

Legislative Analysis



FAIR POLITICAL PRACTICES COMMISSION

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 1248 as passed by the Senate
Senate Bill 1249 (S-1) as passed by the Senate
Senate Bill 1250 (S-1) as passed by the Senate
Senate Bill 1251 as passed by the Senate
Senate Bill 1252 as passed by the Senate
Sponsor: Sen. David Robertson

Analysis available at
<http://www.legislature.mi.gov>

House Committee: Elections and Ethics
Senate Committee: Elections and Government Reform
Complete to 12-18-18

BRIEF SUMMARY:

Senate Bill 1250 would create a Fair Political Practices Commission in the Michigan Campaign Finance Act and give that Commission general oversight over implementing and enforcing the Act. Currently, these responsibilities are delegated to the Michigan Secretary of State (SOS).

The other four bills would incorporate the Commission into four other related acts.

Senate Bills 1248, 1251, and 1252 are tie-barred to SB 1250, meaning that none of them could take effect unless SB 1250 were also enacted.

DETAILED SUMMARY:

Senate Bill 1250 would transfer to the Fair Political Practices Commission the following responsibilities prescribed by the Act and currently under the authority of the SOS:

- Furnishing the appropriate forms, instructions, and manuals under the Act, and receiving required statements and reports.
- Issuing declaratory rulings at the request of interested persons.¹
- Receiving complaints that allege violations of the Act, as well as responses and rebuttals to the complaint.
- Investigating allegations under the applicable campaign finance rules.
- Determining whether there is reason to believe a violation occurred. If such reason existed, the Commission would try to use informal methods to correct the violation and, if that were unsuccessful, would hold a hearing for civil matters or refer the matter to the attorney general for criminal matters. (A final decision and order issued by the Commission would be subject to judicial review.)
- Complying with any document retention requirements under the Act.
- Accepting legal process that would be served on the Commission in lieu of a committee with a nonresident treasurer, and notifying that treasurer of the service.
- Notifying a candidate whose candidate committee account has a balance of at least \$20,000 and who has not filed required statements of an inventory of any money seized.

¹ https://www.michigan.gov/sos/0,4670,7-127-1633_8723_66116---,00.html

Additionally, the Commission would hold a hearing upon request and determine whether the money was subject to forfeiture or returnable to the candidate.

- Adjusting the contribution limits every four years for candidate committees, House and Senate political party caucus committees, and total election cycle contributions, based on the consumer price index.
- Dispensing money from the State Campaign Fund² to eligible candidates.

Fair Political Practices Commission

The bill would create the Commission as an autonomous entity within the Department of State (DOS) and state that the Commission would exercise its statutory powers and responsibilities independently of the DOS, including in the areas of personnel, budgeting, procurement, and management-related functions. The Commission would be responsible for administering and enforcing the Act and exercising the powers and duties conferred on the Commission.

The Commission would consist of six members appointed by the governor—three each from lists submitted by the two parties that received the most votes in the most recent gubernatorial election (or, if a party did not submit names, the governor would appoint formerly elected officials from that party who were still affiliated with the party). The governor would also appoint replacement members to complete unexpired terms from a list submitted by the applicable party. No more than three members of any political party could serve on the commission at one time.

Members could serve for a maximum of two four-year years at a time, and then would be ineligible to serve for four years. The governor could remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

In order to serve, a person would have to be a qualified and elected elector and could not be serving as or a candidate for an elective office; a treasurer, campaign manager, or paid employee of a candidate committee or candidate for public office; or a lobbyist or lobbyist agent.

The Commission would elect a chairperson and other officers as appropriate at its first meeting, and the position of chair would alternate between members of the two political parties represented on the Commission every two years.

The Commission would have to comply with the Open Meetings Act, and its writings would be subject to the Freedom of Information Act (FOIA).

Members could be reimbursed for actual and necessary expenses incurred in their official duties, and would be paid a salary annually established by the legislature. The Commission could hire an executive director and any staff required to exercise its powers and duties.

While on the Commission, a member could not make or solicit a contribution to any person subject to the Commission's jurisdiction. Members would be subject to Public Act 317 of 1968, which governs contracts of public servants with public entities.

² The State Campaign Fund allows taxpayers to designate that \$3 of their taxes be credited to the fund, which is available for eligible gubernatorial candidates in the primary and general elections.

Public funds for campaign purposes

The bill would remove a prohibition on communication by a public body, or a person acting for a public body, within 60 days of an election where a local ballot question appears on the ballot. [This section is not currently in effect. See **Background**, below.]

Candidate committee contribution limit

The bill would amend the definition of *immediate family* for the purposes of the candidate committee contribution of \$50,000 per election cycle to include any relative living in the same household.

Statute of limitations

Also under the bill, a person would have to bring or maintain an action to collect a fine or fee imposed under the Act within five years of the violation.

MCL 169.203 et al.

Senate Bill 1248 would amend the Lobby Act to update the list of contributions and expenditures that do not count as “gifts” under the Act. Currently, the Act excludes from the definition of “gift” a contribution to a legal defense fund that is registered with the SOS under the Legal Defense Fund Act and whose purpose is to defend an elected official for actions that arose out of the official’s governmental duties. The bill would replace reference to registration with the SOS with registration with the Commission.

MCL 4.412 and 4.414

Senate Bill 1249 would amend the Code of Criminal Procedure to institute a statute of limitations for charging a person for a violation of the Michigan Campaign Finance Act. It would provide that an indictment for a violation could be found and filed within five years after the offense was committed.

MCL 767.24

Senate Bill 1251 would amend Chapter 31 (The State Canvass) of the Michigan Election Law to require that the postelection statement filed by elected candidates whose candidate committees had received or expended more than \$1,000 would have to be on a form prescribed by the Commission, rather than by the SOS.

MCL 168.2 and 168.848

Senate Bill 1252 would amend the Legal Defense Fund Act to provide that certain documents concerning a legal defense fund established for an elected official would have to be filed with the Commission instead of the SOS. Also, document retention and disclosure requirements that currently apply to the SOS would be transferred to the Commission. The Commission would also assume the responsibilities of reporting certain errors and omissions to the attorney general, and of promulgating rules and issuing declaratory rulings related to the Act.

MCL 15.523 et seq.

BACKGROUND INFORMATION:

Senate Bill 1250 would remove a prohibition on communication by a public body, or a person acting for a public body, within 60 days of an election where a local ballot question appears on the ballot. However, the subsection to be stricken—section 57(3) of the Act—is not currently in effect. When he signed Public Act 269 of 2015, which added the subsection, Governor Snyder issued a signing statement expressing concern about the section and calling on the legislature “to clarify that the new language does not impact the expression of personal views by a public official, the use of resources or facilities in the ordinary course of business, and that it is intended only to prohibit the use of targeted, advertisement style mass communications that are reasonably interpreted as an attempt to influence the electorate using taxpayer dollars.”

On January 26, 2016, public officials filed a complaint, alleging that the subsection was unconstitutionally vague. The U.S. District Court for the Eastern District of Michigan determined that the plaintiffs were likely to prevail on the merits of the case and issued a preliminary injunction (suspending the enforcement of the subsection) on February 5, 2016. A consent agreement filed on April 28, 2016 permanently enjoined (prohibited) the Secretary of State from enforcing the subsection.

FISCAL IMPACT:

Senate Bill 1250 would create additional costs for the state and require a legislative appropriation to the Department of State. The bill requires the legislature to annually establish salaries for the six members of the Commission. The appropriation would support the cost of salaries, additional staff, and reimbursement of member expenses. Salaries and other expenses have not yet been determined and could vary significantly.

Senate Bills 1248, 1249, 1251, and 1252 would have no fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.