

CAMPAIGN FINANCE ACT AMENDMENTS

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House Bill 4997

Sponsor: Rep. Douglas Geiss

Committee: Ethics and Elections

Complete to 8-20-09

A REVISED SUMMARY OF HOUSE BILL 4997 AS AMENDED 7-15-09

The bill would amend 14 sections of the Michigan Campaign Finance Act (MCL 169.215 et al) and would add two new sections. Among other things, the bill would:

- Revise the filing deadlines for campaign committee statements.
- Limit, generally speaking, detailed reporting to campaign contributions of more than \$20.
- Require aggregate reporting of contributions of \$20 or less.
- Prohibit candidates seeking office from being paid wages or a salary.
- Specify the timing of and disclaimers for 'robo' calls and email ads.
- Remove labor organizations from the list of those who are considered to be single independent committees, and for whom election cycle contribution limits apply.
- Allow public employees to contribute to political action committees through payroll deduction, if their collective bargaining unit provides full compensation to the public body for the service.

A detailed summary of the bill follows.

Campaign Act violations by the attorney general

Currently under the Michigan Campaign Finance Act, the secretary of state must investigate allegations that the law or its rules have been violated. If the secretary of state determines that there has been a violation, then he or she must try to correct the violation, or prevent a further violation, by using informal methods such as a conference, conciliation, or persuasion, and can enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement is a complete bar on any further action. If the secretary of state is unable to correct or prevent further violation by these informal methods, the matter may be referred to the attorney general for the enforcement of a criminal penalty, or to commence a hearing. The same referral protocol applies to violations concerning reports or statements that must be filed under the act. House Bill 4997 would retain these provisions, but specify that if any violation involved the attorney general or a campaign or committee with which the attorney general was connected (directly or indirectly), the director of elections would be required to refer the matter to the prosecuting attorney for the county of Ingham, for the enforcement of a criminal penalty provided by the act.

Distinguish between contributions/loans above and below \$20

Under the Michigan Campaign Finance Act, a campaign committee treasurer (or other designated individual) is responsible for the committee's record keeping, report preparation, or report filings, and must keep detailed accounts, records, bills, and receipts to substantiate the information in the reports. The records must be preserved for five years, and made available for inspection. A treasurer who knowingly violates this section is subject to a civil fine or not more than \$1,000. In addition, the treasurer must record the name and address of a person from whom a contribution is received. House Bill 4997 would retain these provisions, but add that the treasurer must record the name and address of a person from whom a contribution is received *except for contributions of \$20 or less received pursuant to section 41(3)*.

The Michigan Campaign Finance Act specifies all of the information that must be contained in a campaign statement of a committee, including among other things all receipts, expenditure, loans, in-kind contributions, cash-on-hand, and contributions. House Bill 4997 would retain all of these requirements, but modify the reporting of contributions to include *the total amount of contributions received during the period covered by the campaign statement from persons who contributed more than \$20; the total amount of contributions received during the period covered by the campaign statement from persons who contributed \$20 or less; and the total amount of contributions of \$20 or less received during the period covered by the campaign statement and the cumulative amount of the contributions received by the filer pursuant to section 41(3)*.

The Campaign Finance Act also specifies the information that is required to be reported for each fundraising event, including among other things the type of event, date held, address and name of the place where the activity was held, the total amount of all contributions, the gross receipts, the expenditures incident to the event, the full name of each individual from whom contributions are received, including the occupation, employer, and principal place of business if an individual's cumulative contributions are more than \$100. House Bill 4997 would retain all of these provisions, but require that the report include *the total amount of contributions of \$20 or less*, and the full name of each individual from whom contributions *totaling more than \$20* were received.

In addition, the Campaign Finance Act specifies the information a candidate committee or ballot question committee must report, including all cumulative amounts required under the act on a per election cycle basis. In contrast, an independent committee or political committee must report all cumulative amounts on a calendar year basis, and the information that must be included in the reports is described in detail within the act. The bill would retain all of these provisions. Further, the act describes the information that must be reported for bundled contributions to statewide candidates, and the manner in which bundling committees must report both to the secretary of state, and to the campaign committee. House Bill 4997 would retain all of these provisions, but require that the reports include among other things the amount of each contribution *of more than \$20*, the date it was received, the intended recipient, and the name and address *of each person that contributes more than \$20 during the period covered by the statement*.

Under the act, a committee must report loans on a separate schedule attached to the campaign statement, and include the name and address of the lender and each person who

is liable directly, indirectly, or contingently on each loan. House Bill 4997 would modify this provision to require this information on each loan *of more than \$20*. Currently the act also requires that a campaign statement report the receipt of a contribution from a person whose treasurer is out-of-state. House Bill 4997 would also modify this provision to require this information for those who made a contribution *of more than \$20*.

The Campaign Finance Act also describes in detail the information that must be filed by a political party committee in its campaign statements, including the full name and street address of each person from whom contributions are received in a calendar year, the amount, and the date or dates contributed; and, if the person is a committee (including an out-of-state committee), the name and address of the committee and the full name of the committee treasurer. Further, the occupation, employer, and principal place of business must be listed for each person having contributions totaling more than \$100 in a calendar year. House Bill 4997 would require the full name and street address of each person from whom contributions *totaling more than \$20* were received in a calendar year.

House Bill 4997 specifies that a contribution received as the result of a fund-raising event or casual services, or from the sale of political merchandise that is \$20 or less in the aggregate from a person in any calendar year is not considered an anonymous contribution. Further, a contribution received from membership fees, dues, or subscriptions for political purposes to an independent committee or a political party committee that is \$20 or less in the aggregate from a person in any calendar year is not considered an anonymous contribution. Finally, a person making such a contribution that is more than \$20 in any calendar year when added to all other contributions made to that committee by that person must furnish the recipient with the donor's name, address, and the total amount contributed.

Currently under the law, a contribution from a person whose treasurer does not reside in, nor whose principal office is not located in, nor whose funds are not kept in Michigan cannot be accepted for purposes of supporting or opposing candidates for elective office, or the qualification, passage or defeat of a ballot question, unless that contribution is accompanied by a statement certified as true and correct by an officer of the contributing person, setting forth the full name and address, along with the amount contributed. House Bill 4997 would retain this requirement but specify that it would apply only to contributions of more than \$20. Further and under the law, a person cannot receive a contribution from a person other than a committee unless the contribution is accompanied by the name and address of each person who contributed to the total amount of the contribution and the name, address, occupation, employer, and principal place of business of each person who contributed more than \$100 to the total contribution. House Bill 4997 would retain this requirement, but specify that the reporting a person's name and address would apply to those making contributions of more than \$20.

Candidate committee campaign statement

Under the Campaign Finance Act, a committee, other than a candidate committee, must file a campaign statement for each period during which expenditures are made for the purpose of influencing the nomination or election of a candidate or for the qualification, passage, or defeat of a ballot question. House Bill 4997 would eliminate the phrase, *other than a candidate committee*.

Schedule of campaign statement filings

The Michigan Campaign Finance Act requires that independent and political committees file complete campaign statements with the secretary of state, and sets a schedule for filing the reports, which varies depending upon the type of committee. Currently, an independent committee or a political committee other than a House or Senate political party caucus committee files reports in an odd numbered year, not later than January 31 (with a closing date of December 31), July 25 (with a closing date of July 20), and October 25 (with a closing date of October 20). Further, the committee files statements in even numbered years not later than April 25 (with a closing date of April 20), July 25 (with a closing date of July 20), and October 25 (with a closing date of October 20). House Bill 4997 would require that in even numbered years the committees file campaign statements not later than April 25 (with a closing date of April 20), July 25 (with a closing date of July 20), and October 25 (with a closing date of October 20). Although House Bill 4997 eliminates that language in this section (Section 33) that requires odd-numbered year filings, the bill would require odd-numbered year filings for all committees in a later section (Section 35). That section would require the filing of campaign statements for all committees not later than the following dates in odd-numbered years: January 31 (with a closing date of December 31), April 30 (with a closing date of March 31), July 31 (with a closing date of June 30), and October 31 (with a closing date of September 30).

[Note: Under the Campaign Finance Act, a "committee" is defined to mean a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total \$500 or more in a calendar year or expenditures made total \$500 or more in a calendar year. An individual, other than a candidate, does not constitute a committee. A person, other than a committee registered under this act, making an expenditure to a ballot question committee shall for that reason not be considered a committee for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee.]

Currently under the law, a House or Senate political party caucus committee must file campaign statements with the secretary of state each year, not later than January 31 (with a closing date of December 31), and by April 25, July 25, and October 25 (with closing dates of April 20, July 20, and October 20, respectively). House Bill 4997 would require that House or Senate political party caucus committees file their campaign statements *in even-numbered years*, by the dates noted above (that is, January 31, April 25, July 25, and October 25), and in odd-numbered years by January 31, April 30, July 31, and October 31 (with closing dates of December 31, March 31, June 30, and September 30, respectively).

Schedule for committees that still must file annually

Under the Campaign Finance Act, a committee, other than an independent committee or a political committee, is required to file a year-end campaign statement not later than January 31 of each year (with a closing date of December 31). House Bill 4997 would require two reports in even-numbered years, filed by January 31 (with a December 31 closing date) and April 30 (with a March 31 closing date). Further the bill would require

four reports in odd-numbered years, due not later than January 31 (with a December 31 closing), April 30 (with a March 31 closing), July 31 (with a June 30 closing), and October 31 (with a closing date of September 30).

No salary or wages for a candidate from candidate committee

House Bill 4997 would add a new section to the Michigan Campaign Finance Act to prohibit a candidate committee from paying a candidate wages, a salary, or other employment compensation. A person who knowingly violated this prohibition would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both. A committee that violated this prohibition would be subject to a fine of not more than \$10,000.

Candidate statement of approval of advertisement

Currently under the law, if a campaign's radio or television paid advertisement relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate, the ad must contain a disclaimer that says, "authorized by (name of candidate or name of candidate committee)." House Bill 4997 would require that the disclaimer say instead, "I am (name of candidate) and I approve this message."

Limits & requirements on "Robo" calling

House Bill 4997 would add a new section to the Michigan Campaign Finance Act to require that a communication advocating the election or defeat of a candidate that was designed to contact electors through automated, telephonic, electronic mail, or other electronic means clearly state the name and address or telephone number of the person paying for the communication. The disclaimer would have to appear at the beginning of a telephonic communication. Further, a telephonic communication could not take place between the hours of 8 p.m. and 9 a.m. in the time zone within which the recipient of the telephonic communication was located.

If the communication advocated the election or defeat of a candidate and was an independent expenditure not authorized in writing by that candidate's committee, then the communication would have to clearly state the following disclaimer: "Not authorized by any candidate committee." If the communication advocated the election or defeat of a candidate and was not an independent expenditure, but was paid for by a person other than the candidate whom it advocated the election or defeat of, the communication would have to clearly state the following disclaimer: "Authorized by (name of candidate or name of candidate committee)."

The bill specifies that for a visual communication, the direction of elections (in the Department of State) would be required to promulgate rules regulating the size and placement of an identification or disclaimer.

Under the bill as amended, the secretary of state would be required to furnish to candidates, and to post on its internet website, information regarding the prohibitions in this section.

A person who knowingly violated this section would be guilty of a crime as follows:

- for the first violation, a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500, or both;
- for the second violation, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000, or both; and
- for the third or subsequent violation, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$2,500, or both.

Committees established by labor unions, etc.

The Michigan Campaign Finance Act sets limits for contributions to a candidate during an election cycle, both for individuals and independent committees. The law also specifies that, with certain exceptions, House and Senate political party caucus committees are not limited in the amount of contributions they can contribute to a candidate committee for the office of a state legislator. House Bill 4997 would retain these provisions. The law further specifies that for purposes of the limitations provided, all contributions made by political committees or independent committees established by any corporation, joint-stock company, domestic dependent sovereign, or labor organization, including any parent, subsidiary, branch, division, department, or local unit thereof, shall be considered to have been made by a single independent committee. The law then says that by way of illustration and not limitation, all of the following apply as a result of the application of this requirement:

(A) All of the political committees and independent committees established by a for-profit corporation or joint-stock company, by a subsidiary of the for-profit corporation or joint-stock company, or by any combination thereof, are treated as a single independent committee.

(B) All of the political committees and independent committees established by a single national or international labor organization, by a labor organization of that national or international labor organization, by a local labor organization of that national or international labor organization, or by any other subordinate organization of that national or international labor organization, or by any combination thereof, are treated as a single independent committee.

(C) All of the political committees and independent committees established by an organization of national or international unions, by a state central body of that organization, by a local central body of that organization, or by any combination thereof, are treated as a single independent committee.

House Bill 4997 would eliminate labor organizations from the list of those who are considered to be single independent committees, and for whom the contribution limits apply. Further, the bill would eliminate sections (b) and (c), above.

Consent for automatic contributions

Currently the Michigan Campaign Finance Act allows a profit or a nonprofit corporation, a joint stock company, a domestic dependent sovereign, or a labor organization to solicit or obtain contributions for a separate segregated fund established under Section 55 of the act from an individual on an automatic basis, including but not limited to a payroll deduction plan, only if the individual who is contributing to the fund affirmatively

consents to the contribution at least once in every calendar year. House Bill 4997 would retain this provision, but delete the words "*at least once in every calendar year.*"

Public employee campaign contributions through payroll deduction

The Michigan Campaign Finance Act prohibits a public body or an individual acting for a public body from using or authorizing the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure, or to provide volunteer personal services that are excluded from the definition of contribution under Section 4(3)(a) of the act. However, the law also specifies that this prohibition does not apply in six instances: during the expression of views by an elected or appointed public official who has policy-making responsibilities; during the production or dissemination of factual information concerning issues relevant to the function of the public body; during the production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, or magazine; during the use of a public facility if any candidate or committee has an equal opportunity to use the public facility; during the use of a public facility if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event; and when an elected or appointed public official is on his or her own personal time, and is expressing his or her own personal views, expending personal funds, or is providing personal volunteer services. House Bill 4997 would retain all of these exceptions. In addition, the bill would add a seventh exception: "*the use of public resources to permit a public employee to contribute to a political action committee of the employee's collective bargaining unit by payroll deduction, if the collective bargaining unit provides full compensation to the public body for the use of the resources.*"

FISCAL IMPACT:

House Bill 4997 would have an indeterminate fiscal impact on the Department of State. The Department may experience an increase in administrative costs because of the bill's provisions that require additional departmental oversight and possible enforcement activities by the Department of State.

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■ 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.