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## PRESERVATION OF CAMPAIGN FINANCE RECORDS, VIOLATIONS

House Bill 4026 as enrolled  
Public Act 50 of 2000

Second Analysis (4-3-00)

**Sponsor: Rep. Scott Shackleton**  
**House Committee: Constitutional Law and  
Ethics**  
**Senate Committee: Governmental Operations**

### ***THE APPARENT PROBLEM:***

The Michigan Campaign Finance Act currently requires the secretary of state and local filing officials to keep campaign committee records for five years and then destroy them. Some people believe that campaign finance records should be kept for longer than five years and that even then they should not necessarily be destroyed.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Campaign Finance Act to preserve certain campaign records for 15 years instead of the current five years, and would delete the requirement that campaign records be destroyed after five years.

Mandated 15-year preservation period. All campaign statements and reports filed with the secretary of state (including statements of organization) would have to be preserved for 15 years (instead of the current five years). Campaign statements and reports filed with local filing officials (including statements of organization) would have to be kept for 15 years if the committee filing them had received more than \$50,000 in an election cycle, except for statements of organization, which would have to be kept for 15 years after the date of the committee's dissolution. (Records of committees that received less than \$50,000 in an election cycle would, as currently, have to be kept by local filing officials for only five years.)

Five-year preservation of violation records. Public Act 236 of 1999 (enrolled House Bill 5056) amended this section of the act to require that if uncorrected violations had occurred in campaign statements or reports (as determined by the secretary of state), or if a

court determines that a violation of the act's provisions governing statements and reports had occurred, then the statements and reports would have to be kept for five years after the court determination or the date the violation was corrected, whichever came first.

The bill would delete the language added by Public Act 236 and replace it with language requiring that after the secretary of state or a court had determined that a violation of the act had occurred, all complaints, orders, decisions, or other documents related to that violation would have to be preserved by local filing officials for 15 years from the date of the determination of the violation or the date the violation was corrected, whichever came first.

Permissible preservation of records. Currently, campaign records and statements must be destroyed after a mandatory five-year preservation period. Under the bill, after the mandated preservation period (whether five or 15 years), campaign statements or reports no longer would have to be destroyed but could instead be disposed of under the provisions of Management and Budget Act and the Michigan Historical Commission act governing document preservation and disposal.

MCL 169.216

### ***BACKGROUND INFORMATION:***

Under the law governing the Michigan Historical Commission (Public Act 271 of 1913), the commission "may collect from the public offices in this state records that are not in current use and are of value."

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Public officials are required to help the commission in the collection of such records. (MCL 399.5)

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill could result in indeterminate increased record storage and retrieval costs to the state and to local governments, depending on such factors as the volume of records stored, the mechanism and medium for storage, and record storage, retrieval and reproduction costs. The bill also could have Headlee implications associated with the new requirement that local governments keep certain campaign finance records for at least 15 years, which could be viewed by the courts as an unfunded state mandate. (4-3-00)

### ***ARGUMENTS:***

#### ***For:***

According to the *Lansing State Journal* (February 8, 1999), after it reported in September of 1997 that Michigan stood alone among the country's 10 largest states in requiring the destruction of campaign finance records, the secretary of state said that the law should be changed to keep the records longer than five years. The bill would do this, increasing the amount of time that certain campaign finance records would have to be kept to 15 years instead of the current five years. It would address some of the concerns expressed by the Kent and Oakland county clerks regarding the expense of additional storage of all local campaign finance records by requiring that only the records of committees that received a significant amount of money -- over \$50,000 -- in a local election cycle be preserved for the 15-year time period. Finally, the bill would remove the current statutorily-required destruction of campaign records after the prescribed preservation period, allowing their disposal under the Management and Budget Act or under the Michigan Historical Commission Act. The bill would allow for the preservation of the campaign records of historically important candidates. It also would increase the accountability of candidates for elected office, since their campaign records would be available to the public for longer periods of time than currently is the case.

#### ***Against:***

While the concept of preserving important campaign finance records is sound, there may be some problems with the bill. First, by placing longer record retention requirements on local governments, the bill may constitute a state mandated cost to local units, and thereby fall under the Headlee provisions of the state

constitution, which require the state to pay for any additional costs it places on local units of government. While most of the state's 83 counties probably would not see an increase in the numbers of campaign finance records they would have to keep under the bill's provisions, this is not true of the largest counties -- such as Kent, Oakland, Macomb, Wayne, and possibly others -- where it is not unusual for candidates in local election races to raise and spend more than \$50,000 on an election campaign. Once a candidate in a local election raised more than \$50,000 in an election cycle, the county clerk would have to keep the campaign finance records of that candidate for 15 years instead of 5 years. Would storage of such records for 10 years more than currently is required be a problem for these counties? Who would pay for the additional space and equipment needed for this storage?

Secondly, although Public Act 116 of 1992 allows state and local units of government to keep official records on optical storage disks in addition to the more traditional media of photographs, photocopies, and microfilm ("microcopy"), there may be a problem for the counties with implementing the act. It may be that while optical disk storage (as of November of 1998) now is a legal medium for storing official records, the actual image on the storage disk -- which cannot be copied onto microfilm -- may not be able to be used to make hard copies. So counties wanting to use optical disk technology to save space might actually wind up having to have duplicate storage media (namely, both optical disk storage and microfilm), which would hardly seem to address counties' problems with storage of official records.

Although the bill would no longer require that campaign finance records be destroyed after the mandatory preservation period, the decision whether or not to keep such records still would be up to the county clerks and the secretary of state -- that is, to elected officials who are not necessarily professionally trained to make such decisions. Some people suggest that it would be more appropriate to place the decision regarding which records to preserve with a professional archivist, than with elected officials (whether the secretary of state or county clerks). It also has been suggested that if counties didn't want to keep their campaign finance records past the required storage time (whether five years or 15 years), then they should send these records to the secretary of state, who could then -- possibly through the office of the state archivist -- decide whether or not the records should be kept for longer periods of time.

Finally, it should be noted that House Bill 4242, which would require candidates for elective office to sign an affidavit attesting to the fact that all late filing fines had been paid, has passed the House. Should it be enacted into law, some people might wish to preserve campaign finance records indefinitely, making the decision whether or not to destroy such records, even after 15 years, a more pressing issue than it currently is.

***Response:***

According to the secretary of state's office, the state librarian, who is professionally trained in records preservation, already does make the determination of which records are of historical interest, so the bill would formalize – and extend to campaign finance records -- existing practices regarding preservation of other records under the Management and Budget Act and the Michigan Historical Commission Act.

***Against:***

Some people believe that campaign finance records should be preserved indefinitely, and that their indefinite preservation should be required, not just allowed after an extended period of time. That is, mandating the preservation of campaign finance records for 15 instead of five years, and then allowing but not requiring their continued preservation, does not go far enough.

Analyst: S. Ekstrom

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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.