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BILL ANALYSIS



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Senate Bill 571 (as enacted)
Sponsor: Senator Mike Kowall
Senate Committee: Elections and Government Reform
House Committee: Elections

PUBLIC ACT 269 of 2015

Date Completed: 1-11-16

CONTENT

The bill amended the Michigan Campaign Finance Act to do the following:

- **Provide that a contribution by an individual to a separate segregated fund that is aggregated with another payment to a connected organization may be payable first to the organization for subsequent transfer to the fund, under certain circumstances.**
- **Provide that contributions are not considered commingled if 1) a contribution is received by a person for transmission to a separate segregated fund, as provided in the bill; or 2) a contribution is made by one or more people through a person and various conditions are met.**
- **Delete a requirement that an individual affirmatively consent at least once every year to contributing to a separate segregated fund on an automatic basis.**
- **Prohibit a corporation from making an expenditure to provide for the collection and transfer of contributions to a separate segregated fund not established by that corporation, or to a separate segregated fund not connected to a nonprofit corporation of which the corporation is a member.**
- **Allow a candidate committee to use a contribution received in one election cycle to pay outstanding debts from a previous election cycle, if the contribution was not designated in writing for a particular election cycle.**
- **Prohibit a public body, within 60 days before an election in which a local ballot question appears on the ballot, from using public funds or resources for a communication by radio, television, mass mailing, or prerecorded telephone message if the communication refers to a local ballot question.**

These and other amendments made by the bill are described in detail below.

The bill took effect on January 6, 2016.

Contributions to a Separate Segregated Fund

Payment to Connected Organization for Transfer to Fund. Section 55 of the Act previously allowed a for-profit or nonprofit corporation, a joint stock company, a labor organization, or a domestic dependent sovereign formed under the laws of this or another state or a foreign country to make an expenditure for the establishment and administration of, and solicitation of contributions to, a separate segregated fund to be used for political purposes.

The bill instead allows a "connected organization" to make an expenditure for the establishment or administration of, and solicitation, collection, or transfer of contributions to,

a separate segregated fund to be used for political purposes. The term "connected organization" includes each of the entities that previously could form a separate segregated fund, as well as a member of such an entity that is not an individual.

As previously provided, a separate segregated fund is limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, independent committees, and other separate segregated funds.

The bill provides that a contribution by an individual to a separate segregated fund that is aggregated with a dues or other payment to the connected organization may be collected by or made payable first to the connected organization for subsequent transfer to the fund if all five of the conditions described below are met.

First, the individual making the contribution must do either of the following:

- Specifically indicate in a record or electronic record that the amount collected, or a specified portion of the total amount if remitted as part of a dues or other payment to the connected organization, is a contribution to the separate segregated fund.
- Remit payment to the connected organization in response to a specifically requested amount that includes a solicited contribution, if the solicitation is clearly distinguishable from any dues or other fees requested as part of the total, and the connected organization maintains a record or electronic record of the solicitation that includes the amount solicited and the amount of any dues or other fees charged in conjunction with the solicitation for each contribution.

Second, the connected organization must transfer the entire specified amount of any designated contribution, individually or aggregated with other lawful contributions, to the separate segregated fund electronically or by written instrument. Any transfer of designated contributions must be accompanied by or logically associated with a record or electronic record setting forth all information required under Section 26 of the Act for each individual contributor whose contribution is transferred. (Section 26 describes information that a campaign statement of a committee must contain.)

Third, the connected organization must account for the contributions in a manner that documents all of the following:

- The identity of the individual contributor.
- The date, amount, and method of receipt for each individual contribution.
- The date, amount, and method of all transfers to the separate segregated fund.

Fourth, the connected organization and the separate segregated fund must adopt a written policy governing the handling, accounting, and transfer of any contribution under these provisions.

Fifth, in connection with an investigation or hearing regarding any contributions under these provisions, the connected organization must voluntarily agree to make available to the Secretary of State any records described in the four preceding provisions and provide those records at the request of the Secretary of State.

(As used in these provisions, "record" and "electronic record" mean those terms as defined in the Uniform Electronic Transactions Act. "Written instrument" means a money order, or a check, cashier's check, or other negotiable instrument, as those terms are defined in Section 3104 of the Uniform Commercial Code, in the name of the connected organization and payable to the separate segregated fund.)

A person who knowingly violates Section 55 is guilty of a felony. If the violator is an individual, the penalty is imprisonment for up to three years and/or a maximum fine of \$5,000. If the violator is not an individual, the penalty is a maximum fine of \$10,000.

Under the bill, however, if a violation of Section 55 results solely from the failure of a connected organization to transfer one or more contributions, the connected organization is not guilty of a felony, but must notify the contributors of the failure to transfer the contribution and refund the full amount of a contribution to the contributor if requested. The felony penalties apply to any other violation of Section 55, including use and diversion of any contributions by a connected organization for a purpose not described in the bill before those contributions are transferred to the separate segregated fund.

Commingling Exception. Section 21 of the Act prohibits contributions received by a committee from being commingled with other funds of an agent of the committee or of any other person. ("Committee" means a person who receives contributions or makes expenditures for the purpose of influencing the action of voters for or against the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party, if contributions received or expenditures made total \$500 or more in a calendar year.)

The bill specifies that contributions are not considered to be commingled if a contribution is either 1) received by a person for transmission to separate segregated fund as described in Section 55; or 2) made by one or more people through a person if all of the following are met:

- The individual contribution or aggregated contribution is accompanied by or logically associated with all information required under Section 26 for each individual contributor.
- The person making the contribution is its original source.
- The contribution is not obtained through use of coercion or physical force, as a condition of employment or membership, or by the use or threatened use of job discrimination or financial reprisals.
- Only the person making the contribution exercises any control over the making of, or the amount or recipient of, the contribution.
- The contribution is not otherwise prohibited by the Act.

(A person who violates Section 21 is subject to a civil fine of up to \$1,000.)

Contributions on Automatic Basis. The Act allows contributions to a separate segregated fund to be solicited from specific categories of people or their spouses, depending on whether the fund is established by a for-profit corporation, a joint stock company, a nonprofit corporation, a labor organization, or a domestic dependent sovereign. Contributions may be solicited or obtained from a specified individual on an automatic basis, including a payroll deduction plan, only if the individual who is contributing to the fund affirmatively consents to the contribution. The bill retained the consent requirement but deleted a requirement that the person affirmatively consent at least once in every calendar year.

"Contribution" & "Expenditure." The bill provides that the term "contribution" does not include a contribution or expenditure for the establishment or administration of, or solicitation, collection, or transfer of contributions to, a separate segregated fund if the contribution or expenditure was made by the person who established the fund as authorized under Section 55, or was made by a person who is a member of a nonprofit organization that established the fund as authorized under Section 55.

The bill similarly amended the term "expenditure" (which previously did not include an expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund if that expenditure was made by the person who established the fund).

Prohibited Expenditure by Corporation

Under Section 54 of the Act, subject to exceptions and conditions in that section and Section 55, a corporation, joint stock company, labor organization, or domestic dependent sovereign may not make a contribution or expenditure or provide volunteer personal services.

The bill specifies that, except for expenditures made by a corporation in the ordinary course of business, an expenditure made by a corporation to provide for the collection and transfer of contributions to another separate segregated fund not established by the corporation, or to a separate segregated fund not connected to a nonprofit corporation of which the corporation is a member, constitutes an in-kind contribution by the corporation and is prohibited by Section 54. Advanced payment or reimbursement to a corporation by a separate segregated fund not established by the corporation, or by a separate segregated fund not connected to a nonprofit corporation of which the corporation is a member, does not cure a use of corporate resources otherwise prohibited by the section.

(A person who knowingly violates Section 54 is guilty of a felony punishable by a maximum fine of \$5,000 and/or imprisonment for up to three years, if the violator is an individual, or by a maximum fine of \$10,000, if the violator is not an individual.)

Use of Contributions to Pay Outstanding Debts

Section 52 of the Act limits the amount of contributions a person may make to a candidate committee of a candidate with respect to an election cycle. For a person other than an independent committee or a political party committee, the limit is \$1,000, \$2,000, or \$6,800, depending on the office the candidate is seeking. For an independent committee or a political party committee other than a State central committee, the limit is 10 times those amounts (i.e., \$10,000, \$20,000, or \$68,000, depending on the candidate).

A contribution designated in writing for a particular election cycle is considered made for that election cycle. A contribution made after the close of an election cycle and designated in writing for that election cycle may be made only to the extent that the contribution does not exceed the candidate committee's net outstanding debt and obligations from the designated election cycle.

Under the bill, if a contribution is not designated in writing for a particular election cycle, all of the following apply:

- The contribution is considered made for the election cycle that corresponds to the date of the written instrument (as the Act previously provided).
- The contribution limits for the current election cycle apply to that contribution.
- A candidate committee may use that contribution to pay outstanding debts and obligations from a previous election cycle regardless of whether the contribution, when aggregated with any contributions made in that previous election cycle, would exceed the contribution limits for the previous election cycle.

(A person who knowingly violates Section 52 is guilty of a misdemeanor punishable by a maximum fine of \$1,000 and/or imprisonment for up to 90 days, if the violator is an individual, or by a maximum fine of \$10,000, if the violator is not an individual.)

Local Ballot Question: Limit on Communication

Section 57 of the Act prohibits a public body or a person acting for a public body from using or authorizing the use of funds, personnel, office space, computer hardware or software, property, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services, subject to a number of

exceptions. One of the exceptions is the production or dissemination of factual information concerning issues relevant to the function of the public body. Under the bill, this exception is subject to the following provision.

Except for an election official in the performance of his or her duties under the Michigan Election Law, the bill prohibits a public body, or a person acting for a public body, during the period 60 days before an election in which a local ballot question appears on a ballot, from using public funds or resources for a communication by means of radio, television, mass mailing, or prerecorded telephone message if that communication refers to a local ballot question and is targeted to the relevant electorate where the local ballot question appears on the ballot.

(A person who knowingly violates Section 57 is guilty of a misdemeanor punishable by a maximum fine of \$1,000 or imprisonment for up to one year, or both, if the violator is an individual. If the violator is not an individual, the penalty is a maximum fine of \$20,000 or a fine equal to the amount of the improper contribution or expenditure, whichever is greater.)

The bill defines "local ballot question" as a ballot question of a local unit of government to be voted upon in that local unit.

Disclaimer Requirement Exceptions

Except as otherwise provided, the Act requires a billboard, placard, poster, pamphlet, or other printed matter referring to an election, a candidate, or a ballot question to bear the name and address of the person paying for it. With certain exceptions, if the printed matter relating to a candidate is an independent expenditure that is not authorized in writing by the candidate's candidate committee, it must contain the following disclaimer: "Not authorized by any candidate committee".

A radio or television paid advertisement referring to an election, a candidate, or a ballot measure also must identify the sponsoring person and bear the name of the person paying for the ad. If it relates to a candidate and is an independent expenditure, the ad must contain the following disclaimer: "Not authorized by any candidate". If the ad relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate, it must contain a disclaimer indicating that it is authorized by the candidate or the candidate's committee.

Under the bill, these disclaimer requirements do not apply to a communication otherwise entirely exempt from the Act under Section 6(2)(j). (That section excludes from the definition of "expenditure" an expenditure for a communication that does not in express terms advocate the election or defeat of a clearly identified candidate so as to restrict the application of the Act to communications containing express words of advocacy of election or defeat, such as "vote for", "elect", "support", "vote against", or "defeat".)

In addition, the Act requires a prerecorded phone message to bear the name and telephone number, address, or other contact information of the person paying for it, if the message in express terms advocates the election or defeat of a clearly identified candidate, or the qualification, passage, or defeat of a ballot question. Under the bill, a prerecorded phone message subject to this provision is not required to contain a disclaimer.

Filing Requirements

Under the bill, an independent committee, or a political committee other than a House or Senate political party caucus committee required to file with the Secretary of State (SOS), must file campaign statements required by the Act according to following schedule:

- By April 25 each year with a closing date of April 20.
- By July 25 of each year with a closing date of July 20.
- By October 25 of each year with a closing date of October 20.

The Act previously contained this schedule but also included a February 15 filing requirement, which the bill deleted.

In addition to any other requirements of the Act for filing a campaign statement, a committee must file a campaign statement by January 31 of each year. The Act previously made an exception to this requirement for an independent committee or political committee required to file with the SOS. The bill deleted that exception.

The Act requires a committee, within 10 days after being formed, to file a statement of organization with designated filing officials. The statement must contain information specified in the Act, including the name, street address, and, if available, telephone number of the committee, as well as its treasurer or other individual designated as responsible for record-keeping, report preparation, or report filing. The bill also requires the statement to include the electronic mail address of the committee, the candidate, and the treasurer or other designated individual.

Complaint of Violation; Posting Requirements; Civil Fine

The Act allows a person to file with the Secretary of State a complaint that alleges a violation of the Act. The person alleged to have violated the Act may submit a response to the SOS, and the person making the complaint may submit a rebuttal statement. The SOS is required to investigate the allegation and post on his or her internet website whether or not there may be reason to believe that a violation has occurred. Previously, this posting was required within 60 business days after the SOS received a rebuttal statement (if one was received). The bill changed the timeline to not later than 45 days after a rebuttal statement was received.

Previously, the Act required the Secretary of State to post on his or her website any complaint, response, or rebuttal statement regarding the violation and related correspondence, if the SOS determined that there could be a reason to believe that a violation had occurred. Under the bill, when the Secretary of State determines whether there may be reason to believe that a violation of the Act occurred or did not occur or determines to terminate the proceedings, the SOS must post any complaint, response, or rebuttal statement and any correspondence that is dispositive of that violation or alleged violation.

If the Secretary of State determines after an administrative hearing that a civil violation of the Act has occurred, he or she may issue an order requiring the violator to pay a civil fine. Previously, the fine was *equal to* triple the amount of the improper contribution or expenditure plus up to \$1,000 for each violation. Under the bill, the fine is *not more than* triple the amount of the improper contribution or expenditure, plus up to \$1,000 per violation.

Depository Accounts of Committee with Nonresident Treasurer

The Act requires a campaign committee to have a treasurer who is a qualified elector of the State. A committee other than a campaign committee also must have a treasurer who is a qualified elector of the State if the committee conducts business through an office or other facility located in Michigan. If a committee is not required to have as its treasurer a qualified elector of this State, it must have as its treasurer an individual who is a resident of another state.

A committee with a nonresident treasurer is required to have one account in a financial institution as its official depository for the purpose of depositing all contributions it received that are in the form of, or converted to money, checks, or other negotiable instruments, and

for the purpose of making all expenditures. Previously, secondary depositories could be used only for the purpose of depositing contributions and promptly transferring them to the committee's official depository. Under the bill, secondary depositories may be used only for this purpose or for depositing, dividing, and transferring contributions that are aggregated with dues or other payments.

MCL 169.204 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government. The bill prohibits corporations and public bodies from making certain expenditures; however, it also deletes or provides exemptions from other requirements of the Act. It is not known whether these changes will lead to a net increase or a net decrease in civil fines and misdemeanor and felony prosecutions and convictions under the Act. There have been no felony dispositions under the Act since at least 1999.

An increase in misdemeanor and felony prosecutions and convictions will increase resource demands on local court systems, law enforcement, and jails or prisons. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increases the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government could be approximately \$34,550 per prisoner per year.

Conversely, to the extent that the bill prevents misdemeanor and felony prosecutions and convictions, costs will be avoided.

Any associated increase in penal fine revenue will increase funding to public libraries. Civil fines imposed for civil violations of the Act must be deposited in the General Fund.

In addition, the Department of State has indicated that the bill will have a very minimal fiscal impact on the Department's resources. Any costs associated with the bill will be absorbed within the Department's annual appropriations. The costs are indeterminate and will depend on the number of additional hearings that may result from the bill; however, any additional costs are expected to be minimal.

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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.