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BILL ANALYSIS

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Senate Bill 1263 (as introduced 4-17-08)
Sponsor: Senator Michelle A. McManus
Committee: Campaign and Election Oversight

Date Completed: 4-23-08

CONTENT

The bill would amend the lobbyist registration Act to prohibit a lobbyist or lobbyist agent from contributing to defend an elected official against any legal action not related to the elected official's governmental activities and duties; and to establish procedures and a timeline for the Secretary of State to respond to a request for a declaratory ruling.

The bill is tie-barred to House Bill 4001, which would require legal defense funds created to provide for the defense of elected officials to file statements of organization and dissolution with the Bureau of Elections; require the funds to file biannual contribution reports and require the Bureau of Elections to make those reports available to the public; prescribe penalties for the late filing of contribution reports; and prohibit anonymous contributions to legal defense funds and prescribe penalties for a person who knowingly made or accepted an anonymous donation.

Gift to Legal Defense Fund

Under the Act, a lobbyist or lobbyist agent or anyone acting on behalf of a lobbyist or lobbyist agent may not give a gift or loan, other than a loan made in the normal course of business by an institution (a bank, State agency, or state foreign bank branch), a national bank, a branch bank, an insurance company issuing a loan or receiving a mortgage in the normal course of business, a premium finance company, a mortgage company, a small loan company, a State or Federal credit union, a savings and loan association, or a licensee under the Motor Vehicle Sales Finance Act. A preferential interest rate may not be given solely on the basis of the credit applicant's being a public official or a member of a public official's immediate family.

If the value of the gift is \$3,000 or less, a person who gives a gift in violation of this provision is guilty of a misdemeanor punishable by a maximum fine of \$5,000, or imprisonment for up to 90 days, or both; if the person is other than an individual, the person may be fined up to \$10,000. If a person knowingly gives a gift in violation of this provision and the value of the gift is more than \$3,000, the person is guilty of a felony punishable by a maximum fine \$10,000, or imprisonment for up to three years, or both, if the person is an individual, or a maximum fine of \$25,000 if the person is not an individual.

The Act defines gift as a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, whose value exceeds \$25 in any one-month period, unless consideration of equal or greater value is received for it. Gift does not include:

- A campaign contribution otherwise reported as required by the Michigan Campaign Finance Act.
- A loan made in the normal course of business by an entity listed in the lobbyist registration Act.
- A gift received from a member of the person's immediate family, a relative of a spouse, a relative within the seventh degree of consanguinity, or from the spouse of the relative.
- A breakfast, luncheon, dinner, or other refreshment consisting of food and beverage provided for immediate consumption.
- A donation to an officeholder expense fund otherwise reported as required by the Michigan Campaign Finance Act.

Under the bill, "gift" would include a contribution to defend an elected official against any legal action not related to an elected official's governmental activities and duties. Gift would not include a contribution to a legal defense fund that was registered with the Secretary of State under the Legal Defense Fund Act (proposed by House Bill 4001) and whose purpose was to defend an elected official against any criminal, civil, or administrative action, that arose directly out of the conduct or performance of the elected official's governmental activities and duties.

The bill would delete from the list of donations not included in the definition of "gift" a donation to an officeholder expense fund.

Declaratory Rulings

The lobbyist registration Act authorizes the Secretary of State to promulgate rules and issue declaratory rules to implement the Act.

Under the bill, the Secretary of State would have to issue a declaratory ruling only if the person requesting it had provided a reasonably complete statement of facts necessary for the ruling or, with the permission of the Secretary, had supplied supplemental facts necessary for the ruling. A request for a declaratory ruling that was submitted to the Secretary would have to be made available for public inspection within 48 hours after its receipt. An interested person could submit written comments regarding the request to the Secretary within 10 business days after the date the request was made available to the public. Within 45 business days after receiving a declaratory ruling request, the Secretary would have to make a proposed response available to the public. An interested person could submit written comments regarding the proposed response to the Secretary within five business days after the date the proposal was made available to the public.

Except as otherwise provided, the Secretary of State would have to issue a declaratory ruling within 60 business days after receiving a request for a declaratory ruling. If the Secretary refused to issue a declaratory ruling, he or she would have to notify the person making the request of the reasons for the refusal and would have to issue an interpretive statement providing an informational response to the question presented within the same time limitation applicable to a declaratory ruling. A declaratory ruling or interpretive statement issued could not state a general rule of law, other than what was stated in the Act, until the general rule of law was promulgated by the Secretary of State as a rule under the Administrative Procedures Act or under judicial order.

Under extenuating circumstances, the Secretary could issue a notice extending for up to 30 business days the period during which he or she would have to respond to a request for declaratory ruling. The Secretary could not issue more than one notice of extension for a particular request. A person requesting a declaratory ruling could waive, in writing, the time limitations.

The Secretary of State would have to make available to the public an annual summary of the declaratory rulings and interpretive statements he or she issued.

MCL 4.414 et al.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

There could be an indeterminate fiscal impact on the Department of State for costs associated with issuing declaratory rulings. There also could be unknown additional costs to the Department associated with providing the public with an annual summary of the declaratory rulings and interpretive statements. The extra workload and associated costs could be absorbed within the Department's current appropriations; however, any excess costs could require additional appropriations, the amount of which is unknown.

The bill would have no fiscal impact on local government.

Fiscal Analyst: Joe Carrasco

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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.