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Senate Bill 824 (as introduced 11-10-11)
Sponsor: Senator Dave Robertson
Committee: Local Government and Elections

Date Completed: 1-30-12

CONTENT

The bill would amend the Michigan Campaign Finance Act to do the following:

- Require the Secretary of State (SOS) to refer a complaint regarding a violation involving the SOS to the Attorney General.
- Require the SOS to post on the SOS's internet website certain documents regarding individual violation complaints, as well as conciliation agreements.
- Require, rather than allow, the SOS to refer a complaint to the Attorney General or commence a hearing if he or she were unable to resolve the matter using informal means.
- Triple the civil fine imposed for an improper contribution or expenditure.
- Require the Attorney General to determine whether to proceed with enforcement of a criminal penalty within 60 days after the matter was referred to him or her.
- Provide that a committee would not have to file a campaign statement for an administrative account.
- Revise the late filing fee for a failure to report a late contribution.
- Revise the definition of "late contribution".
- Require a committee to report only those late contributions made after the committee filed its preelection campaign statement, effective January 1, 2010.
- Require the State or a county to reimburse or waive any late filing

- fee imposed between January 1, 2010, and the bill's effective date.
- For an independent or political committee, eliminate separate statement filing schedules for odd- and even-numbered years, and require four statements each year, rather than three.
- Require a ballot question committee to file campaign statements in addition to the pre-election and postelection statements.
- Require a committee regarding a nonstatewide ballot question or the recall of a local officeholder to file a required campaign statement with the SOS only.
- Make an exception to requirements regarding printed campaign materials for a separate segregated fund soliciting contributions.
- Allow a separate segregated fund to make contributions to and expenditures on behalf of other separate segregated funds.

Complaint, Investigation, & Enforcement

A person may file with the SOS a complaint that alleges a violation of the Act. Within five business days, the SOS must give notice to the person against whom the complaint is filed. Within 15 days after this notice is provided, that person may submit a response to the SOS, who must provide a copy to the complainant. Within 10 business days after receiving this copy, the complainant may submit a rebuttal statement to the SOS, who must give a copy to the other person. Under the bill, the

person against whom the complaint was filed would have 15 business days after the notice was mailed, rather than provided, to submit a response to the SOS, and the complainant would have 10 business days after a copy of the response was mailed to submit a rebuttal statement.

A complaint must be signed by the complainant; state his or her name, address, and telephone number; and include his or her certification that each factual contention of the complaint is supported by evidence, or that there are grounds to conclude that specific factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry.

Every 60 days after a complaint meeting those requirements is filed and until the matter is terminated, the SOS must mail to the complainant and to the alleged violator notice of the action taken to date by the SOS, together with the reasons for the action or nonaction. The bill would delete this requirement.

Under the bill, if the violation involved the SOS, his or her immediate family, or a campaign or committee with which the SOS was connected, directly or indirectly, the SOS would have to refer the matter to the Attorney General to determine whether a violation had occurred.

Within 60 days after receiving a rebuttal statement from a complainant, or if no response or rebuttal statement were received, the SOS would have to post on the SOS's internet website whether or not there could be reason to believe that a violation of the Act had occurred. If he or she determined that there was reason to believe that a violation had occurred, the SOS, within 30 days, would have to post on the website any complaint, response, or rebuttal statement regarding that violation, as well as any correspondence regarding the violation between the SOS and the complainant or the person against whom the complaint was filed.

Under the Act, if the SOS determines that there may be reason to believe that a violation occurred, he or she must endeavor to correct it or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with

the person involved. Unless violated, a conciliation agreement is a complete bar to any further action with respect to matters covered in it. The bill specifies that it would be a complete bar to any further civil or criminal action. In addition, the bill would require the SOS to post a conciliation agreement on the SOS website within 30 days after it was signed.

Currently, if the SOS is unable to correct or prevent further violation by informal methods, he or she may refer the matter to the Attorney General for the enforcement of any criminal penalty provided by the Act, or commence a hearing to determine whether a civil violation of the Act has occurred. The bill would require, rather than allow, the SOS to refer the matter to the Attorney General or commence a hearing, and would require the SOS to do so within 60 business days.

Under the Act, a hearing may not be commenced during the period beginning 30 days before an election in which the committee has received or spent money and ending the day after that election, except with the consent of the person suspected of committing a civil violation. The bill would delete this provision.

Currently, if the SOS determines after a hearing that a violation has occurred, he or she may issue an order requiring the person to pay a civil fine equal to the amount of the improper contribution or expenditure, plus up to \$1,000 for each violation. Under the bill, the fine would have to equal three times the amount of the contribution, plus up to \$1,000 for each violation.

Within 60 days after a matter was referred to the Attorney General for enforcement of a criminal penalty, the Attorney General would have to determine whether to proceed with enforcement.

The bill states that the criminal penalties provided by the Act could be enforced only by the Attorney General and only upon referral by the SOS.

Administrative Account

Under the bill, a committee would not have to file a campaign statement with respect to an administrative account.

"Administrative account" would mean a separate segregated account maintained by a political party committee to be used exclusively for expenses that did not constitute contributions or expenditures.

"Contribution" means a payment, gift, donation, etc. made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. The bill would exclude from the definition anything of ascertainable monetary value received by a political party committee that was designated clearly by the contributor for the committee's administrative account.

"Expenditure" means a payment, donation, loan, etc. in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question. The bill would exclude from the definition a disbursement from an administrative account.

Late Filing Fee

The Act requires a committee, candidate, treasurer, or other individual designated as responsible for the committee's record-keeping, record preparation, or report filing, to report a late contribution within 48 hours after receiving it. A person who fails to report a late contribution as required must pay a late filing fee as follows:

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

The total fee may not exceed \$2,000. Under the bill, it could not exceed \$2,000 or the amount of the contribution.

Currently, "late contribution" means a contribution of at least \$200 received after the closing date of the last campaign statement required to be filed before an election. The bill would refer to contributions with a cumulative total of at least \$500, rather than a contribution of at least \$200.

In addition, a committee would have to report a late contribution only for an election during which the committee made expenditures for the purpose of influencing the nomination or election of a candidate or for the qualification, passage, or defeat of a ballot question after the committee filed its preelection campaign statement. This provision would be retroactive to January 1, 2010.

The State or a county would have to reimburse or waive any late filing fee paid or assessed between January 1, 2010, and the bill's effective date. This requirement would apply only to committees that had filed all other required campaign statements in a timely manner.

Campaign Statement Filing Schedule

Independent/Political Committee. Currently, an independent committee or political committee, other than a House or Senate political party caucus committee, required to file with the SOS must file campaign statements according to a schedule. In an odd-numbered year, the schedule is as follows:

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

In an even-numbered year, the statements must be filed as follows:

- By April 25 with a closing date of April 20.
- By July 25 with a closing date of July 20.
- By October 25 with a closing date of October 20.

The bill would eliminate the separate schedules for odd- and even-numbered years. Instead, the schedule for each year would be as follows:

- By January 31 of each year with a closing date of December 31 of the previous year.
- By April 25 of each year with a closing date of April 20 of that year.
- By July 25 of each year with a closing date of July 20 of that year.

- By October 25 of each year with a closing date of October 20 of that year.

Ballot Question Committee. The Act requires a ballot question committee to file preelection and postelection campaign statements. Under the bill, such a committee also would have to file campaign statements not later than the following dates every year:

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

In addition, in every odd-numbered year, a ballot question committee would have to file a campaign statement by October 25 with a closing date of October 20 of that year.

Nonstatewide Ballot Question/Local Recall

Under the Act, a ballot question committee supporting or opposing a statewide ballot question must file a copy of the required campaign statement with the SOS and with the clerk of the most populous county in the State. A ballot question committee supporting or opposing a ballot question to be voted upon in more than one county, but not statewide, must file a copy of the statement with the clerk of the county in which the greatest number of registered voters eligible to vote on the question resides. A ballot question committee supporting or opposing a question to be voted upon within a single county must file a copy of the statement only with the clerk of that county.

Under the bill, these requirements would apply except as otherwise provided. If a ballot question committee were registered with the SOS and were supporting or opposing a nonstatewide ballot question, the committee would have to file a copy of a required statement only with the SOS.

Also, if any committee were registered with the SOS and were supporting or opposing the recall of a local elective officeholder, that committee would have to file a statement only with the SOS.

Separate Segregated Fund

Under the Act, except as otherwise provided, a billboard, placard, poster, pamphlet, or other printed matter referring to an election, a candidate, or a ballot question, must bear the name and address of the person paying for it. Except as otherwise provided, if the printed matter relating to a candidate is an independent expenditure that is not authorized in writing by that person's candidate committee, the material must contain the following disclaimer: "Not authorized by any candidate committee". An individual other than a candidate is not subject to these requirements if he or she is acting independently and not acting as an agent for a candidate or any committee. Under the bill, these provisions would not apply to communications between a separate segregated fund established under Section 55 and individuals who could be solicited for contributions to that fund.

Section 55 allows corporations, labor organizations, and other entities to make an expenditure for the establishment and administration of, and solicitation of contributions to, a separate segregated fund to be used for political purposes. A separate segregated fund is limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees. Under the bill, a separate segregated fund also could make contributions to and expenditures on behalf of other separate segregated funds.

MCL 169.204 et al.

FISCAL IMPACT

The requirement of the payment of a civil fine equal to triple the amount of an improper contribution would result in additional revenue the State's General Fund. The amount of additional revenue is indeterminate and dependent on the number of infractions. There could be additional costs to the State or counties associated with the requirement to reimburse entities for late filing fees that were paid between January 1, 2010, and the bill's effective date. Based on FY 2010-11 data, the State would have to refund an estimated \$117,000 in late filing fees. An estimated

\$176,000 in late filing fees remains assessed but uncollected. If collected, this revenue would be refunded to entities according to the proposed provision. Fees collected by the State would be refunded from the State's General Fund. The amount of additional costs at the local level is unknown and dependent on the number of late fees that ultimately would be reversed.

The remaining provisions of the bill would have no fiscal impact on State or 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.