greater than four percent of the vertical picture height.
- 11. Specifies, with regard to disclosure statements required to be included on certain campaign literature and advertisements, that only the contributions made during the calendar year in which the independent expenditure is made must be considered for the purposes of determining the contributors to be disclosed.
- 12. Permits a membership organization, trade association, cooperative or corporation without capital stock to engage in certain specified activities related to expenditures if such activities are directed primarily toward its members.
- 13. Permits a person to rely on the Federal Elections Commission's rules, policy statements, interpretive rules and other guidance, adopted as of January 1, 2013 in relation to 2 U.S.C. 441(B)(2), in interpreting whether specified expenditures are to be construed as political contributions.
- 14. Permits corporation to solicit contributions from retirees of the corporation and their families, or retirees of the corporation's subsidiaries, branches, divisions and affiliates.
- 15. Modifies the conditional requirements that prohibit a city, town or county of this state from removing, altering, defacing or covering a political sign.
- 16. Requires the county recorder or other officer in charge of elections to post on their website the number of attempts made to find a polling place prior to granting an emergency designation.
- 17. Requires a county recorder or other officer in charge of elections to grant a polling place an emergency designation and prohibit electioneering as prescribed, if any of the following occurs:
 - a) an act of God renders a previously set polling place as unusable; or
 - b) a county recorder or other officer in charge of elections has exhausted all options and
 - c) there are no facilities in a precinct willing to be a polling place unless a facility can be given an emergency designation.
- 18. Replaces references to emergency exemption with emergency designation.
- 19. Conforms election dates prescribed for incorporated towns with the consolidated election dates prescribed in statute.

Planned Communities and Local Governments

- 20. Applies the following provisions to municipality planning agencies and county planning and zoning commissions (planning or zoning entity).

21. Prohibits the planning or zoning entity of a local government from requiring, as part of a subdivision regulation or zoning ordinance, a subdivider or developer to construct or enact a planned community.
22. Asserts that a subdivider or developer cannot be penalized for the lack of a planned community as part of the preliminary plat or specific plan.
23. Permits a local government to require a developer or subdivider to construct or enact a planned community to maintain private improvements approved and installed as part of a preliminary or final plat or specific plan; applies only to those planned communities established in plats recorded after the effective date of this act.
24. States these provisions do not limit the establishment or authority of any planned community established pursuant to statute.

Management Companies

25. Allows a management company (company), its officers and employees to act on behalf of a planned community or condominium HOA and its board of directors by taking the actions below, if the HOA is contracted with such a lawfully formed and operating entity for management services.
26. Permits a company to record a notice of lien or notice of claim of lien of the HOA against the property of a unit owner or HOA member (owner) in the condominium or planned community if all of the following apply:
 - a) the officer or employee is specifically authorized in writing by the HOA to do so and is a certified legal document preparer as prescribed in the Arizona Code of Judicial Administration;
 - b) doing so is not the primary duty of the officer or employee with respect to the HOA and is a secondary or incidental duty to the HOA;
 - c) the HOA is the original party to the lien and the lien right is not the result of an assignment of rights; and
 - d) the lien right exists by operation of law pursuant to statute and is not the result of obtaining a final judgment in an action to which the HOA is a party.
27. Allows a company and its officers and employees to appear in a small claims court action on behalf of an HOA, if all of the following apply:
 - a) the officer or employee is specifically authorized in writing by the HOA to do so;
 - b) doing so is not the primary duty of the officer or employee with respect to the HOA and is a secondary or incidental duty to the HOA; and
 - c) the HOA is an original party to the small claims court action.

Rental in an HOA

28. Permits an owner to use the unit or property as a rental property unless doing so is prohibited in the declaration, but the owner must comply with the declaration's rental time period restrictions.

29. Allows an owner to make a written designation of a third party to act as the owner's agent with respect to all HOA matters relating to the unit or property.
30. Requires the owner to provide the HOA a copy of the written designation of the agent. The designation must be signed by the owner of record.
31. Authorizes the HOA, on delivery of the written designation, to conduct all HOA business related to the unit or property through the designated agent.
32. Specifies that notice to the agent on any matter relating to the unit or property constitutes notice to the owner.
33. Prohibits an HOA, on rental of a unit or property, from requiring an owner or agent to disclose any tenant information other than:
 - a) the name and contact information for any adults occupying the unit or property;
 - b) the time period of the lease, including the beginning and ending dates;
 - c) a description and the license plate number of the tenants' vehicles; and
 - d) if the condominium or planned community is age restricted, a government issued photo identification that confirms the tenant meets the age restrictions or requirements.
34. Allows an HOA, on request of the HOA or its managing agent for the above disclosures, to charge a fee of \$25 or less.
35. Authorizes the fee to be charged for each new tenancy for that unit or property, but prohibits the fee for a renewal of a lease.
36. Prohibits an HOA or its managing agent from assessing, levying or charging any other fee or fine or otherwise imposing a requirement on a rental unit or property any differently than on an owner-occupied unit or property in the HOA.
37. Prohibits the HOA from doing any of the following:
 - a) requiring a unit or property owner to provide a copy of the tenant's rental application, credit report, lease agreement, rental contract or other personal information regarding the tenant except as allowed above; or
 - b) requiring the tenant to sign a waiver or other document limiting the tenant's civil rights of due process as a condition of the tenant's occupancy of the unit or property; or
 - c) prohibiting or restricting a unit owner from serving on the board of directors based on the owner's not being an occupant of the unit; or
 - d) imposing any fee, assessment, penalty, late charge or other charge on a unit owner, property owner or managing agent for incomplete or late information related to a tenant of a rental unit or property.
38. Specifies the above provision does not prohibit the HOA from acquiring a credit report on a person in an attempt to collect a debt.

39. Specifies that any attempt by an association to charge a fee, assessment, penalty or late charge that is not authorized in statute voids the statutorily authorized fee and the requirement to provide tenant information as prescribed.
40. Requires the filing fee related to disputes between an owner and a condominium or planned community HOA to be refunded to the petitioner on dismissal of a petition as follows:
 - a) at the request of the petitioner before a hearing is scheduled; or
 - b) by stipulation of the parties before a hearing is scheduled.

Miscellaneous

41. Outlines requirements for the display of political signs for condominiums in an HOA as follows:
 - a) allows an HOA to prohibit the display of political signs 71 days before the day of an election and three days after;
 - b) allows an HOA to regulate the size and number of political signs permitted to be placed in certain specified areas, if the regulation is no more restrictive than any applicable city, town or county ordinance;
 - c) prohibits an HOA from limiting the number of political signs if there is no applicable city, town or county ordinance that regulates the size and number of political signs on residential property; and
 - d) limits the maximum aggregate number of political signs permitted on a unit's property to nine square feet.
42. Prohibits an HOA from prohibiting the indoor or outdoor display of a political sign by a unit owner in the common element ground adjacent to the unit or on the unit owner's property, including any limited common elements for that unit, with the aforementioned exceptions.
43. Permits an HOA to provide for voting by electronic mail and facsimile delivery.
44. Establishes the City and Town Approval Voting Study Committee (Committee).
45. Stipulates the Committee is comprised of six members, as follows:
 - a) three members of the Senate appointed by the President of the Senate, not more than two may be members of the same political party. The President of the Senate is required to designate one member as co-chairperson; and
 - b) three members of the House of Representatives appointed by the Speaker of the House of Representatives. No more than two of whom may be from the same political party, and the Speaker of the House of Representatives is required to designate one member as co-chairperson.
46. Requires the Committee to meet and consider issues relating to a city or town establishing and using a system of approval voting in that city or town's primary or first election.
47. Stipulates an approval voting system must provide for the following:

- a) the voter in the primary or first election must be permitted to vote for as many candidates for a single office as the voter chooses to approve;
- b) the two candidates that receive the highest and second highest number of votes in the primary or first election must advance to the general or runoff election without regard to whether any candidate has received a majority of the votes cast for that office; and
- c) the ballot and all other voting materials must indicate that the voter is permitted to vote for as many candidates as the voter chooses, and that the candidates who receive the two highest number of votes must advance to the general or runoff election.

48. Repeals the Committee on January 1, 2014.

49. Contains session law that exempts any city or town whose alternate expenditure limit expires in the spring of 2014 from specified penalties in FY 2015, if certain requirements are met.

50. Contains Session law that exempts any city or town whose alternate expenditure limit expires in the spring of 2015 from specified penalties in FY 2015, 2016 or 2017, and stabilizes the city or town expenditure limitation at the level established for 2015, if certain requirements are met.

51. Contains session law related to expenditure limits regarding the implementation of consolidated elections in cities and towns.

52. Contains session law that permits a municipality to lengthen the term of office for elected officials in order to comply with the consolidation of election dates.

53. Contains a severability clause.

54. Makes technical and conforming changes.

55. Becomes effective on the general effective date.

Amendments Adopted by Committee of the Whole

1. Prohibits a participating candidate from using Clean Elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item that is owned by a business or entity owned by the candidate, or in which the candidate has a controlling interest, and specifies that such use of goods or services is deemed an unlawful in-kind contribution to the candidate.
2. Contains requirements for enactment for initiatives and referendums (Proposition 105).

Amendments Adopted by House of Representatives

1. Restores the exemption related to required disclosure statements for certain specified campaign signs.

2. Modifies and conforms certain requirements related to the format and display of disclosure statements with regard to campaign literature and advertisements paid for by political committees.
3. Expands the definition of *contribution*.
4. Modifies the definition of *independent expenditure*.
5. Defines *political sign*.
6. Replaces references to *emergency exemption* with *emergency designation*.
7. Requires the number of attempts made to find a polling place before granting an emergency designation to be posted on the county recorder's or other officer in charge of elections' website.
8. Requires the county recorder or other officer in charge of elections to grant a polling place an emergency designation and prohibit electioneering and other political activity as prescribed, under certain specified circumstances.
9. Extends the timeframe for a political committee to obtain the required contributions for certification to contribute to candidates at the higher limits, and extends the timeframe for a political committee to maintain such certification.
10. Permits corporations to solicit funds from retirees of the corporation and their families.
11. Permits a membership organization, trade association, cooperative or corporation without capital stock to engage in specified activities related to expenditures, under certain circumstances.
12. Modifies the formula with regard to the random sample of qualifying contribution forms used to determine eligibility to receive funds from the Clean Elections Fund.
13. Establishes the Study Committee on City and Town Approval Voting and outlines committee membership and duties.
14. Repeals the committee on January 1, 2014.
15. Specifies certain requirements and prohibitions for planning entities of local governments related to planned communities.
16. Specifies actions a management company is permitted to take on behalf of an HOA if certain requirements are met.
17. Enumerates rental property rights of tenants and unit and property owners in HOAs.
18. Specifies alternative forms of delivery for HOA voting.

19. Outlines requirements for the display of political signs for condominiums in an HOA.
20. Conforms election dates prescribed for incorporated towns with the consolidated election dates prescribed in statute.
21. Includes session law related to expenditure limits regarding the implementation of consolidated elections in cities and towns.
22. Includes session law that permits a municipality to lengthen the term of office for elected officials in order to comply with the consolidation of election dates.
23. Makes technical and conforming changes.

House Action

Senate Action

JUD 3/21/13 DP 8-0-0-0
3rd Read 6/13/13 53-5-2-0

ELEC 02/19/13 DP 6-0-1-0
3rd Read 03/04/13 28-0-2-0
Final Read 06/14/13 28-1-1-0

Signed by the Governor 6/20/13
Chapter 254

Prepared by Senate Research
June 27, 2013
CRS/ly