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AMEND CAMPAIGN FINANCE ACT

House Bill 4523 (Substitute H-2)
Sponsor: Rep. Andrew Richner

House Bill 5056 (Substitute H-1)
Sponsor: Rep. Judson Gilbert II

House Bill 5057 (Substitute H-1)
Sponsor: Rep. Gary Woronchak

House Bill 5058 as introduced
Sponsor: Rep. Bruce Patterson

Committee: Constitutional Law and Ethics

House Bill 5059 as introduced
Sponsor: Rep. Michael Bishop
Committee: Family and Civil Law

First Analysis (11-9-99)

House Bills 4523, 5056, 5057, 5058 and 5059 (11-9-99)

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:

- double fees for failing to file, or for late filing of, required campaign finance reports ([House Bill 5057](#));
- require candidates to pay late filing fees and prohibit them from paying late filing fees from their committee funds ([House Bill 4523](#));
- specify a time line and certain notification requirements for the secretary of state regarding investigation of complaints alleging violations of the act ([House Bill 5057](#));
- add a new criminal penalty for making false allegations of campaign finance act violations ([House Bill 5057](#));

- require that every campaign contribution dollar be reported, including those contributed at political bingos ([House Bill 5059](#)); and
- require the secretary of state to establish an electronic website ([House Bill 5059](#)).

More specifically, the bills would amend the Michigan Campaign Finance Act as follows:

[House Bill 4523](#) would amend the act (MCL 169.235) to require candidates to pay late filing fees incurred under section 35 of the act and to prohibit them from using committee funds to pay late filing fees. (See also House Bill 5057, which, among other things, would amend this section of the act to double late filing fees.)

[House Bill 5056](#) 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 (under [House Bill 5059](#), below), reports of late campaign contributions by no later than the end of the business day on which the report was received. The bill also would quadruple the daily late filing fees, and the maximum for these late fees, for reports of late contributions, increasing the fee

from its current \$25 to \$100 for each business day, up to a maximum of \$2,000 rather than the current \$500 maximum. Finally, the bill would require longer retention of certain campaign statements or reports. Instead of the 5-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, the statements or reports would have to be kept until 5 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. More specifically, 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."] (See also House Bill 5058, below, which would make it a misdemeanor to file false complaints alleging violations of the act.)

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. House Bill 5057 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.

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 as required under sections 33 or 35 must pay a late filing fee of \$25 for each business day the statement remains unfiled, up to a maximum of \$500. House Bill 5057 would amend these sections to double these late filing fees for committees that raised more than \$10,000 in the previous two years, while leaving the fees unchanged for committees who raised \$10,000 or less during the previous two years. That is, the late filing fee of \$25 for each business day and the maximum of \$500 would remain unchanged for committees who had raised \$10,000 or less during the previous two years, but would double the daily fee to \$50 and the maximum to \$1,000 for committees that had raised more than \$10,000 during the previous two years. The bill would similarly double the daily late filing fees for ballot question committees under section 34, as well as double the current late filing fee maximum of \$1,000 for ballot question committees to \$2,000. (See House Bill 4523, which also would amend this section, section 35, of the act, which would prohibit candidates from paying late filing fees from committee funds.)

House Bill 5058 would amend the act (MCL 169.215) to make it a misdemeanor, punishable by a fine of up to \$500 or imprisonment for up to 90 days, or both, to file a false complaint with the secretary of state alleging a violation of the act, knowing that the complaint was false. (See also House Bill 5057, above, which, among other things, would amend this section to set time lines and certain notification requirements for the secretary of state when complaints alleging violations of the act were filed.)

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; require the secretary of state to develop an Internet website for disclosure of certain campaign statements; and require that certain campaign statements be filed electronically.

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.)

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.

House Bill 5059 also would repeal Section 25a of the act, which exempts from 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.

Finally, House Bill 5059 would add a new section to the campaign finance act to require (1) the electronic filing of certain campaign finance statements and (2) the secretary of state to develop and implement an "electronic disclosure system" that would allow for such filings and would provide Internet disclosure of such electronically filed statements or reports on a website. More specifically, 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 electronically ("by diskette, modem, or Internet"). Candidate committees that received or spent in the preceding election cycle, or that expected to receive or spend in the current election cycle, at least \$20,000 would be required to electronically file all required statements and reports according to the following schedule:

- beginning with the pre-election campaign statement for the August 2,000 primary, each candidate committee for the supreme court, court of appeals, or state House of Representatives; and
- beginning with the annual campaign statement due January 31, 2002, each candidate committee required to file with the secretary of state.

In addition, each committee other than a candidate committee that received or spent in the preceding calendar year, or that expected to receive or spend in the current calendar year, at least \$20,000 would be required to file electronically with the secretary of state beginning with the annual campaign statement due January 31, 2002.

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 could 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.

FISCAL IMPLICATIONS:

Fiscal information is not available.

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 Bill 5057 would double late filing fees for

campaigns that took in or spent above a two-year \$10,000 threshold, while House Bill 5056 would quadruple fees for failing to report late contributions to campaigns. Both of these measures should improve compliance with the act's reporting requirements. Moreover, House Bill 4523 would target non-compliant candidates directly by requiring them to pay late filing fees and fines and prohibiting them from using their committee funds to do this. 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 doubled and quadrupled fines would have on potential violators. Instead of a flat 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 doubling 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.

The bill also would attempt to 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

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.

Against:

House Bill 5058 would make it a misdemeanor to file a false complaint with the secretary of state, knowing that the complaint were false. But the bill gives no definition of "false complaint," so it is possible that complaints filed in good faith that later were determined to be untrue could result in the complainant being charged with and convicted of a misdemeanor. The bill could even have the effect of deterring legitimate complaints, if people were afraid that they'd be convicted of a crime if the secretary of state ruled unfavorably on their complaint.

Against:

House Bill 5057 would amend two sections (sections 15 and 35) that two of the other bills, House Bill 4523 (section 35) and House Bill 5058 (section 15) also would amend. This could cause unintended results if all three bills were enacted, since the bill enacted into law last would supersede any changes proposed by the other bill(s).

House of Representatives. When there was a temporary vacancy in a couple of the seats held by one of the

POSITIONS:

The Michigan Chamber of Commerce supports the bills.
(11-8-99)

Common Cause of Michigan supports the requirement in House Bill 5059 that the secretary of state create a website, but opposes removal of the \$20 reporting threshold. (11-8-99)

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.