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KEEP CAMPAIGN FINANCE REPORTS FOR 15 YEARS

House Bill 4026 (Substitute H-4) First Analysis (3-10-99)

Sponsor: Rep. Scott Shackleton
Committee: Constitutional Law and Ethics

THE APPARENT PROBLEM:

Currently, the Michigan Campaign Finance Act effectively requires that filing officials (such as county clerks and the secretary of state) keep statements or reports required to be filed under the act for five years, after which time the act requires that the statements or reports (or their reproductions) be destroyed.

Some people believe that campaign finance records should be kept for longer than five years, and legislation has been introduced to do this.

THE CONTENT OF THE BILL:

The Michigan Campaign Finance Act currently requires filing officials to preserve statements or reports required to be filed under the act for specific periods of time. Committees' statements of organization must be preserved for five years from the official date of the committee's dissolution, while statements or reports filed by candidates for offices with terms exceeding four years must be preserved for one year beyond that candidate's term of office, and any other statements or reports filed under the act must be preserved for five years from the date the filing occurred. After the required preservation period, the statements and reports (or the reproductions of the statements and reports) must be destroyed.

The bill would amend the act to require local filing officials to keep statements or reports filed with them under the act for five years (five years after a committee's dissolution for statements of organization, and five years after filing for any other statements or reports), if the committee filing the statement or report had not raised more than \$50,000. Statements and reports filed with the secretary of state -- and those filed with local filing officials by committees that had raised more than \$50,000 in an election cycle -- would have to be preserved for 15 years (15 years after a committee's dissolution, for statements of organization, and 15 years after filing for all other statements or reports). The bill also would make destruction of

statements or reports after the required preservation period permissible, rather than required.

MCL 169.216

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could result in increased record storage and retrieval costs to state and local government associated with the requirement that records filed locally and with the secretary of state under the Michigan Campaign Finance Act be kept for 15 years (5 years, for locally filed records if the committee filing the statements and reports spent \$50,000 or less in an election cycle). The actual costs would depend on a number of factors, such as the volume of records stored, the mechanism and medium for storage, and record storage, retrieval and reproduction costs. The bill could have Headlee implications associated with the requirement that local governments keep certain campaign finance records for at least 15 years. This requirement could be viewed by the courts as an unfunded state mandate. (3-10-99)

ARGUMENTS:

For:

According to the *Lansing State Journal* (February 8, 1999), after it reported in September of 1997 that Michigan stood alone among the country's 10 largest states in requiring the destruction of campaign finance records, the secretary of state said that the law should be changed so the records would be kept longer than five years. The bill would do this, increasing the amount of time that campaign finance records would have to be kept to 15 years instead of the current 5 years. It would address some of the concerns expressed by the Kent and Oakland county clerks regarding the expense of additional storage of all local campaign finance records by requiring that only the records of committees that spent a significant amount

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of money -- over \$50,000 -- in a local election cycle be preserved for the 15-year time period. Finally, the bill would remove the current statutorily-required destruction of campaign records after the prescribed preservation period, leaving their destruction or further preservation up to the discretion of the secretary of state or the local filing official. The bill would preserve the campaign records of historically important candidates and would increase the accountability of candidates for elected office, since their campaign records would be available to the public for longer periods of time than currently is the case.

Against:

While the concept of preserving important campaign finance records is sound, there may be some problems. First, by placing longer record retention requirements on local governments, the bill may constitute a state mandated cost to local units, and thereby fall under the Headlee provisions which require the state to pay for any additional costs it places on local units of government. While most of the state's 83 counties likely would not see an increase in the numbers of campaign finance records they would have to keep under the bill's provisions, this is not true of the largest counties -- such as Kent, Oakland, Macomb, Wayne, and possibly others -- where local election races in which candidates spend more than \$50,000 are not uncommon. Once a candidate in a local election -- such as county commissioner -- spent more than \$50,000 in an election cycle, the county clerk would have to keep the campaign finance records of that candidate for 15 years instead of the current 5-year requirement. Secondly, however, although Public Act 116 of 1992 allows state and local units of government to keep official records on optical storage disks in addition to the more traditional media of photographs, photocopies, and microfilm ("microcopy") -- with the administrative rules allowing optical disk storage taking effect in November of 1998 -- there may be a problem for the counties with implementing the act. It may be the case that while optical disk storage now is a legal medium for storing official records, the actual image on the storage disk -- which cannot be copied onto microfilm -- may not be able to be used to make hard copies. So counties wanting to use optical disk technology to save

space might actually wind up having to have duplicate storage media: optical disk storage and microfilm, which would hardly seem to address counties' problems with storage of official records. Finally, although the bill would remove the mandatory destruction of campaign finance records after the mandatory preservation period, the decision whether or not to keep such records still would be up to the county

clerks and the secretary of state. It has been suggested that it would be more appropriate to place this decision with the state archivist, a professional historian, than with elected officials. It also has been suggested that if counties didn't want to keep their campaign finance records past the required storage time (whether 5 years or 15 years), then they should send these records to the secretary of state, who could then -- possibly through the office of the state archivist -- decide whether or not the records should be kept for longer periods of time. It also should be noted that House Bill 4242, which would require candidates for elective office to sign an affidavit attesting to the fact that all late filing fines had been paid, has passed the House. Should it be enacted into law, some people might wish to preserve campaign finance records indefinitely, making the decision whether or not to destroy such records, even after 15 years, a more pressing issue than it currently is.

POSITIONS:

The Department of State supports the bill. (3-10-99)

Common Cause in Michigan supports the bill. (3-10-99)

The Michigan Chamber of Commerce supports the bill. (3-10-99)

The Oakland County Clerk has no position on the bill at this time. (3-10-99)

Analyst: S. Ekstrom

■ 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.