

**DESCRIPTION OF H.R. _____
(THE "FULL AND FAIR POLITICAL
ACTIVITY DISCLOSURE ACT OF 2000")**

Scheduled for a Markup
before the
House Committee on Ways and Means
on
June 22, 2000

Prepared by the
Staff of the
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CONTENTS

	<u>Page</u>
INTRODUCTION	1
DESCRIPTION OF H.R. ____	2
A. Present Law	2
B. Description of the Bill	5

INTRODUCTION

The House Committee on Ways and Means has scheduled a markup for Thursday, June 22, 2000, on H.R. _____, the Full and Fair Political Activity Disclosure Act of 2000. The bill would provide enhanced public disclosure relating to section 527 political organizations and with respect to the political activities of section 501(c)(4), section 501(c)(5), and section 501(c)(6) tax-exempt organizations.

This document,¹ prepared by the staff of the Joint Committee on Taxation, contains an overview of present law and the a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. _____ (The "Full and Fair Political Activity Disclosure Act of 2000")*(JCX-61-00), June 21, 2000.

**DESCRIPTION OF H.R. _____
(THE "FULL AND FAIR POLITICAL
ACTIVITY DISCLOSURE ACT OF 2000")**

A. Present Law

Overview

Present-law section 501(c) provides for twenty-seven different categories of nonprofit organizations that generally are exempt from Federal income tax. Among the types of organizations described in section 501(c) are (1) social welfare organizations (sec. 501(c)(4)), (2) labor organizations (sec. 501(c)(5)), and (3) trade associations or civic leagues (sec. 501(c)(6)).

Section 527 provides a limited tax-exempt status to "political organizations," meaning a party, committee, association, fund, account, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures (or both) for an "exempt function." These organizations are generally exempt from Federal income tax on contributions they receive, but are subject to tax on their net investment income and certain other income at the highest corporate income tax rate (currently 35 percent). Donors are exempt from gift tax on their contributions to such organizations. For purposes of section 527, the term "exempt function" means: "the function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed." Thus, by definition, the purpose of a section 527 organization is to accept contributions or make expenditures for political campaign (and similar) activities.

Present-law rules governing political activities of tax-exempt organizations

The Federal tax rules applicable to political activities of tax-exempt organizations depend on the nature of the organization and the nature and extent of the activities. There is no bright-line test for determining whether particular activities are political campaign activities, lobbying activities, or other activities (e.g., educational activity).

Tax-exempt organizations other than those described in section 501(c)(3) generally are permitted to engage in political activities. For many of these organizations, political activities are inconsistent with the purpose for which the organization was established; thus, most such organizations do not engage in any significant political activities. However, for those organizations (such as a social welfare organization described in section 501(c)(4), a labor organization described in section 501(c)(5), or a business league or trade association described in section 501(c)(6)) that do engage in significant political activities, such activities cannot be the primary activities of such an organization.

Even though a non-501(c)(3) tax-exempt organization that engages in political activities

will generally retain its tax-exempt status so long as such activities are not the primary means of accomplishing its purposes, such activities nonetheless will result in the organization being subject to tax under section 527(f) on the lesser of the amount of its investment income or the amount expended on political activities. However, a non-501(c)(3) organization may establish a separate segregated fund, which may be treated as a separate organization under section 527(f)(3), so that the expenditures and investment income of the fund will not be attributed to the sponsoring organization.

Present-law filing and disclosure requirements

Recognition of tax-exempt status

Most non-section 501(c)(3) organizations are not required to notify the IRS that they are seeking recognition of their tax-exempt status. Such organizations may voluntarily file exemption applications in order to establish their qualifications for tax exemption with the IRS.

Section 527 organizations are subject to no notification requirement when they are formed and there is no separate application for recognition of status as a section 527 organization. However, an organization wishing to receive confirmation of its status as a section 527 organization may request a written determination from the IRS in the form of a private letter ruling.

Annual filing requirements

Tax-exempt organizations generally are required to file an annual information return with the IRS. An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a tax-exemption determination.

Most tax-exempt organizations are required to file annually Form 990 (Return of Organization Exempt From Income Tax). Section 501(c) organizations are required to disclose on their annual returns (Form 990) for each year the total amount of direct or indirect political expenditures made by the organization during the year. No detailed accounting of such expenditures is required. In addition, the Form 990 requires tax-exempt organizations to report the total amount of dues and contributions received by the organization during the taxable year. Tax-exempt organizations generally are required to report on their Form 990s a list of major contributors (i.e., generally persons making gifts of \$5,000 or more during the year).

Section 527 political organizations are not required to file Form 990. If the section 527 political organization has taxable income, it is required annually to file Form 1120-POL (U.S. Income Tax Return for Certain Political Organizations); however, if the political organization does not have taxable income, the Form 1120-POL is not required to be filed. A non-section 501(c)(3) organization also is required to file Form 1120-POL if the organization's political expenditures and net investment income both exceed \$100 for the year and must disclose on the

Form 990 the fact that it has filed the Form 1120-POL. If a non-section 501(c)(3) organization establishes and maintains a section 527(f)(3) separate segregated fund, the fund is required to file Form 1120-POL.

Because it is an income tax return, the Form 1120-POL requires information related to the amount of income and deductible expenses of the filing organization (or separate segregated fund) for the year. Thus, the Form 1120-POL does not contain information relating to contributors to the organization or the specific activities of the organization (or fund).

Disclosure requirements

Under present law, section 501(c) organizations are required to make a copy of their application for recognition of tax-exempt status (and certain related documents) and their annual information return (Form 990) available for inspection by any individual during regular business hours at the organization's principal office or any regional or district office that has three or more employees. All tax-exempt organizations (other than private foundations) are required to comply with requests made in person or in writing by individuals who seek a copy of the organization's Form 990 for any of the organization's three most recent taxable years. Upon such a request, the organization is required to supply copies without charge other than a reasonable fee for reproduction and mailing costs. If the request for copies is made in person, then the organization must provide such copies immediately. If the request for copies is made in writing, then copies must be provided within 30 days.

Upon written request to the IRS, members of the general public also are permitted to inspect annual information returns of tax-exempt organizations and applications for recognition of tax-exempt status (and related documents) at the IRS National Office in Washington, D.C. or in the office of any district director. A person making such a written request is notified by the IRS when the material is available for inspection at the IRS National Office, and where notes may be taken of the material open for inspection, photographs taken with the person's own equipment, or copies of such material obtained from the IRS for a fee. In addition, the IRS is required to make such applications and returns publicly available. Annual information returns must be made available for a three-year period beginning with the due date for the return (including any extension of time for filing).

Tax-exempt organizations and section 527 organizations are not required to disclose their Forms 1120-POL. In addition, tax-exempt organizations are not required to disclose the names of contributors.

Separability clause

Under present law, if any provision of the Internal Revenue Code or the application of any such provision to any person or circumstance is held invalid, the remainder of the Internal Revenue Code and its application to any other person or circumstance is not affected.

B. Description of the Bill

In general

The bill would enhance the present-law reporting and disclosure requirements applicable to section 527 organizations and certain tax-exempt organizations. Under the bill, section 527 organizations and social welfare organizations (described in section 501(c)(4)), labor organizations (described in section 501(c)(5)), and business leagues (described in section 501(c)(6)) generally would be required to file returns with the Secretary of the Treasury to report contributions and expenditures relating to their disclosable activities. In addition, section 527 organizations would be required to file a statement of organization with the Secretary of the Treasury.

Information required to be disclosed

Under the bill, a tax-exempt organization or section 527 organization subject to the enhanced reporting and disclosure requirements would be required to include the following information in its return reports:

- (1) a detailed description of the organization's disclosable activities during the reporting period and the purpose and intended results for the major categories of expenditures for such disclosable activities, including the candidates intended to be affected by the expenditures;
- (2) a list containing each expenditure made for a disclosable activity during the reporting period in excess of \$200 (in the case of expenditures by section 527 organizations) and \$1,000 (in the case of expenditures by section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations subject to the reporting and disclosure requirement);
- (3) a list containing the name and address of each person to whom the organization made any expenditure during the reporting period in an aggregate amount in excess of \$200 (in the case of expenditures by section 527 organizations) and \$1,000 (in the case of expenditures by section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations subject to the reporting and disclosure requirement); and
- (4) in the case of a reportable contributor,
 - (a) the name and address of the contributor (and, if the contributor is an individual, the contributor's occupation and employer),
 - (b) the amount of each contribution by such a contributor,
 - (c) the name and address (if any) of the person on whose behalf the contributor made a payment to the organization, and
 - (d) the name and address of any intended beneficiary of a payment that was designated for a beneficiary other than the organization to which the payment was

made (including amounts earmarked or otherwise directed through an intermediary).

In the case of a section 527 organization, the following additional information would be required to be included on the return:

(1) a certification, under penalty of perjury, whether an expenditure is made in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate for public office or any authorized committee or agent of such a candidate;

(2) the name, address, and business purpose of any entity that is a reportable contributor during the reporting period;

(3) in the case of an entity described in (2), whether the entity claims to be exempt from tax and the basis for the tax-exempt status; and

(4) the original source and the intended ultimate recipient of all contributions made by a person directly or indirectly, including contributions that are earmarked or otherwise directed through an intermediary.

Under the bill, this information must be provided for the applicable reporting period and cumulatively for the calendar year.

The bill would define the term contribution to include a gift, subscription, loan, advance, or deposit of money, or anything of value, and would include a contract, promise, or agreement to make a contribution, whether or not legally enforceable. In addition, the term expenditure would include a payment, distribution, loan, advance, deposit, or gift of money, or anything of value, and would include a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

Reporting periods and due dates

In the case of a section 501(c)(4) organization, a 501(c)(5) organization, or a 501(c)(6) organization, the reporting period would include each calendar quarter and the calendar year. The due date for each quarterly return would be the 15th day after the end of the calendar quarter. The due date for the annual return for a calendar year would be the date prescribed by the Secretary of the Treasury. In addition, in the case of such an organization, the reporting and disclosure requirements would not apply for any reporting period if the aggregate expenditures of the organization for disclosable activities is less than \$10,000 for the period beginning January 1 of the calendar year through the end of the reporting period.

In the case of a section 527 organization, the reporting periods and deadlines generally would be the same as those required for reports under section 434(a) of the Federal Election Campaign Act of 1971 (“FECA”). In general, the FECA specifies different reporting periods and

deadlines depending upon whether it is an election or non-election year and the nature of the organization (i.e., principal campaign committee of a candidate for the House of Representatives or Senate, principal campaign committee of a candidate for the office of President, or a political committee other than an authorized committee of a candidate). Under the FECA, reporting can be required monthly, quarterly, or semi-annually and special pre- and post-general election reports are required.

Under the bill, in the case of a section 527 organization organized and operated exclusively for the purpose of securing the nomination, election, or appointment of a candidate for State, local, or judicial office, the reporting period would be the organization's taxable year and the deadline for reporting would be the due date for the organization's annual return, whether or not the organization is required to file an annual return.

Definition of reportable contributor

Under the bill, a reportable contributor means any person if the aggregate of such person's contributions and membership dues, fees, and assessments (as defined in section 527) received by the organization from the person exceed \$200 (in the case of a section 527 organization) or \$1,000 (in the case of a section 501(c)(4) organization, a section 501(c)(5) organization, or a section 501(c)(6) organization subject to the reporting and disclosure requirements) during the period beginning January 1 and ending on the last day of the applicable reporting period.

In determining whether any person is a reportable contributor, an organization could elect under the bill only to take into account dues that are attributable to the disclosable activities of the organization. For purposes of this election, the portion of dues attributable to expenditures for disclosable activities would be the amount that bears the same ratio to the total amount of the dues of the organization as the expenditures for disclosable activities bears to the total expenditures of the organization for the period.

In addition, the bill would provide a special election for earmarked contributions deposited into a separate, segregated fund by a section 501(c)(4) organization, a section 501(c)(5) organization, or a section 501(c)(6) organization. Under the bill, an organization could apply the rule requiring disclosure of reportable contributors only to amounts that are earmarked for a disclosable activity. This election would be available only if the organization (1) maintains a separate, segregated fund for such contributions, (2) deposits into such fund only and all amounts received by the organization that are earmarked for a disclosable activity, and (3) makes expenditures for disclosable activities only from such separate fund. If the organization makes the election to use this special rule, but fails to satisfy all of the requirements for the election during a reporting period, the exception to the general rule on reportable contributors would not apply for the reporting period and for any subsequent reporting period during the calendar year. However, under the bill, failure to meet the requirement of (3), above, with respect to de minimis amounts would not be treated as a failure to satisfy all of the requirements for the election. If an organization makes this election, the separate fund is not treated as a section 527 organization solely for purposes of the reporting and disclosure requirements. Thus, the applicable dollar

threshold amounts would be \$1,000, rather than \$200 in such a case.

Definition of disclosable activities

Under the bill, disclosable activities would include:

- (1) section 527-type activities (i.e., exempt function activities as defined in section 527);
- (2) establishing, administering, or soliciting contributions to a section 527 organization;
- (3) contributing to a section 527 organization or to a section 501(c)(4), section 501(c)(5), or section 501(c)(6) organization; and
- (4) any mass media communication (including any mass mailing) that is not a section 527-type activity and that mentions an individual holding Federal office or a clearly identified candidate for election for Federal office (including an individual who has formed an exploratory committee for such an election) or the political party of such an individual or candidate or any mass media communication (including any mass mailing) that contains the likeness of such an individual or candidate.

An activity described in (4), above, would not be treated as a disclosable activity if the activity relates solely to bona fide members of the organization. However, activity described in (4), above that would be otherwise be treated as an exempt function activity under section 527 (i.e., would constitute a political activity) would not be treated as a disclosable activity under (4), above, but rather would be described in (1), above. Thus, the exception for activities relating to bona fide members of the organization would not apply.

Statement of organization by section 527 organization

Under the bill, every 527 organization would be required to file a statement of organization with the Secretary of the Treasury no later than 10 days after the date that the organization is established or, in the case of an organization in existence on the date of enactment of the bill, no later than 10 days after the date of enactment.

The statement of organization would be required to contain the following information:

- (1) the name and address of the organization;
- (2) the name, address, relationship, and type of any person that is directly or indirectly related to or affiliated with the organization;
- (3) the name, address, and position of the custodian of books and accounts of the organization;

(4) the name and address of the treasurer of the organization;

(5) a listing of all banks, safety deposit boxes, and other depositories used by the organization.

In addition, under the bill, if the information contained in the statement of organization ceases to be accurate, the organization would be required to file a corrected statement with the Secretary of the Treasury no later than 10 days after the information ceases to be accurate.

For purposes of the statement of organization, a person would be considered directly or indirectly related to or affiliated with a political organization if, at any time during the 3-year period ending on the date of the statement, the person was in a position to exercise substantial direct or indirect influence over the process of collecting or disbursing the exempt purpose funds of the organization or was in a position to exercise substantial, overall direct or indirect influence over the activities of the organization.

Filing procedures

Under the bill, the Secretary of the Treasury would be directed to develop procedures for submission in electronic form of the returns and statements required under the bill. In addition, the bill would provide that an organization is not required to file any return or statement for any period, if the organization submits to the Secretary of the Treasury, under penalty of perjury, a certified statement that the organization has made a filing for such period that is publicly available with another Federal agency and that such filing includes all of the information otherwise required to be filed under the bill and specifies the public location where such information may be found. Thus, for example, a section 527 organization that is subject to reporting and disclosure requirements under the Federal election law could file a statement with the Secretary if all of the information that would otherwise be required to be disclosed under the bill is disclosed in the filing under the Federal election law.

Public inspection of statements and returns

Under the bill, the present-law public inspection requirements of section 6104 would be extended to the returns required to be filed under the bill and to the statement of organization required to be filed for section 527 organizations. In addition, under the bill, the income tax return (Form 1120-POL) filed by a section 527 organization (or a segregated fund of another tax-exempt organization that is treated as a section 527 organization) would be subject to the public inspection requirements. Thus, a copy of the return or statement of organization would be required to be made available by the organization for inspection during regular business hours at the principal office of the organization and, if the organization maintains at least one regional or district office with 3 or more employees, at each such regional or district office. In addition, an individual would be permitted to request in person or in writing a copy of such statement of organization and the organization would be required to provide such a copy without charge other than a reasonable fee for any reproduction and mailing costs. If such a request is made in person,

it would be required to be provided immediately. If the request is made in writing, it would be required to be provided within 30 days.

The bill generally would require documents that are required to be made publicly available to be available no later than 2 business days after being filed. However, this rule would not apply to the annual returns required by the bill or to the Form 1120-POL. In addition, the public disclosure requirement would apply to any document during the 3-year period beginning on the last date prescribed for its filing. Finally, to the extent practicable, returns and statements required to be filed under the bill would be made available to the public on the World Wide Web.

The bill would also provide that the Secretary is required to make public the returns and statements required to be filed under the bill and the Form 1120-POL. In addition, the present-law rule that prohibits the Secretary from disclosing the names and address of contributors would not apply to any section 527 organization or to any section 501(c)(4), 501(c)(5), or 501(c)(6) organization required to file returns under the bill. The Secretary of the Treasury would be permitted to cooperate with another Federal agency to carry out the requirements with respect to public inspection of returns and statements required to be filed under the bill.

Penalties

The penalty for failure to file properly the returns or statements required under the bill would be an amount equal to the highest corporate income tax rate (i.e., 35 percent) multiplied by the amount to which the failure relates. In the case of the failure to report an expenditure or contribution as required under the bill, the amount to which the failure relates is the amount of the expenditure or contribution required to be disclosed. In the case of a failure to provide full information (for example, the name and address of a contributor) with respect to an expenditure or contribution, the amount to which the failure relates is the amount of such expenditure or contribution. If an organization fails to file a return as required, the amount to which the failure relates would be the total amount of expenditures and contributions that should have been reported on the return.

The bill would permit the Secretary of Treasury to make a written demand of a section 527 organization of a reasonable future date by which a return or statement will be filed. Any person who fails to comply with such a written demand would be subject to a penalty of \$10 per day for each day after the expiration of the time specified in the demand for filing, up to a maximum penalty with respect to such statement of \$5,000.

The penalty for failure to satisfy the public inspection requirements with respect to a statement of organization would be \$20 for each day during which such failure continues up to a maximum of \$10,000 with respect to each failure.

Separability clause

The bill would not modify the present-law separability clause contained in the Internal

Revenue Code. Thus, if any portion of the bill were to be held invalid, any portions of the bill not found to be invalid would remain in effect.

Effective date

The bill would generally be effective for expenditures made and contributions received in reporting periods beginning after the date of enactment and expenditures made and contributions received after the date of enactment in annual reporting periods ending after the date enactment. The statement of organization required to be filed by section 527 organizations would be effective on the date of enactment.