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AMEND CAMPAIGN FINANCE ACT

House Bill 5056 as enrolled
Public Act 236 of 1999
Sponsor: Rep. Judson Gilbert II

House Bill 5057 as enrolled
Public Act 238 of 1999
Sponsor: Rep. Gary Woronchak

House Committee: Constitutional Law and Ethics
Senate Committee: Government Operations

House Bill 5059 as enrolled
Public Act 237 of 1999
Sponsor: Rep. Michael Bishop

House Committee: Family and Civil Law
Senate Committee: Government Operations

Second Analysis (1-6-00)

THE APPARENT PROBLEM:

Public apathy over the election process sometimes is blamed on the public's scepticism over the lack of meaningful campaign finance reform. Legislation has been introduced that would amend Michigan's campaign finance act.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Campaign Finance Act to:

- require the secretary of state to make late campaign contribution reports available on the Internet (House Bill 5056);
- increase both the daily late filing fees and the maximum amount for late filing fees (House Bills 5056 and 5057);
- specify a time line and certain notification requirements for secretary of state investigations of complaints alleging violations of the act (House Bill 5057);

- require the secretary of state to establish an electronic filing and disclosure system and require certain committees to file electronically beginning in January 2004 (House Bill 5057); and

- eliminate the current \$20 campaign contribution reporting threshold (House Bill 5059). More specifically, the bills would amend the Michigan Campaign Finance Act as follows:

House Bill 5056. Late contribution reports. Currently, a "late contribution" (a contribution of \$200 or more received after the closing date of the last campaign report required to be filed before an election) must be reported to a filing official within 48 hours of its receipt, and the secretary of state is required to make statements or reports – including reports of late contributions – required to be filed under the act available to the public by the third business day after he or she receives it. The bill would amend the act (MCL 169.216 and 169.232) to require the secretary of state to make available to the public, on a ("single") website he or she had established and maintained, reports of late campaign contributions by no later than the end of the business day on which the report was received.

House Bills 5056, 5057 and 5059 (1-6-00)

Late filing fees. Currently, there is a \$25 late filing fee, up to a maximum of \$500, for each business day a report or statement required to be filed under the act remains unfiled. The bill would increase the maximum for late filing fees to \$2,000, and would progressively increase the daily late filing fees after three and ten business days. The daily fee would remain \$25 for the first three business days the report or statement remained unfiled, but there would be an additional daily \$25 fee for each business day after the first three business days, and a further additional daily \$50 fee after the first ten business days. Thus, the late filing fee schedule would be \$25 a day for the first three business days, \$50 a day for the fourth through tenth business days, and \$100 a day for each business day after that (up to the new maximum of \$2,000).

Other provisions. The bill also would require that certain campaign statements or reports be kept for longer than the current five-year period dating from the date of a committee's dissolution. Instead of the five-year preservation period (dating from the date of a committee's dissolution), if uncorrected violations had occurred or a court determined that a violation of the act had occurred with regard to the statements or reports, those statements or reports would have to be kept until five years after the date of the court determination or the date the violations were corrected, whichever were later.

House Bill 5057 would amend the act (MCL 169. 215 et al.) to establish a time line for the secretary of state when reviewing complaints alleging violations of the campaign finance act. It also would require the secretary of state to develop an Internet website for disclosure of certain campaign statements, require that certain campaign statements be filed electronically, increase late filing fees, and allow the secretary of state to promulgate rules under the act regarding the filing of campaign statements.

Review of complaints. Within 5 business days after a complaint were filed, the secretary of state would be required to give notice, including a copy of the complaint, to the person against whom the complaint had been filed. Within 15 business days after the notice were provided, the person against whom the complaint had been filed could submit a response to the secretary of state (though the secretary of state could extend this response period for an additional 15 business days for good cause). The secretary of state would have to provide the complainant with a copy of the response received, at which time the complainant would have 10 business days to submit a rebuttal statement to the secretary of state (though the secretary of state could

also extend the rebuttal period an additional 10 business days for good cause). The secretary of state then would have to provide the person against whom the complaint had been filed a copy of the rebuttal statement from the complainant. Finally, every 60 days after a complaint had been filed, and until the matter were terminated, the secretary of state would have to mail to both the complainant and the person against whom the complaint had been filed notice of the action taken to date by him or her, along with the reasons for the action or nonaction. [Subsection (1)(f) lists "one or more" of the following reasons as constituting "good cause" for a late filing fee waiver: (1) "The incapacitating physical illness, hospitalization, accident involvement, death, or incapacitation for medical reasons of a person required to file, a person whose participation is essential to the preparation of the statement or report, or a member of the immediate family of these persons"; (2) "Other unique, unintentional factors beyond the filer's control not stemming from a negligent act or nonaction so that a reasonably prudent person would excuse the filing on a temporary basis. These factors include the loss or unavailability of records due to a fire, flood, theft, or similar reason and difficulties related to the transmission of the filing to the filing official, such as exceptionally bad weather or strikes involving transportation systems."]

Secretary of state electronic filing and Internet disclosure system. The bill would add a new section to the campaign finance act to require the secretary of state to develop and implement an electronic filing and Internet disclosure system; to create a temporary "electronic filing advisory board"; to allow committees to file electronically by July 1, 2000; and to require committees receiving or spending at least \$20,000 in a calendar year to file electronically beginning with the annual campaign statement due January 31, 2004.

The electronic filing advisory board. The electronic filing advisory board would consist of the following five members: two members appointed by the Senate (one member each appointed by the Senate Majority and Minority Leaders), two members appointed by the House (one member appointed by the Speaker of the House and one by the House Minority Leader), and the secretary of state or his or her designee. Members would be appointed within 60 days after the bill took effect and serve without compensation for the life of the board, though they could be reimbursed for their actual and necessary expenses incurred in performing their official duties as board members. Appointed members could be removed by the officer appointing them for incompetency, dereliction of duty,

malfeasance, misfeasance, or nonfeasance in office, “or any other good cause.” Appointed members who vacated their office would be replaced as they originally were appointed. The Department of State would provide staff for the board, and the secretary of state would call the board’s first meeting, where the board would elect a chairperson and any other officers it deemed necessary. After the first meeting, the board would meet at least quarterly, or more often at the call of the chair or at the request of two or more members. A majority of the board would constitute a quorum for transacting business at a board meeting and a majority of members “present and serving” would be required for official board action. Board business would have to be conducted according to the Open Meetings Act, and board “writings” prepared, owned, used, in the possession of, or retained by the board in the performance of an official function would be subject to the Freedom of Information Act.

The board would monitor both (1) the voluntary electronic filing of campaign statements in the 2000 and 2002 election cycles and (2) the Internet disclosure of electronically filed campaign statements, and would prepare and submit a report (by February 1, 2003) to the legislature on the effectiveness and ease of use of the electronic filing and Internet disclosure system. Within 60 days after submitting this report, the board would be dissolved.

Electronic filing system. By July 1, 2000, the bill would require the secretary of state to offer each committee required to file with the secretary of state the option of filing campaign statements or reports electronically, and by January 31, 2004, committees receiving or spending \$20,000 or more in a calendar year would be required to file electronically with the secretary of state.

Committees that did not initially meet the \$20,000 electronic filing threshold but that later did meet this threshold would have to notify the secretary of state within ten business days after reaching the threshold and subsequently file electronically all required statements and reports.

The secretary of state would have to let a committee electronically file statements and reports, other than an original statement of organization, after the committee treasurer (and, for a candidate committee, the candidate) had signed and filed a form designed by the secretary of state to serve as the signature verifying the accuracy and completeness of each electronically filed statement or report.

Late filing fees. Currently, a committee, candidate, treasurer, or other individual designated as responsible for the committee’s record keeping, report preparation, or report filing who fails to file a statement must pay a late filing fee of \$25 for each business day the statement remains unfiled, up to a maximum of \$500. The bill would keep the current late filing fees for a committee that raised \$10,000 or less during the previous two years, but would progressively increase the late filing fees for committees (except for ballot question committees and candidate committees of candidates for state elective office or judicial office) that raised more than \$10,000 during the previous two years in the same way that House Bill 5056 would increase the late filing fees for reports of late contributions. That is, committees that raised more than \$10,000 in the previous two years would be subject to late filing fees of \$25 a day for each of the first three business days a report went unfiled. After three business days, the bill would add an additional \$25 a day up until ten business days, at which point there would be an additional \$50 fee for each business day.

For ballot question committees, and for committees of candidates for state elective office or judicial office that raised more than \$10,000 in the previous two years, the bill would double the current daily late filing fees from \$25 to \$50 a day.

The bill also would double the current maximums for late filing fees as follows for committees that raised over \$10,000 in the previous two years: \$2,000 instead of the current \$1,000 maximum for ballot question committees, and \$1,000 instead of the current maximum of \$500 for other committees.

Other provisions. Currently, a committee (other than an independent committee or a political committee) that supports or opposes a candidate is required to file campaign statements with the secretary of state “as required” by the campaign finance act. The bill would amend this requirement to say that such committees would be required to file “complete” campaign statements, and not only as required by the act but also as required by rules promulgated under the act (that is, thereby giving the secretary of state the authority to promulgate rules regarding the filing of campaign statements under the act).

House Bill 5059 would amend the act (MCL 169.205 et al.) to eliminate the contribution reporting threshold; repeal a section that prescribes separate reporting requirements for contributions from certain events conducted under the Bingo Act; and require that if a committee were a candidate committee, the committee

name would have to include the candidate's first and last names.

Elimination of the \$20 reporting threshold. The campaign finance act contains various reporting and recording requirements for contributions or loans to candidates that are over \$20. (For instance, a campaign statement must include the name and address of every individual who contributes over \$20, the date received, the amount contributed, the cumulative amount, etc.) Contributions and loans that are \$20 or less are not subject to these reporting requirements. House Bill 5059 would eliminate the \$20 threshold, meaning that contributions or loans of any amount would be subject to the act's reporting requirements. The bill would continue to prohibit a person from making or accepting a single contribution of more than \$20 in cash. (Contributions over \$20 must be made by written instrument containing the names of the payor and payee.)

Anonymous contributions. House Bill 5059 would continue to prohibit accepting or expending "anonymous contributions," and the requirement that such contributions be given to charity, while eliminating two exceptions to these provisions. There currently are two kinds of contributions of \$20 or less that are not considered to be "anonymous": a contribution received as the result of a fund-raising event or casual services or from the sale of political merchandise; and a contribution received from membership fees, dues, or subscriptions for political purposes to an independent committee or political party committee. The bill would eliminate these exemptions from the "anonymous contribution" requirements.

Political bingo. House Bill 5059 also would repeal Section 25a of the act, which exempts from the reporting requirements of the act cash contributions of \$25 or more at an event conducted under the Bingo Act by a committee licensed under the Bingo Act. Section 25a also lists other reporting requirements that do not apply to a contribution made at a charity game conducted under the Bingo Act.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bills 5056 and 5057 would result in indeterminate/increased costs and revenues to the state. House Bill 5056 could impose costs on the Department of State to maintain a website for the disclosure of late contribution reports, while the increased fees for failure to report late contributions could increase revenue to the state. However, the amount of fees collected would depend

on the number of individuals failing to file the reports, as well as the number of days each report remained unfiled. Under House Bill 5057, the state could receive additional revenue from late filing fees, but also could incur additional administrative costs from the proposed procedures for handling complaints of alleged violations of the act. Finally, House Bill 5059 would result in increased costs to the state with no increased revenues. The bill would substantially widen the pool of contributions that would have to be reported to the secretary of state, while also requiring the Department of State to develop and implement an electronic filing system for the disclosure of contributions. According to the Department of State, the creation, implementation, and maintenance of electronic disclosure would cost approximately \$990,000, with \$750,000 needed to be allocated for system development, maintenance, support, programming, and a back-up system. For the year 2000 elections cycle, the department anticipates that start-up costs would be approximately \$240,000 to cover costs of compiling information for next year's elections, and the department will be requesting annual appropriations for ongoing costs in fiscal year 2000-2001. (1-6-00)

ARGUMENTS:

For:

In general, the bills would increase the likelihood of timely campaign finance reporting and allow better public oversight of campaign financing. For example, House Bills 5056 and 5057 would increase late filing fees, which should improve compliance with the act's reporting requirements. In addition, House Bill 5059, among other things, would require the secretary of state to establish an Internet website for posting certain campaign statements and all late campaign contributions, thereby increasing public access to, and accountability over, campaign finances. Finally, House Bill 5057 also would strengthen the ability of the secretary to require compliance with the campaign finance act by giving him or her the authority to promulgate rules that committees supporting or opposing candidates would have to follow in filing their campaign reports, and by requiring that these committees file "complete" reports.

Response:

Increasing the late fines could work like a regressive "tax," since the wealthier a campaign fund was, the less impact the increased fines would have on potential violators. Instead of an across-the-board increase, a better approach might be to look specifically at "repeat offenders," as some other Michigan laws do in other circumstances. Thus, for example, for a "first offense,"

people might just be given a warning, while for a second “offense” a minimum fine or fee could be imposed, and for third or subsequent late filings a higher fee or fine could be imposed.

For:

Reportedly, there have been complaints about the length of time it takes the secretary of state to investigate complaints of violations of the campaign finance act. Apparently, when someone files such a complaint, the secretary of state currently sends a letter acknowledging receipt of the complaint to the complainant, along with a copy of the administrative rules governing complaints. The alleged violator reportedly is asked to file an answer to the complaint, but a copy of any such answer apparently is not given to the complainant, nor is the complainant given an opportunity to respond to the alleged violator’s answer. House Bill 5057 would improve on the current state of affairs by setting certain deadlines within which the secretary of state would have to notify an alleged violator that a complaint had been filed, give the alleged violator a specified period of time in which to respond to the complaint, notify the complainant of any response by the alleged violator, and give the complainant a specified period of time to submit a rebuttal to the alleged violator’s response to the complaint. In addition, the bill would keep the parties involved in a complaint informed of the status of the secretary of state’s investigation by requiring the secretary of state to notify both the alleged violator and the complainant of any action or nonaction taken by the secretary of state.

Response:

The bill would do little to address the real problem with the secretary of state’s investigation of alleged violations of the campaign finance act, because it does not set any kind of deadline for the secretary of state to resolve campaign finance complaints. While the bill would make minor improvements by requiring the secretary of state to keep the parties involved notified of the status of the investigation, beginning with notification of the filing of the complaint and any responses and rebuttals, the bill still would not ensure that the secretary of state ever completed an investigation. Thus, innocent parties falsely accused could be harmed by never having false complaints against them resolved, while parties guilty of actual violations could continue to avoid ever being made accountable for their violations. The bill needs to give real teeth to the secretary of state’s investigations, but the changes it proposes would not do this.

Reply:

As was pointed out in testimony before the House committee, because the secretary of state does not have subpoena power, he or she must use persuasion to get parties to cooperate in investigations. Short of the legislature giving that power to the secretary of state, the bill would provide at least an incremental improvement on the current situation. Moreover, the investigations of some complaints are (and will be) more complicated than others, and require more time. Thus, to set a single date by which an investigation would have to be completed could result in the dismissal of complaints against guilty parties simply because an arbitrary deadline had been reached.

For:

Proponents of House Bill 5059's elimination of the \$20 dollar reporting threshold, and its elimination of the special reporting requirements currently allowed for political bingo, argue that in order to ensure that voters know who is supporting candidates it is necessary to require that every penny donated to a political campaign be reported and accounted for. Moreover, some people have believed for years that political bingos should be eliminated, arguing variously that political bingos siphon off funds from other charitable bingos or that money raised by political bingos constitutes an unconscionable loophole in campaign finance fundraising by not identifying individuals who contribute financially to support certain political candidates. The campaign finance act currently contains two loopholes that need to be closed to ensure full disclosure in campaign finances: bingo cards and charity game tickets. The bill would not ban political bingos or the sale of charity game tickets, but it would hold such fundraisers to the same reporting requirements that other political fundraisers are subject to.

Response:

Elimination of the \$20 reporting threshold would be disastrous not only for political bingo, which the bill also would effectively eliminate as a source of political fundraising, but for campaigns that did not have professional campaign finance people to fill out the enormous amount of complicated paperwork that would be generated by the bill’s new reporting requirements. These provisions, if enacted, would virtually ensure that only people able to run professionally staffed campaigns would be able to participate in election campaigns. In particular, when taken in combination with the provisions increasing the fines for late filing of campaign finance reports, the bill could wind up pricing people out of the market, so far as running for office were concerned, since the

proposed new reporting requirements would almost certainly result in an increase in late filings simply because people wouldn't be able to meet the current deadlines due to the massively increased amount of required paperwork. The bill would constitute a disaster for grassroots campaigns. Moreover, the bill would discourage campaigns from accepting small contributions, since the costs of reporting small contributions would likely cost more than many of the contributions themselves, thereby discouraging all but the larger, monied campaign contributors from influencing campaigns through their contributions. By pricing small contributors and grassroots campaigns out of the market, so to speak, the bill could further contribute to alienating ordinary citizens from the political process at a time when public apathy about electoral politics already is at an all-time high.

The bill also would overturn a 1996 citizens' referendum that rejected a proposed legislative ban on political bingo. Although proponents of the bill are correct when they say that the bill would not ban political bingo outright, the bill would nevertheless effectively eliminate political bingo as a political fundraiser because the reporting requirements would be so onerous that no one would be able to use bingos as political fundraisers. Burying political bingo in unmanageable paperwork is not, as the bill's proponents claim, an effort in campaign finance reform. It is simply a way to shut down a means of fundraising that one political party uses more often than the other. The history of partisan attempts to eliminate political bingo goes back for years, to the so-called "shared leadership" legislative session in which both political parties had equal numbers of members elected to the House of Representatives. When there was a temporary vacancy in a couple of the seats held by one of the parties, the other party took that opportunity to try to eliminate political bingo legislatively. However, in a subsequent referendum on the legislation passed to ban political bingo, the citizens of the state voted to allow political bingo to continue. In subsequent compromise legislation, political bingo was allowed a special reporting exemption that realistically allowed the reporting of money raised by political bingos without eliminating them entirely through overly burdensome reporting requirements. The elimination of the special reporting provisions for political bingos would serve no legitimate public interest, since the people who "contribute" at political bingos spend their money to engage in a minor gaming pastime and not in order to lobby for a special interest. It borders on ludicrous to suggest otherwise.

Reply:

The hard political fact is, any legislative compromise worked out by previous legislatures can be undone by subsequent legislatures if enough votes can be gathered to do so. Even the attorney general has ruled in the past that legislatures cannot bind future legislatures, so if the current legislature decides to eliminate the special reporting requirements for political bingos that a previous legislature enacted, it is well within its right to do so.

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.