

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

RECEIVED

MAY 17 1988

Senate Bill 789

Sponsor: Senator Phil Arthurhultz

Committee: Government Operations

Date Completed: 4-15-88

Mich. State Law Library

SUMMARY OF SENATE BILL 789 as introduced 3-22-88:

The bill would amend the campaign finance Act to make numerous changes, including the following:

- Creating a Campaign Commission.
- Eliminating officeholder expense funds.
- Indexing contribution and expenditure limits to inflation.
- Altering requirements regarding the filing of campaign statements.

Following is a detailed description of the bill's provisions.

Create Campaign Commission

The bill would create the Michigan Campaign Commission within the Department of State to "perform such duties as are or may hereafter be prescribed by law or by the Secretary of State". The Commission would consist of four persons appointed by the Governor with the advice and consent of the Senate. The Senate Majority Leader and Minority Leader, and the Speaker of the House and House Minority Leader would each be required to recommend one candidate for membership on the Commission. At no time could more than two Commission members belong to the same political party. Commission members could only serve one four-year term. A candidate for public office would not be eligible to serve as a member.

Three members of the Commission would constitute a quorum to conduct business, but no action could become effective unless at least one member appointed from each major political party concurred in the action. Members would be entitled to necessary expenses as determined by the Secretary of State but would receive no other compensation.

Eliminate Officeholder Expense Funds

The bill would repeal Section 49, which allows an elected public official to establish an officeholder expense fund (OEF).

Section 49 provides that an officeholder's OEF can be used for "expenses incidental to the person's office", but may not be used to make contributions and expenditures to further the person's nomination or election to office. Contributions and expenditures must be recorded and reported to the Secretary of State each year.

Contribution and Expenditure Limits

Currently, the Act requires the Secretary of State, in each odd-numbered year, to recommend adjustments to the dollar value of the contribution limits specified in the Act that various committees are allowed to accept or contribute. The recommendations must be approved by the Legislature. The bill provides that, effective January 1,

1989, contribution and expenditure limits would be adjusted by the percentage increase or decrease in the Detroit Consumer Price Index (all items). For 1989, the adjustment would be made by comparing the Index for December, 1976 to the Index for November 1988. The percentage of change would be multiplied by the existing contribution and expenditure limits in the Act, and the results would be added to the existing contribution and expenditure limits and rounded up to the nearest \$25. These amounts would be the new limits for the Act for a two-year period. New limits would be calculated in the same manner to become effective January 1, 1991, and every two years thereafter. The Secretary of State would be required to determine and announce the adjusted amounts on or before December 15 each year that a general election is held.

Under the bill, if the candidate committee of a candidate for statewide office, including a candidate committee of a candidate for Governor that did not apply for State campaign funds, accepted from the candidate and the candidate's immediate family contributions for an election that totaled more than 100 times the amount permitted to be contributed, the candidate committee would have to notify the Secretary of State in writing of receipt of the total contribution. (Currently, the limit is \$1,700 and does not apply to contributions from independent committees or political party committees.) Within two business days of receiving this information, the Secretary of State would have to notify all the candidates for that office. The candidate committees of these candidates would then be allowed, for the remainder of the election, to receive from contributors, other than independent or political party committees, contributions of up to 10 times the limit normally allowed. In addition to this expanded limit, a candidate committee for a candidate for Governor would also be permitted, for the remainder of an election, to accept from independent or political party committees amounts of up to 30 times the limit normally allowed (currently \$1,700). The expenditure limits on a candidate committee for a candidate for Governor also would be waived under this condition.

Campaign Statement Filing

The bill would require tri-annual reporting to the Secretary of State by an independent committee or a political committee and require independent or political committees to file certain statements regarding special elections.

The bill would require an independent or political committee to file a campaign statement according to the following schedule:

S.B. 789 (4-12-88)

OVER

- For odd-numbered years, no later than January 31 to cover activity through December 31 of the previous year; no later than July 25 to cover activity through July 20; and no later than October 25 to cover activity through October 20.
- For even-numbered years, no later than April 25 to cover activity through April 20; no later than July 25 to cover activity through July 20; and no later than October 25 to cover activity through October 20.

Other committees (candidate committees, political party committees, and ballot proposal committees) would continue to report expenditures on behalf of or in opposition to a candidate no later than the 11th day before an election and no later than the 30th day after an election.

The bill would require an independent or political committee that is required to file a campaign statement, and that made an independent expenditure 45 days prior to a special election, to file a report of the expenditure within 48 hours with the Secretary of State. The report would have to be made on a form provided by the Secretary of State and would have to include the date of the independent expenditure, the amount, a brief description of the nature of the expenditure, and the name and address of the person to whom it was paid. The brief description would have to include the name and office sought by the candidate or the name of the ballot question, and whether the expenditure supported or opposed the candidate or question. An independent or political committee, however, would not be required to submit this report if the independent expenditure were going to be reported in a campaign statement required to be filed before the election in which the expenditure was made.

As a rule, the bill would exempt independent committees and political committees from having to report on the basis of individual elections, which they currently must do. Instead, reporting by independent committees and political committees could be based on the calendar year. An independent committee or a political committee that did not expect to receive or spend more than \$1,000 in a calendar year could make a sworn statement to that effect when filing its statement of organization, and if the committee's contributions and expenditures did not exceed \$1,000 in that year, it would not be required to file any further campaign statements. If such a committee did exceed \$1,000 in receipts and expenditures for the calendar year, it would then be subject to the Act's full campaign filing requirements.

As is currently the case, a candidate committee, political party committee, or a ballot proposal committee could file a sworn statement that the committee did not expect to receive or spend in excess of \$1,000 for each election. A candidate committee that filed such a sworn statement would not be required to file a statement of dissolution (as is required of other committees) if the committee failed to receive or expend in excess of \$1,000 and the candidate either: (a) were defeated and had no outstanding campaign debts or assets; or, (b) vacated elective office and had no outstanding campaign debts or assets.

The bill provides that the Act's late filing fees and penalties regarding committees that miss filing or statement deadlines would be assessed using business days, instead of calendar days as is currently the case.

(An "independent committee" is a committee other than a political party committee that is organized at least six months before an election for which it expects to accept contributions or make expenditures in support of or opposition to a candidate for State elective office, and that receives contributions from at least 25 persons and spends

money in support of or in opposition to three or more candidates for State elective office in the same calendar year. A "political committee" is a committee that is not a candidate committee, political party committee, independent committee, or ballot question committee.)

Statement of Organization

Under the Act, a committee is required to file a statement of organization with the filing officials as designated in the Act. In most instances, the filing officials are the Secretary of State and the county clerk. The filing officials are required to maintain a committee's statement of organization until notified of the committee's dissolution. The bill would require that a statement of organization be maintained for five years after a committee's dissolution.

Under current law, if the information in a statement of organization is changed (if the name or address of the committee changed, for instance), failure to amend the statement within 10 days can subject the committee to a late filing fee of \$10 for each day the statement is not filed, up to a maximum of \$300. The bill would eliminate these provisions and would instead require that an amendment to a statement be filed when the next campaign statement was required to be filed. Failure to file a required change could result in a fine of up to \$1,000.

The bill provides that a committee that was a separate segregated fund of a corporation would have to include the name of the corporation in its statement. A committee that was not a separate segregated fund would be required to name the person or persons who sponsored the committee, if any, or with whom the committee was affiliated.

Ballot Question Committee Statements

Ballot question committees are required under the Act to file a pre-election campaign statement at least 11 days before an election. The committee or its treasurer can be required to pay a late filing fee for each day the statement is not filed. The late filing fee is \$25 for the first day, \$50 for the second, \$75 for the third, and \$100 per day for the fourth and each day thereafter, up to \$1,000. The bill would eliminate this schedule and instead provide that the late filing fee would be \$10 for each business day the statement was not filed, up to \$300. A person who violated this provision for more than seven days, however, would be guilty of a misdemeanor punishable by a fine of up to \$1,000 or imprisonment for up to 90 days, or both.

Waiver of Late Filing Fees

The bill provides that a committee, other than a candidate committee, would not be required to pay a late filing fee for a statement of organization, a campaign statement, a closing campaign statement, or a ballot question committee statement, if all of the following conditions were met:

- A committee failed to file a statement of organization, and the Secretary of State notified the committee of its failure to file a statement of organization.
- At the same time or after the notice was sent, the Secretary of State notified the committee of its failure to file a campaign statement that was due for a period before the failure to file a statement of organization was sent.
- Within 10 business days after the notice of failure to file statement was sent, the committee filed a statement of organization and all required campaign statements.

This waiver would not apply to a committee that filed a statement of organization before the Secretary of State

sent a notice of failure to file. If a committee failed to file the required statements before the 11th day after notice of failure to file was sent by the Secretary of State, the committee would be assessed the late filing fees that would have been imposed if not for the waiver provisions.

Contents of Campaign Statement

The Act requires a committee, other than a political party committee, to include information in its campaign statement as listed in the Act. The bill would eliminate a number of the Act's requirements for the reporting of contributions, and instead would require that a campaign statement include the name and street address of each "person", other than an individual, (defined below) from whom contributions were received during the period covered by the statement; an itemization of the amounts contributed; the date each contribution was received; and the cumulative amount contributed by that person for that election. The statement would also have to include the total expenditures by the committee of \$100 or less (currently \$50 or less) made during the period covered by the statement, and the full name and street address of each person to whom expenditures totaling \$100 or more (currently \$50 or more) were made. Expenditures of \$100 or less made to or on behalf of another committee, candidate, or ballot question would not have to be included on the statement. Expenditures of \$100 or more made to or on behalf of another committee, candidate, or ballot question would have to be itemized on the statement.

Contributions from persons (individuals included) during the statement period would have to be included on the statement with the person's full name, street address, amount contributed, date received, and the cumulative amount contributed by the person for that election. As under current law, the statement would have to include a person's occupation, employer, and principal place of business if his or her total contributions were over \$200.

Contributions

The Act requires committees to report a late contribution within 48 hours of receiving the contribution. The bill provides that a person who failed to report a late contribution as required would be subject to a civil penalty of up to \$1,000.

The bill provides that each person who received a contribution for a committee would be required to forward the contribution to the committee within 30 days of its receipt, and to furnish the committee with the name and address of the contributor. A person who violated this provision would be subject to a civil penalty of up to \$1,000.

The bill specifies that two or more persons, other than individuals, could hold a joint fund-raiser if the receipts and expensed were shared proportionately. The bill would not prevent persons, other than an individual, from participating in fund-raising efforts with other persons in tandem or serial fund-raising events where receipts and expenditures were separate.

State Campaign Fund

The State Campaign Fund receives money from persons who designate that \$2 of their income tax liability be dedicated to the Fund. Money from the Fund is made available to candidates for the office of Governor who qualify to receive money under the requirements of the Act. The Act provides that an amount designated by taxpayers each year must be appropriated from the General Fund to the State Campaign Fund. The bill provides that if the Legislature failed to appropriate the required funds before October 1 of the year preceding a gubernatorial election year, the expenditure and

contribution limits of the Act for gubernatorial candidates would not apply to contributions received or expenditures made until 90 days after the appropriation was made.

Secretary of State Rulings

The Act makes several requirements of the Secretary of State regarding the administration of the Act, among them to promulgate rules and issue declaratory rulings to implement the provisions of the Act. The bill provides that a declaratory ruling by the Secretary of State could be issued only if the person who requested the ruling provided a "reasonably complete statement of facts necessary for the ruling", or if the Secretary of State or the Michigan Campaign Commission (created by the bill) had permitted the person requesting the ruling an opportunity to supply supplemental facts necessary for the ruling. A request for a declaratory ruling would have to be made public within 48 hours after its receipt. Written comments on the request could be submitted to the Secretary of State by an interested person within five business days after the request was made public. Within 30 days of a request the Secretary of State would have to submit a proposed declaratory ruling to the Michigan Campaign Commission. The Commission would have to approve or reject the proposed ruling. Rejection of a proposed ruling would require the Secretary of State to provide the person who requested the ruling an opportunity to submit supplemental facts, and to issue a revised proposed ruling for consideration by the Commission for approval or rejection.

A declaratory ruling or interpretive statement could not state a general rule of law, other than that already stated in the Act, until the general rule were promulgated by the Secretary of State. The Secretary of State's office would be required to give wide public dissemination to an annual summary of the declaratory rulings and interpretive statements it issues.

Definitions

The bill would amend a number of the definitions in the Act.

Currently, a "committee" is defined as a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against a candidate or a ballot question, if the contributions received total \$200 or more or expenditures made total \$200 or more. The bill would raise this level to \$500. The bill specifies that a person who makes a contribution to a ballot question committee would not be considered a committee for purposes of the Act. Currently, a "person" is defined in the Act as a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly.

The bill would delete the definition of "business" from the Act.

The bill specifies within the definition of "contribution" that a contribution would include the full purchase price of tickets or payments of an attendance fee for events such as lunches, dinners, rallies, testimonials, and other fund-raising events. The bill would raise from \$250 to \$500 the amount not considered a contribution for personal travel expenses by an individual in a calendar year, if the costs were voluntarily incurred without any understanding that such costs would be repaid, directly or indirectly.

The bill also provides that a contribution would not include food and beverages valued at up to \$100 per year that were donated by an individual, and for which

OVER

reimbursement was not made. Currently the Act allows the donation of up to \$50 value per year in food and beverages before it is considered a contribution.

The bill would amend the definition of "elective office" to provide that the office of school board member in a primary, third class, or fourth class school district would not be considered an elective office.

The bill would amend the definition of "expenditure" to provide that an expenditure would not include any of the following:

- An offer or tender of an expenditure if rejected or returned.
- An expenditure for communication by a person with the person's officers and directors, or employees or spouses of employees who have policy-making, managerial, professional, supervisory, or administrative nonclerical responsibilities. A communication could include a republication of materials prepared by another person if produced at the expense of the person.
- Legal and accounting costs incurred by a person for the purpose of ensuring compliance with the Act.
- Payments to provide security for a candidate.
- Payments made or costs incurred in response to a written complaint filed pursuant to the Act or to rules, or in response to a notice of error or omission.
- Post-election "winding down" expenditures made within 90 days after an election including, but not limited to, thank-you dinners or communications.
- Late filing fees assessed under the Act.
- Expenditures for compliance with the Michigan Election Law.

Currently, "independent expenditure" means an expenditure by a person if it is not made at the direction of, or under the control of, another person and is not a contribution to a committee. The bill specifies that an independent contractor could contract with both a candidate committee and a person making independent expenditures in a campaign for the same office, as long as the contractor did not give the candidate committee direction or control of the person's expenditures.

Under the Act, a "qualifying contribution" is a contribution of \$100 or less made by a person by written instrument to a candidate committee of a candidate for the office of Governor, if made after April 1 of the year preceding a gubernatorial election year. In addition, not more than \$100 of a person's total aggregate contribution may be used as a qualifying contribution in any calendar year. The bill would raise the \$100 limits to \$200, and require the Secretary of State to promulgate rules establishing reasonable standards to be uniformly applied to identify errors and deficiencies in qualifying contributions submitted. A qualifying contribution could not be rejected on the basis of a standard not set forth in the rules. Rules would have to be promulgated not later than April 1 of the year preceding a gubernatorial election year, and could not be changed until after the election.

MCL 169.201 et al.

Legislative Analyst: G. Towne

FISCAL IMPACT

The creation of the Michigan Campaign Commission would include reimbursement to members for actual and necessary expenses. A rough estimate of direct expenses for the four-member Commission is approximately \$10,000. This does not include other meeting expenses or support staff requirements.

The repeal of authorization for the officeholders expense fund could result in an undetermined reduction in administrative costs incurred by the Department of State for monitoring fund use.

According to the Department of State, the waivers of late filing fees in Section 17(3) could reduce State revenue by an indeterminate, but minimal amount. The Department of State also notes that there could be an increase in filings and workload from the bill, requiring additional personnel and resources to conform to legislatively mandated time schedules.

Fiscal Analyst: G. Cutler

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.