

# Legislative Analysis

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## LEGAL DEFENSE FUND ACT

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**House Bill 4001 (Substitute H-4)**  
**Sponsor: Rep. Steve Bieda**  
**Committee: Ethics and Elections**

### First Analysis (3-27-07)

**BRIEF SUMMARY:** The bill would create a new act to be known as the Legal Defense Fund Act which would require legal defense funds to file statements of organization and contribution reports with the Bureau of Elections. The bill also would prohibit anonymous contributions.

**FISCAL IMPACT:** The fiscal impact to the state is indeterminate. The Department of State will incur costs as a result of the required report. However, these costs might be offset as the bill requires late filing fees and civil fines to be paid to the Department of State in an effort to offset expenses of administering the act. The amount of late filing fees and civil fines to be paid to the department is indeterminate and will depend on the number of violations.

### THE APPARENT PROBLEM:

Currently Michigan does not require either financial reporting or public disclosure for legal defense funds that are set up by public officials who are accused of violating the law. Consequently, those alleged to have broken society's rules and laws can solicit funds to pay for their defense in court, without having to make the fund's contributors known to the public.

This legislation would create a new law to require financial reporting and public disclosure with the Bureau of Elections in the Department of State, prohibit anonymous contributions, and provide for the orderly dissolution of a fund to ensure that its contributions were returned to those who made them, were deposited in the state's General Fund, or sent to the Access to Justice Fund created by the Michigan State Bar Foundation.

### THE CONTENT OF THE BILL:

The bill would create a new act to be known as the Legal Defense Fund Act. It would require legal defense funds to file statements of organization and to file contribution reports. The bill also would prohibit anonymous contributions.

[The bill defines "legal defense fund" to mean a person (individual or entity) who received a contribution from another person with the intent to use the contribution to defend an elected official of this state against a criminal, civil, or administrative action, or to transfer the contribution to another legal defense fund. A legal defense fund does not

include a financial institution that only acts as a depository of contributions for a legal defense fund.]

Statement of Organization. Under the bill, a legal defense fund would be required to file a statement of organization with the Bureau of Elections (within the Department of State) within 10 days after it received its first contribution. That statement of organization would have to include the following:

- The name, street address, and telephone number of the legal defense fund (which must include the first and last name of the elected official intended to be the beneficiary of the fund).
- The name, street address, and telephone number of the individual designated as the fund treasurer.
- The name and address of each financial institution in which the fund's money is deposited (or may be deposited).
- The full name of and office held by the elected official intended to be the beneficiary of the fund.

A legal defense fund that failed to file its statement of organization would be fined a \$10 late filing fee for each business day the statement remained un-filed; however, the fee could not exceed \$300. If the statement went un-filed for more than 30 days, the fund would be subject to a civil fine of not more than \$1,000. When the fund dissolved, it would be required to file a statement of dissolution, in the form required by the secretary of state.

Contribution Reports. A legal defense fund would be required to file contribution reports, disclosing all of the following:

- The legal defense fund's name, address, and telephone number, and the full name, residential and business addresses, and a telephone number of the fund's treasurer.
- Every contributor's full name.
- Every contributor's full address.
- The amount contributed.
- The date each contribution was received.
- The cumulative amount contributed by person.
- The person's occupation, employer, and place of business if the cumulative contributions are more than \$100.

The contribution reports (each accompanied by the fund treasurer's verification statement) would have to be filed on (or before) each of the following dates:

- January 31, with a closing date of December 31 of the previous year.
- July 25, with a closing date of July 20.

Late Filing Fees. If a contribution report were filed late, the fund or the treasurer would be required to pay a late filing fee, based on the amount of money the fund had raised. If the fund had raised \$10,000 or less during the previous two years, then the late filing fee would be \$25 for each business day the report remained un-filed, but could not exceed \$500. If the fund had raised more than \$10,000 during the previous two years, then the late fee could not exceed \$1,000, and would be determined as follows: a) \$25 for each business day the report remained un-filed; b) an additional \$25 for each business day after the first three business days; c) an additional \$50 for each business day after the first 10 days.

Failure to File. A legal defense fund's treasurer who failed to file two contribution reports for more than 30 days would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both. A fund's treasurer who knowingly filed an incomplete or inaccurate contribution report would be subject to a civil fine of not more than \$1,000. A late filing fee or civil fine assessed would be paid to the secretary of state, and used to pay the expenses of administering the act.

Public Inspection of Reports. The bill would require the secretary of state to make the contribution reports and organization statements available for public inspection and reproduction as soon as practicable but not later than three days after receipt. (The manner of making the documents public could include displaying them on the Internet.) The secretary of state would be required to keep the filings until five years after the legal defense fund's dissolution.

The bill would prohibit an individual or entity from making or accepting an anonymous contribution. Such a contribution could not be deposited into an account, but rather, would have to be given to a non-profit organization that was exempt from taxation under section 501(c)(3) of the Internal Revenue Code. Further, a contribution could not be made, directly or indirectly, by a person in a name other than the name by which that person was identified for legal purposes. A violation of this section would be a misdemeanor, punishable as follows: a) if an individual, by imprisonment for not more than 90 days or a fine of not more than \$1,000 or both; b) if a partnership, corporation, association, governmental entity, or other legal entity, by a fine of not more than \$10,000.

Dissolution. Under the bill, when a legal defense fund is dissolved it would be required to file a statement of dissolution in the form required by the Bureau of Elections. The fund would be required to return any unexpended money to its contributors, or forward

the unexpended funds to the state treasurer for deposit into the state's General Fund, or to the Michigan State Bar Foundation for deposit into the Access to Justice Fund.

### ***ARGUMENTS:***

#### ***For:***

This bill should be enacted into law since it would require a public official who created a legal defense fund to let the public know who was making contributions to it. The bill also prohibits one defense fund from transferring its money to another, and would require a fund that was dissolving either to return its contributions to its contributors, or deposit any unspent funds in one of two places: the state's General Fund or the Access to Justice Fund created by the Michigan State Bar Foundation. The Access to Justice Fund currently allocates financial resources to 40 civil legal aid providers across Michigan. Since its founding, attorneys have donated more than \$6 million to ensure that low income citizens have access to representation before the law in civil suits.

#### ***Against:***

A spokesman from the Michigan State Chamber of Commerce points out that this bill does not *limit* the amount of money that can be contributed to a Legal Defense Fund, nor does it restrict the *source* of funding such as banning contributions from corporations, labor unions, Indian Tribes, casinos, lobbyists, or lobbyist agents. In addition, although the legislation would require a defense fund to report its contributors, it would not require that the defense fund disclose its *expenditures*. In light of these omissions—no limits, no source restrictions, and no expenditure disclosure—the bill allows yet another opportunity for public officials to raise money for a fund having too little regulatory oversight, and as a result could have unintended consequences, creating more problems than it would solve.

### ***POSITIONS:***

The State Bar of Michigan has no position on the bill. (3-27-07)

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■ 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.