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BILL ANALYSIS

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Senate Bills 750 and 753 (as introduced 10-12-11)  
Sponsor: Senator Dave Robertson (S.B. 750)  
Senator Jack Brandenburg (S.B. 753)  
Committee: Local Government and Elections

Date Completed: 11-1-11

### **CONTENT**

**Senate Bill 750 would amend the Michigan Campaign Finance Act to do the following:**

- **Increase the penalty for knowingly filing an incomplete or inaccurate campaign finance statement or report from a civil fine to a misdemeanor fine and/or imprisonment, and include a candidate among the individuals subject to the penalty.**
- **Designate failure to file required campaign statements for a candidate committee with an account balance of at least \$20,000 as a felony, and provide that money in the account would be subject to seizure and forfeiture by the State.**
- **Establish procedures for the seizure and forfeiture, including a candidate's opportunity for an administrative hearing and an appeal to the circuit court.**

**Senate Bill 753 would amend the Code of Criminal Procedure to add to the sentencing guidelines the failure to file required campaign statements for a candidate committee. The violation would be a Class H felony against the public trust with a statutory maximum of three years' imprisonment.**

The bills are tie-barred to each other. Senate Bill 750 is described below in further detail.

#### **Incomplete/Inaccurate Statement**

The Campaign Finance Act requires a committee to file complete campaign finance statements according to a schedule, depending on the type of committee. In addition, subject to certain exceptions, a committee, other than an independent or political committee, must file by January 31 of each year an annual campaign statement with a closing date of December 31 of the previous year.

("Committee" means 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 either contributions received or expenditures made total at least \$500 in a calendar year. An individual, other than a candidate, does not constitute a committee. "Person" means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of people acting jointly.)

If a treasurer or other individual designated as responsible for a committee's record-keeping, report preparation, or report filing knowingly files an incomplete or inaccurate statement or report, he or she is subject to a civil fine of up to \$1,000. Under the bill, the person would be guilty of a misdemeanor punishable by a maximum fine of \$1,000 or the amount of the undisclosed contribution or expenditure, whichever was greater, and/or imprisonment for up to 90 days. The penalty also would apply to a candidate.

#### Candidate Committee: Failure to File

For a committee other than an independent or political committee, the Act's statement requirements include preelection and postelection statements. Under the bill, if a candidate committee's account had a balance of at least \$20,000 and, following a general election, a candidate, treasurer, or other designated individual failed to file the required postelection campaign statement and the next annual campaign statement, he or she would be guilty of a felony punishable by imprisonment for up to three years and/or a maximum fine of \$5,000. Any money in the candidate committee account would be subject to seizure by, and forfeiture to, the State.

Within five business days after seizure of the money, the Department of Treasury would have to deliver personally or by registered mail to the last known address of the candidate from whom the seizure was made an inventory statement of the money seized. The statement would have to contain notice that unless a demand for a hearing were made within 10 business days, the money would be forfeited to the State.

Within 10 business days after the notice was served, the candidate could file with the State Treasurer a demand for a hearing before the Treasurer or his or her designee for a determination as to whether the money was lawfully subject to seizure and forfeiture. The candidate would be entitled to appear before the State Treasurer or designee, to be represented by counsel, and to present testimony and argument. Upon receiving a request for a hearing, the Department of Treasury or a person designated by the State Treasurer would have to hold the hearing within 15 business days. The hearing would not be a contested case proceeding and would not be subject to the Administrative Procedures Act.

The Department of Treasury or the Treasurer's designee would have to render a written decision within 10 business days after the hearing and, by order, would have to declare the money either subject to seizure and forfeiture or returnable to the candidate.

If the candidate did not file a demand for a hearing by the deadline, the seized money would be forfeited to the State by operation of law. If the Department of Treasury or the Treasurer's designee determined after a hearing that the money was lawfully subject to seizure and forfeiture and the candidate did not appeal to the circuit court of the county in which the seizure was made (as described below), the money also would be forfeited to the State by operation of law.

If a candidate were aggrieved by the Department's or designee's decision, he or she could appeal to the circuit court to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action would have to be commenced within 20 days after notice of the determination was sent to the candidate. The court would have to hear the action and determine the issues of fact and law in accordance with rules of practice and procedure as in other in rem proceedings. ("In rem" refers to a lawsuit or other legal action directed toward property, rather than toward a particular person.)

MCL 169.233 & 169.235 (S.B. 750)  
777.11e (S.B. 753)

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

The Department of Treasury would have additional responsibilities under Senate Bill 750 related to the potential seizure of candidate committee accounts for failure to file certain reports. If the Department acted under the proposed authority, it would incur costs related to seizure, notification, and inventory requirements, and the subsequent hearing process. The Department would be required to meet timelines for a hearing on the matter and issuing a decision. These responsibilities would increase the costs of the Department by an unknown amount. Funds lawfully seized under the authority provided by the bill would be deposited in the General Fund and available upon appropriation. The amount of the costs and revenue would depend on the number of violations and the size of any accounts seized. An account that was seized would be required to have a balance of least \$20,000.

There are no data to indicate how many offenders would be convicted of the proposed criminal offenses. An offender convicted of the Class H offense under the bills would receive a sentencing guidelines minimum sentence range of 0-1 month to 5-17 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.