



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

CAMPAIGN FINANCE: EXCLUDE OFFICE FACILITY EXPENSES

House Bill 4606 as introduced
First Analysis (5-8-03)

Sponsor: Rep. James Koetje
Committee: Government Operations

THE APPARENT PROBLEM:

The 1971 Federal Election Campaign Act (FECA), and subsequent amendments, provided for the regulation of contributions, campaign receipts and expenditures, and the creation of the Federal Election Commission. In defining "contribution", the act specifically exempted "*any gift, subscription, loan, advance, or deposit of money or anything of value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office*". The act also preempted any state law with respect to an election to a federal office.

In 2002, the Congress passed the Bi-Partisan Campaign Reform Act (BCRA), which, in part, eliminated the building fund exemption stated above and, instead, provided that state law is to govern exclusively with regard to regulating spending on state and local party buildings (meaning that political parties may accept contributions for, and expend money from, a building fund, where allowed by state law). Michigan law does not contain any provision regarding the use of a building fund by a state or local political party.

THE CONTENT OF THE BILL:

The Michigan Campaign Finance Act (Public Act 388 of 1976) regulates "contributions" and "expenditures" related to the nomination or election of particular candidates and the passage or defeat of ballot questions. The act's definition of "expenditure" specifically excludes certain types of payments, donations, and loans (as well as other, non-monetary forms of assistance with an ascertainable monetary value) that might otherwise be thought of as expenditures. For example, under the act "expenditure" does not include expenses for a communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference.

Such excluded expenses are not regulated under the act.

House Bill 4606 would amend the Michigan Campaign Finance Act (MCL 169.206) to additionally exclude from the act's definition of "expenditure" any expense by a state central committee of a political party, or a person "controlled by" such a committee, for the construction, purchase, or renovation of one or more office facilities in Ingham County, as long as the facility was not constructed, purchased, or renovated for the purpose of influencing the election of a candidate in a particular election. Further, the bill would specify that any expenses approved in Federal Election Commission Advisory Opinions 1993-9, 2001-1, and 2001-12 would be excluded, regardless of whether those advisory opinions had been superseded. Generally speaking, these advisory opinions address the use of state political parties' office building funds and the acceptance of corporate and labor union donations to those funds.

FISCAL IMPLICATIONS:

Fiscal information is not yet available.

ARGUMENTS:

For:

Prior to the enactment of the 2002 campaign finance reform act, the Federal Election Campaign Act (FECA) permitted state political party committees to establish building funds to purchase or construct an office or a facility, and accept corporate or labor union donations to that fund. In numerous advisory opinions, the FEC has stated that FECA and the related regulations preempt and supercede the application of any state law that purports to prohibit corporate donations to a state party committee building fund. This issue has surfaced on several occasions here in Michigan. In 1984, the Department of State issued an interpretive statement regarding

House Bill 4606 (5-8-03)

several hypothetical questions, including whether state political party committees could use corporate contributions for the rental or purchase of a party office or headquarters. The department responded by stating that corporate contributions may be expended for such purposes provided that the space is used only for non-campaign purposes, and that if such an office were only used occasionally for campaign purposes, the office could not be purchased or rented with those corporate funds. The issue arose again in 1992 when the Michigan Republican State Committee requested a declaratory ruling from the Department of State regarding whether it could accept corporate donations to its building fund. In response, the department referred to the 1984 interpretative statement. The issue appeared to be settled with a 1993 FEC advisory opinion (1993-9) that stated that the FECA and related regulations preempted the application of state law with respect to the prohibitions on corporate donations to the MRSC building fund. However, it appears that given the fact that FECA was amended to return authority over state political party building funds to state laws, and given the fact that the campaign finance act does not contain a similar "building fund exemption" found in the FECA prior to the 2002 amendments, there is the potential for political parties in the state to be limited in their use of certain contributions and their use of buildings obtained through the use of certain contributions, in the manner described in the department's 1984 interpretative statement.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (5-7-03)

Analyst: M. Wolf

■ 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.