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## BILL ANALYSIS

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House Bill 4001 (Substitute H-4 as passed by the House)  
Sponsor: Representative Steve Bieda  
House Committee: Ethics and Elections  
Senate Committee: Campaign and Election Oversight

Date Completed: 4-23-08

**CONTENT**

**The bill would create the "Legal Defense Fund Act" to do the following:**

- 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.**
- Establish fees and civil fines for the late filing of contribution reports, and misdemeanor penalties for failure to file.**
- Prohibit anonymous contributions to legal defense funds and prescribe misdemeanor penalties for a person who knowingly made or accepted an anonymous donation.**

"Legal defense fund" would mean a person who receives a contribution from another person with the intent to use it to defend an elected official of this State against a criminal, civil, or administrative action. A legal defense fund would not include a financial institution that only acted as a depository of contributions for a legal defense fund. "Elected official" would mean an individual who holds an elective office as that term is defined in the Michigan Campaign Finance Act.

**Statements of Organization & Dissolution**

A legal defense fund would have to file a statement of organization with the Bureau of Elections within 10 days after the fund first received a contribution.

A statement of organization would have to include all of the following information:

- The name, street address, and telephone number of the legal defense fund and of the individual designated as its treasurer.
- The name and address of each financial institution in which money of the fund was or was intended to be deposited.
- The full name of and office held by the elected official intended to be the beneficiary of the fund.

The name of the fund would have to include the first and last name of the elected official intended to be the beneficiary of the fund. If any of the information required in a statement

of organization changed, the fund would have to file an amended statement of organization when the next contribution report was required to be filed.

A fund that failed to file a statement of organization would have to pay a late filing fee of \$10 for each business day the statement remained unfilled, up to \$300. A fund that failed to file a statement of organization for more than 30 days after the statement was required to be filed would be subject to a maximum civil fine of \$1,000.

When a legal defense fund was dissolved, it would have to file a statement of dissolution, in the form required by the Bureau of Elections, with the Bureau and would have to return any unspent funds to the State Treasurer for deposit into the General Fund or to the State Bar Foundation for deposit in the Access to Justice Fund.

### Contribution Report

From the date a legal defense fund received its first contribution until it filed a statement of dissolution, the fund would have to file contribution reports according to the schedule described below. A contribution report would have to disclose the legal defense fund's name, address, and telephone number and the full name, residential and business addresses, and telephone numbers of the fund's treasurer. The report also would have to include the name and address, the amount contributed, the date each contribution was received, and the cumulative amount contributed, for each person from whom a contribution was received during the covered period. If the person were an individual whose cumulative contributions exceeded \$100, his or her occupation, employer, and principal place of business also would have to be included.

("Contribution would mean a transfer of money, services, or anything of ascertainable monetary value made for the purpose for defending an elected official of this State against a criminal civil, or administrative action. Contribution would not include a transfer from the elected official or a member of his or her immediate family.)

A legal defense fund would have to file a contribution report by each of the following dates covering the period beginning on the day after the closing date for the preceding contribution report:

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

The beginning date of the first contribution report would be the date the first contribution was received by the fund.

A legal defense fund would have to file a final contribution report with its statement of dissolution. The final contribution report would have to cover the period beginning on the day after the closing date of the preceding contribution report and ending on the last date that the fund received a contribution.

A contribution report would have to include a verification statement, signed by the treasurer, stating that he or she had used all reasonable diligence in preparing the report and that to his or her knowledge the statement was true and complete.

If a report were filed late, the legal defense fund or the treasurer would have to pay a late filing fee. If the fund had raised \$10,000 or less during the previous two years, the late filing fee would be \$25 for each business day the report remained unfilled, up to \$500. If the fund had raised more than \$10,000 during the previous two years, the late filing fee would be determined as follows, but could not exceed \$1,000:

- \$25 for each business day the report remained unfiled.
- An additional \$25 for each business day after the first three business days the report remained unfiled.
- An additional \$50 for each business day after the first 10 business days the report remained unfiled.

A legal defense fund's treasurer who failed to file two contribution reports, if both of the reports remain unfiled for more than 30 days, would be guilty of a misdemeanor punishable by imprisonment for up to 90 days or a maximum fine of \$1,000, or both.

A legal defense fund's treasurer who knowingly filed an incomplete or inaccurate contribution report would be subject to a maximum civil fine of \$1,000.

### Bureau of Elections

The Bureau of Elections would have to make a statement or report available for public inspection and reproduction as soon as practicable after receipt, but not later than three business days following the day of receipt. The manner of making the statement or report available to the public could include displaying it on the internet.

The Bureau would have to keep a statement or report filed until five years after the date of the legal defense fund's dissolution.

A late filing fee or civil fine assessed under the bill would have to be paid to the Bureau and used to pay the expenses of administering the bill.

### Contributions

A person could not make or accept an anonymous contribution. An anonymous contribution received by a legal defense fund could not be deposited into an account the fund maintained with a financial institution, but would have to be given to a person that was exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The person receiving the contribution from the legal defense fund would have to give it a receipt, which the fund's treasurer would have to retain. A contribution could not be made by a person in a name other than the name by which that person was identified for legal purposes.

A person who knowingly violated these prohibitions would be guilty of a misdemeanor punishable as follows:

- If the person were an individual, by imprisonment for up to 90 days or a maximum fine of \$1,000, or both.
- If the person were other than an individual, by a maximum fine of \$10,000.

Legislative Analyst: Craig Laurie

### **FISCAL IMPACT**

There could be an indeterminate fiscal impact on the Department of State for costs associated with administering the proposed Act; however, these costs could be offset by the late filing fees and the civil fines proposed by the bill. Currently, legal defense funds are not required to file statements of organization or contribution reports with the Bureau of Elections. Depending on the number of legal defense funds that are created, the extra workload and associated costs could be absorbed within the Department's current appropriations. Any excess costs associated with administering the Act not covered by the late filing fees and civil fines could require additional appropriations; however, the amount is unknown.

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of making or accepting an anonymous contribution to a legal defense fund. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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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.