Legislative Analysis

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REVISE CAMPAIGN FINANCE ACT PENALTIES

Senate Bill 750 (S-4)
Sponsor: Sen. Dave Robertson

Senate Bill 753 (without amendment)
Sponsor: Sen. Jack Brandenburg
House Committee: Redistricting and Elections
Senate Committee: Local Government and Elections

Complete to 4-16-12

A SUMMARY OF SENATE BILLS 750 & 753 AS PASSED BY THE SENATE 2-14-12

Senate Bill 750 (S-4) would amend the Michigan Campaign Finance Act (MCL 169.233 and 169.235) in the following ways.

- The current penalty for knowingly filing an incomplete or inaccurate campaign finance statement or report is a civil fine of not more than $1,000. The penalty is imposed on the campaign treasurer or another designated responsible person. Under the bill, this penalty would also apply to a candidate.
- The bill would make a candidate, treasurer, or other designated record-keeper who knowingly omits or under-reports a contribution or expenditure subject to a civil fine of up to $1,000, or the amount of the contributions and expenditures, whichever is greater.
- The failure to file required campaign statements for a candidate committee with an account balance of at least $20,000 for two consecutive years would be a felony, punishable by imprisonment for up to three years or a fine of not more than $5,000, or both. Further, money in the account would be subject to seizure and forfeiture by the state.
- The bill would establish procedures for the seizure and forfeiture, including a candidate's opportunity for an administrative hearing before the Secretary of State, and an appeal to the circuit court.

Senate Bill 753 would amend the Code of Criminal Procedure (MCL 777.11e) to add to the sentencing guidelines the felony penalties for the failure to file required campaign statements for a candidate committee. The violation would be a Class H felony against the public trust with a statutory maximum of three years' imprisonment. Senate Bill 753 is tie-barred to Senate Bill 750 so that it could not go into effect unless Senate Bill 750 is also enacted into law.

A more detailed description of Senate Bill 750 follows.

Campaign Finance Statements

The Campaign Finance Act requires a committee to file complete campaign finance statements according to a schedule, depending on the type of committee. In addition, subject to certain exceptions, a committee, other than an independent or political committee, must file by January 31 of each year an annual campaign statement with a closing date of December 31 of the previous year.

("Committee" means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate; or the qualification, passage, or defeat of a ballot question, if either contributions received or expenditures made total at least $500 in a calendar year. An individual, other than a candidate, does not constitute a committee.

"Person" means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of people acting jointly.)

Under Senate Bill 750 (S-4), an independent committee or a political committee (other than a House or Senate political party caucus committee) would be required to file with the Secretary of State campaign statements every year, not later than specified dates, as follows:

- February 15 (with a closing date of February 10)
- April 25 (with a closing date of April 20)
- July 25 (with a closing date of July 20)

In addition, in every odd numbered year, a campaign finance statement would have to also be filed no later than October 25 (with a closing date of October 20).

Currently under the law, these reports are filed in January, July, and October during odd years, and during April, July, and October during even years.

Filing Penalties

Now under the law, if a treasurer or other individual designated as responsible for a campaign committee's record-keeping, report preparation, or report filing knowingly files an incomplete or inaccurate statement or report, he or she is subject to a civil fine of up to $1,000. Under Senate Bill 750 (S-4), a "candidate" could also be penalized. Further, a candidate, treasurer, or other designated individual responsible for a committee's record-keeping, report preparation, or report filing who knowingly omitted or under-reported individual contributions or individual expenditure required to be disclosed would be subject to a civil fine of not more than $1,000 or the amount of the contributions and expenditures omitted or under-reported, whichever was greater.

Felony Penalties

Under the bill, if a candidate committee's account had a balance of $20,000 or more and a candidate, treasurer, or other designated individual failed to file the required campaign statements for two consecutive years, he or she would be guilty of a felony punishable by

imprisonment for up to three years and/or a maximum fine of $5,000. Any money in the candidate committee account would be subject to seizure by, and forfeiture to, the state.

Seizure Procedure and Appeals

Within five business days after seizure of the money, the Secretary of State (SOS) would have to deliver personally or by registered mail to the last known address of the candidate from whom the seizure was made an inventory statement of the money seized. The statement would have to contain notice specifying that unless a demand for a hearing were made within 10 business days, the money would be forfeited to the state.

Within 10 business days after the notice was served, the candidate could file with the SOS a demand for a hearing before the SOS or a designee for a determination as to whether the money was lawfully subject to seizure and forfeiture. The candidate would be entitled to appear before the SOS or designee, to be represented by counsel, and to present testimony and argument. Upon receiving a request for a hearing, the SOS or a designated person would have to hold the hearing within 15 business days. The hearing would not be a contested case proceeding and would not be subject to the Administrative Procedures Act.

The SOS or the designee would have to render a written decision within 10 business days after the hearing and, by order, would have to declare the money either subject to seizure and forfeiture or returnable to the candidate.

If the candidate did not file a demand for a hearing by the deadline, the seized money would be forfeited to the state by operation of law. If the SOS or a designee determined after a hearing that the money was lawfully subject to seizure and forfeiture and the candidate did not appeal to the circuit court of the county in which the seizure was made (as described below), the money also would be forfeited to the state by operation of law.

A candidate who was aggrieved by the SOS's or designee's decision could appeal to the circuit court to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action would have to be started within 20 days after notice of the determination was sent to the candidate. The court would have to hear the action and determine the issues of fact and law in accordance with rules of practice and procedure as in other *in rem* proceedings.

FISCAL IMPACT:

Senate Bill 750 would presumably increase certain administrative costs for the Department of State under the provisions of the bill establishing procedures for the seizure and forfeiture of candidate committee accounts, including a candidate's opportunity for an administrative hearing before the Secretary of State, and an appeal to the circuit court. It is unknown whether the department would be able to absorb the costs of the provisions of the bill with current appropriation levels. Any funds forfeited under the provisions of the bill would be deposited in the state's General Fund and be subject to appropriation by the legislature.

To the extent that the provision of the bill increase the number of civil fines paid, the bill would increase the amount of civil fine revenue deposited in the state's General Fund.

The bills create new felony offenses for failure to file required campaign statements for two consecutive years under certain circumstances and create a new civil fine penalty for underreporting expenditures or contributions. To the extent that the bills result in additional felony convictions, they could increase costs on state or local correctional systems. Incarceration costs in local jails vary by jurisdiction. The average cost of prison incarceration in a state facility is roughly $34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about $2,200 per supervised offender per year. Since the bills establish the new felony offense as a Class H felony, Michigan sentencing guidelines would call for an intermediate sanction of probation or jail unless the offender was a repeat felony habitual offender. Thus, it is unlikely that those convicted of these offenses would be sentenced to a state prison term. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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