



**House
Legislative
Analysis
Section**

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CAMPAIGN FINANCE REFORM

**Senate Bill 448 (Substitute S-1) as passed by the
Senate**

First Analysis (6-6-89)

RECEIVED

Sponsor: Sen. Dick Posthumus
Senate Committee: Government Operations
House Committee: House Oversight

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THE APPARENT PROBLEM:

The campaign finance act (Public Act 388 of 1976) contains detailed provisions concerning the establishment of campaign committees and the regulation of campaign contributions and expenditures, as well as providing for public funding of gubernatorial elections through a taxpayer-supported state campaign fund. The act was intended to provide the public with information concerning campaign finances both before and after elections and to establish accountability for the proper recording and reporting of campaign information.

However, in its present form the act contains serious flaws that militate against the full and accurate disclosure of money spent in elections. For example, political action committees ("PACS," called "independent committees" in the act) are required to disclose election expenses only when made directly to or on behalf of candidates. Thus, it is possible for a PAC to raise large sums of money, transfer it to a second PAC, and never have to file a full disclosure report. And since the second PAC must only reveal the lump sum given by the first PAC, the identity of the original contributors need never be made public.

A second major loophole has to do with the \$1,000-per-election waiver allowed by the act. Under present law, a committee may spend or receive up to \$1,000 in an election before it must file detailed pre-election, post-election, and annual campaign statements with the Department of State. However, independent committees and political committees, unlike the other committees under the act (candidate committees, political party committees, and ballot proposal committees), keep their books on a calendar year basis, rather than organizing election-by-election, since they can't predict at the beginning of any given year how many elections they'll be involved in. An independent committee can spend money in any number of primary, special, and general elections, which means that it could spend thousands of dollars a year and still escape the reporting requirement, so long as it didn't spend more than \$1,000 in any one election. Finally, the sheer number of reports that independent committees and political party committees now must file reportedly make it difficult for the Bureau of Elections in the Department of State to obtain an accurate picture of a committee's activity. A PAC might file up to a dozen or more reports a year, depending on the number of elections (primary, special, and general) it gets involved in, a situation which, incidentally, PACs themselves find excessively burdensome. (A Department of State survey of independent and political committees found that over 70 percent of survey respondents found the present reporting requirements burdensome and would prefer a quarterly reporting system over the present election-by-election reporting system.)

Legislation has been proposed that would address these, and other, issues.

THE CONTENT OF THE BILL:

The bill would amend the campaign finance act in a number of ways, with the most substantive changes being made to the reporting schedule for independent committees and political committees and to the provisions governing public funding of gubernatorial campaigns. In addition, the bill also would change contribution limitations to an "election cycle" rather than "per election" basis, establish a timetable for declaratory rulings, create a civil enforcement process, allow out-of-state committees to have nonresident treasurers, and make a number of other changes in the act's reporting requirements.

Reporting by independent or political committees. Independent committees and political committees currently must file campaign reports eleven days before each election and thirty days after each election in which the committee spends more than \$1,000 on behalf of a candidate. The bill would require instead that these committees file campaign reports three times a year (unless they qualify for a waiver because they did not spend or receive more than \$1,000 for the calendar year), and would exempt them from having to file annual campaign reports. However, if an independent committee or a political committee made an independent expenditure (that is, spends money on behalf of a candidate or a ballot question independently of, and without contributing to, the candidate's committee or the ballot question committee) within 45 days before a special election, the committee would have to file a report with the secretary of state within 48 hours after the expenditure.

Gubernatorial election funding. The bill would make a number of changes in the provisions governing public funding of gubernatorial elections, including raising the expenditure limit, allowing a candidate to exceed the expenditure limit under certain circumstances, and allowing public funding of candidates in uncontested primary elections.

Under present law, unopposed candidates in gubernatorial primaries are not eligible for public funding unless a major party has a contested nomination for the office (in which case, the unopposed candidate is eligible for 25 percent of the expenditure limitation). The bill would strike the language regarding uncontested gubernatorial primaries, which means that unopposed candidates for governor would qualify for the maximum public funds of 66 percent of the expenditure limitation.

The expenditure limit for candidate committees for the office of governor, which now is \$1 million, would be raised to \$1.5 million in the aggregate for one election, and the state central committee contribution limit would be changed from the present 25 percent of the candidate's expenditure limit to \$750,000 per election cycle. (Note: This figure corresponds to what the dollar amount would be

er election as expressed in terms of a percentage of the increased expenditure limit. This increase in the expenditure limit obviously also would result in an increase in the dollar amounts allowed or required by the act that are expressed as a percentage of the expenditure limitation, such as, for example, the 66 percent maximum public funds allowed for a primary election.)

gubernatorial candidate who received public funds currently is prohibited from spending more than \$1 million. The bill would allow a candidate who was receiving public funds to exceed the proposed \$1.5 million expenditure limit if an opposing candidate who was not receiving public funds used more than \$340,000 of his or her money (or that of his or her family) in an election cycle. The candidate receiving public funds would not be entitled to any additional public funds, but would be allowed to spend more than \$1.5 million for that particular election.

Election cycle contribution limits. The campaign finance act sets certain limits on how much individuals and groups can contribute to candidates for state offices for each election. The bill would limit contributions on an election cycle basis, rather than on a per election basis, basically doubling the existing limits (except for increasing by \$100 per election cycle the limit for contributions to Senate candidates).

Election cycle would be defined for a general election as the period beginning on the day following the previous general election in which the office appeared on the ballot and ending on the day of the next general election in which the office appears on the ballot. For a special election, the election cycle would begin the day the special election was scheduled or the date on which the office became vacant (whichever were earlier) and would end on the day of the special election.

Current and proposed contribution limits can be compared as follows:

Limit	House	Senate	Other
Current (per election)	\$250	\$ 450	\$1,700
Current (primary and general)	\$500	\$ 900	\$3,400
Proposed (election cycle)	\$500	\$1,000	\$3,400

Independent committees and political party committees other than state central committees would continue to be able to contribute ten times the above amounts. (State central committees may contribute up to ten times these amounts to candidates for the state legislature, and up to twenty times these amounts to candidates for other state offices.)

Declaratory rulings. The bill would provide a mechanism for public comment and a 60-day timetable for the release of declaratory rulings and interpretative statements by the secretary of state.

Civil enforcement. The bill would establish a civil hearing process for the processing of complaints and other violations, and would give the secretary of state the authority to issue an order requiring someone who made an improper contribution or expenditure to pay a civil fine equal to the amount of the improper contribution or expenditure plus up to an additional \$1,000 for each violation.

In addition, the bill would decriminalize certain violations of the act (failing to file required amendments to statements of organization within 30 days of a change, knowingly filing incomplete or inaccurate reports), imposing instead civil fines of up to \$1,000.

Committee treasurers. The bill would allow non-residents to be committee treasurers under certain circumstances, and would allow the designation of someone other than the committee treasurer to be responsible for the committee's record keeping and report preparation and filing.

Presently, the campaign finance act requires that the treasurer of a committee other than a candidate committee be a qualified voter in Michigan and that the committee have an account in a financial institution located in Michigan. The bill would delete these requirements, and would allow a committee (other than a candidate committee) to have a treasurer who is not a qualified voter in Michigan if the committee were not conducting business through an office or other facility located in Michigan. A committee with a nonresident treasurer also would be required to appoint the secretary of state as the committee's agent so that legal process affecting the committee would be served on the secretary of state and would have the same effect as if served on the committee itself.

The bill also would allow a committee to designate someone other than the committee treasurer to carry out certain duties and responsibilities (basically, those of handling the books and preparing and filing reports).

Joint fundraising. The bill would allow joint fundraisers, including joint fundraisers between a candidate committee and the candidate's officeholder expense fund (OEF). Receipts and expenditures of the fundraiser would have to be shared proportionately, except in the case of a joint fundraiser between a candidate committee and an OEF; the candidate committee would have to pay all of the expenses and the receipts would be shared proportionately between the candidate committee and the OEF, except for any corporate contributions, which would have to be deposited in the OEF account.

Miscellaneous. The bill also would make a number of other changes, including raising the threshold amount for committees from \$200 to \$500, raising the contribution exemption for volunteer personal services and for food and beverages donated by individuals, exempting certain school board members (from school districts with fewer than 2,400 students) from the act's filing and reporting requirements, and requiring that someone receiving a contribution from one committee for the purpose of delivering it to another committee to either deliver it in ten business days or return it.

MCL 169.201 et al

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have minimal fiscal implications for the Department of State, with possible increased administrative costs because of the administrative changes proposed by the bill. (5-16-89)

ARGUMENTS:

For:

The bill would close at least two major loopholes in Michigan's campaign finance act that presently allow large sums of undisclosed campaign money to be spent in

elections. Under present law, an independent committee (a "political action committee" or "PAC") may raise large sums of money, transfer it to a second PAC, and never file a disclosure report so long as it never makes expenditures in support of or opposition to a candidate. The PAC receiving the transferred money is only required to disclose a lump sum receipt from the first PAC, and the original contributors' identities remain off the public record. In addition, the "per election" reporting waiver potentially allows a PAC to spend thousands of dollars a year without having to report these expenditures, so long as they don't spend more than \$1,000 on any one election.

The bill would improve disclosure of election spending by making political committees and independent committees report all of their activities, not just those on behalf of candidates, three times a year. The July and October deadlines would allow the secretary of state to monitor pre-primary and pre-general election spending much more accurately than presently, and requiring three longer reports a year (instead of the current numerous shorter reports covering short periods of time) will make it easier for the department and the public to get an accurate picture of each committee's financial activities.

Finally, this proposed system would make reporting simpler for the committees themselves, without sacrificing meaningful disclosure by the committees. Independent committees and political committees already commonly keep their books on a calendar year basis instead of an election basis. From an accounting standpoint, a calendar year reporting system is more practical because at the beginning of any given calendar year, a committee does not know how many elections it will be involved in.

For:

Many committees name honorary treasurers for fundraising purposes and have the committee staff do the actual record keeping. The bill would recognize and regularize this practice, as well as ease the difficulty that many out-of-state committees have in complying with the current requirements that every committee have a treasurer who is a qualified Michigan voter and an account in a financial institution located in Michigan.

For:

Under the present law, nearly all penalties are criminal penalties (mostly misdemeanors) that have been difficult to enforce, given the limited enforcement powers granted to the Department of State. Creating a civil enforcement procedure should result in more effective enforcement of, and compliance with, the law.

For:

Many of the amendments would ease administrative requirements that have proven burdensome or of little value to the disclosure of campaign finances.

POSITIONS:

The Department of State supports the bill. (6-1-89)

The Michigan State Chamber of Commerce supports the bill. (6-1-89)

Common Cause of Michigan supports the bill. (6-1-89)