



**House
Legislative
Analysis
Section**

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**ALLOW NEW, LEGISLATIVE
POLITICAL PARTY PACS**

**House Bill 5410 (Substitute H-2)
First Analysis (11-30-95)**

**Sponsor: Rep. Susan Grimes Munsell
Committee: House Oversight and Ethics**

THE APPARENT PROBLEM:

Although most ordinary voters do not understand how money for political campaigns is raised and spent, people who report on or are active in partisan electoral politics generally appear to agree that, in practice, the existing system of raising money through political action committees or PACs virtually ignores the campaign contribution limits placed on PACs. Under the Michigan Campaign Finance Act, PACs that are defined under the act as "independent committees" can contribute up to \$5,000 to each candidate for state representative, \$10,000 to each candidate for state senator, and \$34,000 for each statewide candidate. State central political party PACs can contribute double these amounts. Legislative caucuses can and do form their own "independent committees" (or PACs), which are known informally as "caucus committees," to raise and funnel money to their party's candidates for legislative office. Despite the fact that these "caucus committees" have legal limits on the amount of money they may give to candidates, because there is no limit on the number of such PACs that the caucuses can create, the caucuses can, in effect, give unlimited amounts of money to their candidates by creating new PACs or funneling money from one PAC to another. Although legal, this creative use of campaign financing makes it difficult for the public to track campaign spending because of the number of PACs involved. Some people argue that limiting the number of caucus committees, while eliminating the spending limit, would at least allow for public accountability.

Legislation has been introduced to address this, and other, issues.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Campaign Finance Act (MCL 169.205 et al.) to create four new legislative "political party caucus committees" -- two each for the House of Representatives and the Senate -- which would be allowed to make unlimited contributions to candidates running for state legislative office. The bill also would (a) require that all other so-called "caucus committees" be dissolved, (b) regulate political contributions by Indian tribes, (c) change reporting

requirements for voter registration and election day activities, (d) prohibit campaign contributions by "public bodies," and (e) add fines for failure to report late contributions.

Political party caucus committees. The bill would allow each of the four House and Senate caucuses to have a single "political party caucus committee." The four caucus leaders would be required to designate the independent committee (see BACKGROUND INFORMATION below) that would be their caucus's political party caucus committee within 30 days after the bill took effect. Also within this same period of time, the legislative caucuses would be required to dissolve all of their other independent committees.

Currently, the act limits the amount that independent committees may contribute during each election cycle to candidates for state elective office to no more than ten times the amounts allowed for contributors other than independent committees or political party committees. The bill would specifically exempt political party caucus committees from this limit.

The political party caucus committees would be required to file quarterly campaign statements with the secretary of state on dates specified in the bill (January 31, April 25, July 25, and October 25).

Indian tribe PACs. The bill would require all federally recognized Indian tribes ("domestic dependent sovereigns") to establish separate segregated funds (PACs) if they wanted to make political contributions to candidates or ballot question committees, and would subject PAC contributions to the same limits that other independent committees operate under (namely, ten times the individual contribution limits). Tribes could solicit PAC contributions from their tribal members.

Reporting of voter registration and election day activities. Currently, the Campaign Finance Act requires that certain expenditures be reported on campaign statements, but exempts from its definition of reportable "expenditure" (among other things) expenditures for nonpartisan voter registration or

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nonpartisan get-out-the-vote activities. The bill would require that all political action committees report certain election day activities, exempting only federally-recognized non-profit organizations and the secretary of state and voter registration officials from having to report voter registration or get-out-the-vote expenditures.

The current exemption of voter registration and get-out-the-vote activities from expenditures that must be reported on campaign finance statements specifically includes such activities when conducted by the secretary of state "and other registration officials" under the provisions of the Michigan Election Law. The act specifically doesn't exempt such activities from reporting when sponsored or financed by candidates or groups of candidates (including elected officials who aren't up for reelection in the year in which the expenditures are made). The bill would restrict the existing reporting exemption of nonpartisan voter registration or get-out-the-vote expenditures to federally-recognized non-profit organizations and the secretary of state (and other registration officials), and would add certain election day activities (poll watchers, challengers, distribution of election day literature, canvassing of voters to get out the vote, or transporting voters to the polls) to the definition of (reportable) "expenditure." Finally, the bill would add a new reporting requirement for all political action committees, namely, an itemized list of all expenditures during the reporting period for election day busing of voters to the polls, get-out-the-vote activities, slate cards, challengers, poll watchers, and poll workers.

Prohibit campaign contributions by public bodies. The bill would define "public body" (which would include, but not be limited to, boards, commissions, authorities, or councils of legislative or governing bodies of the state or political subdivisions of the state that were legally empowered to exercise or perform governmental or proprietary authority), and would prohibit public bodies from making contributions or expenditures or providing volunteer personal services that were excluded from the act's definition of "contribution." A violation of this prohibition would be a felony, punishable by a fine of up to \$20,000 for violators who were not individuals, and by a fine of up to \$2,000 and imprisonment for up to one year for violators who were individuals.

Penalties for failure to report late contributions. The bill would add penalties for the failure to report late contributions as currently required under the act. The bill would impose late filing fees of \$25 for each business day the report remained unfiled up to a maximum of \$500.

Severability. The bill says that if any of its provisions were found invalid by a court, the remaining portions of the bill would remain in effect unless found invalid by a court also.

BACKGROUND INFORMATION:

Kinds of political action committees. The Michigan Campaign Finance Act defines "committee" (also known more informally as a political action committee or PAC) as a "person" who receives or expends at least \$500 in a calendar year for or against a candidate or ballot question. Currently, under the act, there are five kinds of committees: candidate committees, ballot question committees, independent committees, political committees, and political party committees. Candidate "committees" may be individuals (namely, the candidate); all other committees consist of organizations or groups of people (businesses, proprietorships, firms, partnerships, joint ventures, syndicates, business trusts, labor organizations, companies, corporations, associations, or committees) "acting jointly."

The five committees currently are as follows:

1. "Ballot question committees" act in support of, or in opposition to, the qualification, passage, or defeat of a ballot question. They do not receive contributions or make expenditures or contributions for the purpose of influencing voters for or against a candidate.
2. "Candidate committees" must be established by a candidate, and must be controlled and directed by the candidate.
3. An "independent committee" is a committee, other than a political party committee, that does the following before it contributes to a candidate for statewide office: It files a statement of organization at least six months before an election, receives contributions from at least 25 persons, and makes expenditures in support of, or in opposition to, at least three candidates in the same calendar year.
4. "Political party committees" are state central, district, or county committees of a political party which are committees under the act's definition. Each state central party designates the official party county and district committees, and there can't be more than one officially designated political party committee per county and per congressional district.
5. Finally, a "political committee" is a committee which isn't any of the other committees.

Current contribution limits. Currently, except for independent committees and political party committees, the Campaign Finance Act limits election cycle contributions by individuals to candidates ("a candidate committee of a candidate") for state office as follows:

- (1) \$500 for candidates for state representative;
- (2) \$1,000 for candidates for state senator: and
- (3) \$3,400 for other state candidates (governor, secretary of state, Michigan supreme court, board of education, and so forth).

Political action committees (PACs) -- independent committees and political committees other than state central committees (that is, congressional district or county committees) -- can make contributions to candidate committees that are up to ten times the amounts listed above (that is, \$5,000 for candidates for state representative, \$10,000 for candidates for state senator, and \$34,000 for statewide candidates). State central committees of political parties can make contributions to candidates for the state legislature (either for the state Senate or for the House of Representatives) that are up to ten times the amounts listed above for legislative candidates; for other state-wide offices, state central committees may contribute up to 20 times the amounts listed.

The rise of legislative caucus campaign committees. According to a June 1994 article in State Legislatures, legislative caucus campaign committees have proliferated in recent years and "legislative parties" have emerged as "the new engine of campaign power in state politics." Ten years ago, only 15 states had caucus campaign committees in all four caucuses (though another eight had "fledgling efforts" in at least one caucus). At the time the article was published last year, the number of states that had developed legislature-based campaign committees that operated in all four caucuses (or, in some cases, as joint House-Senate efforts) had risen to 40. According to the article, the rise of these legislative caucus campaign committees (LCCCs) is the result of a number of factors: increased "legislative professionalism" (the first legislatures to develop campaign committees were those with longer sessions, large professional staffs, and relatively well-paid, full-time members, namely, New York, Wisconsin, Ohio, California, and Illinois); heightened party competition, especially in "swing" districts, and the resulting, increasingly costly campaigns; party decline in the 1960s and early 1970s, which paralleled the erosion of patronage powers, the increasing independence of voters and candidates, and the loss of party control over the recruitment and

selection of candidates; historically weak parties in states with nonpartisan and reform traditions; the fact that some state parties are "the governor's" party or focus on statewide races and provide little help to legislators; and, as some political observers have speculated, because of campaign finance restrictions.

The article says, "Ultimately, the new legislative parties have a lot to do with money, the cost of legislative campaigns and changes in the campaign finance law. As campaign costs increase and restrictions limit PAC contributions, legislative caucus campaign committees become a strategic link between those who can raise money and those who need it most. . . . Legislative campaign committees help nonincumbent candidates and legislators in swing districts raise the necessary money to pay for increasingly costly campaigns." However, "[s]ince both caucuses have the same goal of winning seats, the escalating effect can be considerable."

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

By abolishing the plethora of existing "caucus" PACs, and allowing new single political party caucus committees for each caucus in the House and Senate, the bill would make it much easier to track expenditures made by the political parties. Disclosure of expenditures would be much easier to find, and more complete, because each of the four caucus committees would have to report all caucus expenditures on behalf of candidates, as well as having an additional reporting period (four, instead of the three for other independent committees) each calendar year.

Proponents of the bill also argue that by consolidating all of the existing caucus committees into single committee for each of the house caucuses, the bill will make the caucus committees' campaign practices more accountable to the caucus leaders. Under the current system, the content and quality of advertising by independent committees is difficult to control, and even if caucus members object to certain campaign advertising themselves, they really have little recourse. Clearly there is a need for someone to be responsible for overall caucus campaigning, and this would be facilitated by the bill.

Other positive changes that would be made by the bill include:

-- Indian tribes, who currently face no regulation of their spending on campaigns, would be subject to the same kinds of regulation and limitations that other organizations must operate under;

-- public schools (and other public bodies) would clearly be prohibited from using their employees' time to send out literature in support of millage proposals;

-- truly nonpartisan get-out-the-vote and election day activities, by federally tax-exempt organizations and the secretary of state and other voter registration officials, would continue to be exempt from the act's reporting requirements, while partisan expenditures on these activities would have to be disclosed as part of total campaign expenditures; and

-- failure to report late contributions would result in financial penalties, which should help encourage timely reporting of such contributions.

Against:

While disclosure may be the cornerstone of campaign finance reform, and while the bill may indeed make it easier to track expenditures by (and contributions to) political parties in election campaigns, the elimination of the limits on what these new legislative caucus committees could expend creates an enormous loophole in the Campaign Finance Act. It's not enough just to ensure disclosure of expenditures in election campaigns; the amount of money that can be spent by campaign contributors also needs to be limited. As the June 1994 State Legislatures article points out, even where legislative caucuses have supplanted the party structure in many state, their purpose is "traditional and time-honored -- to win election and to secure or protect legislative majorities. . . . Legislative campaign committees help nonincumbent candidates and legislators in swing districts to raise the necessary money to pay for increasingly costly campaigns. Since both caucuses have the same goal of winning seats, the escalating effect can be considerable." Not only could the bill drive up the already exorbitant costs of elections even higher -- thereby making candidates and officeholders even more indebted to the special interests paying for their campaigns -- this seems to go against other campaign finance reforms undertaken in Michigan and elsewhere. Earlier this year the House acted on a bill (House Bill 5074) that would put limits on contributions to candidates for local elections, with proponents arguing that imposition of contribution limits was necessary to prevent individuals and groups from having undue influence over local elected officials through large campaign contributions and that if contributors to candidates for state office had limits on their contributions, then surely contributors to

candidates for local office should too. Other states that have, or have had, legislative caucus campaign committees have not taken this drastic move. In 1993, New Jersey passed a package of reforms that strictly limits how much individuals and PACs can contribute directly to candidates, but allows contributions of up to \$25,000 per year to four designated legislative caucus committees or the state parties. Arizona, on the other hand, eliminated legislative caucus campaign committees altogether, but allows slightly more generous contributions by the state parties (as compared to other PACs) and exempts state party-coordinated campaign activities that benefit three or more candidates.

Proponents of the bill argue that it simply would preserve what already is going on (the targeting of particular candidates for contributions above those currently allowed in law) while at least greatly improving access to information on contributions and expenditures. But disclosure -- tracking who gives money to whom and how -- is possible now, as a flow chart presented to the House Oversight and Ethics Committee graphically illustrated.

Against:

Some of the bill's provision are not so much attempts to reform campaign financing but are simply efforts to weaken the ability of certain organizations to exercise their sovereign rights to advocate politically for their interests. To attempt to treat sovereign nations, which Native American tribes are, as though they were corporations or labor unions is legally questionable at best.

POSITIONS:

The Department of State supports the bill. (11-29-95)

The Michigan State Chamber of Commerce supports the bill. (11-28-95)

Common Cause of Michigan supports the bill. (11-28-95)

The Michigan Consumers Federation opposes the bill. (11-28-95)

The Michigan AFL-CIO opposes the bill. (11-28-95)

Michigan Citizen Action opposes the bill. (11-28-95)

■ 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.