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BILL ANALYSIS

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Senate Bill 335 (Substitute S-1 as reported)
Senate Bill 336 (as reported without amendment)
Sponsor: Senator Dave Robertson
Committee: Elections and Government Reform

Date Completed: 7-12-17

RATIONALE

A section of the Michigan Campaign Finance Act, Section 54(1), limits the ability of corporations and labor organizations (as well as certain other entities) to make expenditures or contributions for the election or defeat of candidates. In a 1990 decision, *Austin v. Michigan Chamber of Commerce*, the United States Supreme Court addressed a challenge to Section 54(1) and found that the law was constitutional. In 2010, however, in *Citizens United v. Federal Election Commission*, the U.S. Supreme Court overturned *Austin* and decided that Federal limits on corporate independent expenditures were unconstitutional. Subject to certain exceptions, the language in Section 54(1) prohibits a corporation or labor organization from making a "contribution" or "expenditure". (Both terms refer to a payment, gift, donation, or other transfer made for the purpose of influencing the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party, but an expenditure is made for goods, materials, services, or facilities. As discussed below, contributions and expenditures are treated differently under the law and by the courts.) Other provisions of the Act allow a corporation or labor organization to contribute to candidate elections through a separate segregated fund. A corporation or labor organization also may contribute to a ballot question committee and make an independent expenditure for the qualification, passage, or defeat of a ballot question. (An independent expenditure is defined in the Act as an expenditure that is not made at the direction of, or under the control of, another person and that is not a contribution to a committee.)

After *Citizens United* was decided, the Michigan Chamber of Commerce sought a declaratory ruling from the Secretary of State regarding the proposed establishment of a political action committee, "MCPAC III", that would receive funds from the Chamber and from contributions solicited from people for the purpose of making a contribution to MCPAC III, and that would make independent expenditures. The Secretary of State ruled that this would violate the Act. Subsequently, the Michigan Chamber of Commerce brought an action in the U.S. District Court challenging the Secretary of State's interpretation and application of the Act, and seeking an injunction. The Court granted an injunction, preventing enforcement of the Secretary of State's ruling.

In light of these developments, it has been suggested that Act should be amended to reflect the *Citizens United* decision, and that related changes should be made. (The decisions in *Citizens United, Austin, Michigan Chamber of Commerce,* and a Federal case involving contributions to independent expenditure committees are discussed in the **BACKGROUND** section below.)

CONTENT

Senate Bill 335 (S-1) would amend the Michigan Campaign Finance Act to do the following:

-- Permit the creation of independent expenditure committees.

-- Redefine "independent expenditure".
-- Allow a corporation, labor organization, joint stock company, or domestic dependent sovereign to make a contribution to an independent expenditure committee.
-- Allow a corporation, labor organization, joint stock company, or domestic dependent sovereign to make an independent expenditure in any amount advocating the election or defeat of a candidate, and provide that the entity would not become a committee unless it solicited or received contributions in excess of $500 to make the independent expenditure.
-- Allow an independent expenditure committee to make contributions to another independent expenditure committee or a ballot question committee.
-- Prohibit an independent expenditure committee from making a contribution to a political committee, candidate committee, or certain other committees, and prescribe a felony penalty for a person who knowingly violated the prohibition.
-- Prescribe penalties that would apply if the independent nature of an independent expenditure were defeated.
-- Provide that the independent nature of an independent expenditure would not be defeated under circumstances in which a person making an independent expenditure related to a candidate or committee had an attorney, vendor, or other agent in common with the candidate or committee; or a candidate or committee solicited contributions on behalf of an independent expenditure committee.
-- Require an independent expenditure committee to file campaign statements according to a schedule that applies to an independent committee.
-- Prescribe late filing fees and a misdemeanor penalty for failing to report an independent expenditure as required.
-- Require a separate segregated fund established by a connected organization to be organized as a political committee or an independent committee, and permit it to contribute to independent expenditure committees.
-- Prohibit a member of a connected organization from maintaining its own separate segregated fund unless that fund and the fund of the other entity were treated as a single independent committee.

Senate Bill 336 would the Code of Criminal Procedure to include the felony established by Senate Bill 335 (S-1) (regarding a prohibited contribution by an independent expenditure committee) in the sentencing guidelines as a class H offense against the public trust with a statutory maximum of three years' imprisonment.

Senate Bill 336 is tie-barred to Senate Bill 335. Each bill would take effect 90 days after its enactment.

A detailed description of Senate Bill 335 (S-1) follows.

Independent Expenditure Committee

The bill would allow one or more people to create an independent expenditure committee. "Independent expenditure committee" would mean a committee that receives contributions and makes independent expenditures pursuant to the Michigan Campaign Finance Act.

The Act defines "independent expenditure" as an expenditure by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee. The bill would define the term, instead, as an expenditure by a person if the expenditure is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a ballot question committee or a candidate, a candidate committee or its agents, or a political party committee or its agents and if the expenditure is not a contribution to a committee.

("Committee" means a person that receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party, if contributions received or

expenditures made total $500 or more in a calendar year. An individual, other than a candidate, is not a committee.)

The bill also would amend the definition of "contribution" to exclude an independent expenditure. ("Contribution" refers to a payment, gift, expenditure, or donation of money or anything of ascertainable monetary value, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.)

A person creating an independent expenditure committee would have to file a statement of organization. An independent expenditure committee would have to file campaign statements as required by the bill.

In addition to any independent expenditures, an independent expenditure committee could make contributions to another independent expenditure committee or to a ballot question committee.

An independent expenditure committee could receive contributions from any person, except a person prohibited from making a contribution under 52 USC 30121 (a foreign national). Within 30 days after receiving a contribution from a person prohibited from making one, the committee would have to return it.

Currently, a person, other than a committee registered under the Act, making an expenditure to a ballot question committee may not, for that reason, be considered a committee for purposes of the Act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee. Under the bill, this also would apply to a person making an expenditure to an independent expenditure committee. In addition, the person making an expenditure to either a ballot question committee or an independent expenditure committee would not be required to file a report for the purposes of the Act, subject to the existing exception.

Prohibited Contribution by Independent Expenditure Committee

The bill would prohibit an independent expenditure committee from making a contribution to a candidate committee, independent committee, political committee, political party committee, or House or Senate political party caucus committee. A person who knowingly violated or caused a person to violate this prohibition would be guilty of a felony punishable by imprisonment for up to three years or a maximum fine of $5,000, or both.

If the person violating the prohibition were not an individual, the person would be subject to the greater of the following:

-- A maximum fine of $20,000.
-- A fine of up to three times the amount of the improper contribution or expenditure.

Improper Independent Expenditure

Under the bill, if the independent nature of an independent expenditure were defeated, the resulting contribution would be punishable as follows:

-- For an independent expenditure committee or its agent, the penalty would be the same as provided above for a prohibited contribution by an independent expenditure committee, if that prohibition were violated.
-- For a corporation, labor organization, joint stock company, or domestic dependent sovereign, or a person acting for such an entity, the penalty would be what the Act prescribes for a violation of Section 54, if the resulting contribution violated that section.
-- For any other person, the penalty would be as otherwise provided for a violation of the Act.

(Section 54(1) prohibits a corporation, labor organization, joint stock company, domestic dependent sovereign, or a person acting for such an entity from making a contribution or

expenditure or providing volunteer personal services that are excluded from the definition of "contribution". A person who knowingly violates Section 54 is guilty of a felony punishable by a maximum fine of $5,000 and/or imprisonment for up to three years if the violator is an individual, or a maximum fine of $10,000 if the violator is not an individual.)

The independent nature of an independent expenditure would not be defeated where a person making an independent expenditure related to a ballot question committee, candidate, candidate committee, or political party committee engaged an attorney, vendor, or other agent that also was or had been engaged by that candidate or committee, if the attorney, vendor, or other agent did not do any of the following:

-- For the creation, production, or distribution of a communication, convey information to the person making the communication about the campaign plans, projects, activities, or needs of that candidate or committee that he or she also provided services for and that had been obtained from that candidate or committee or its agents.
-- For the creation, production, or distribution of a communication, use any information about the campaign plans, projects, activities, or needs of that candidate or committee that he or she also provided services for and that had been obtained from that candidate or committee or its agents.
-- Convey information about the creation, production, or distribution of the communication to the candidate or committee that he or she also provided services for.

The independent nature of an independent expenditure also would not be defeated where a candidate, candidate committee, political party committee, or agent of the candidate or committee solicited contributions on behalf of an independent expenditure committee but did not request or suggest action by, or further cooperate, consult, act in concert, or otherwise coordinate in any way with the independent expenditure committee related to any independent expenditure made on behalf of that candidate or committee. This provision would not preserve the independent nature of an independent expenditure if the independent expenditure committee made independent expenditures during an election cycle related solely to one candidate and that candidate, his or her candidate committee, or his or her agent solicited funds on behalf of the independent expenditure committee.

Expenditure/Contribution by Corporation or Labor Organization

As noted above, Section 54(1) of the Act prohibits a corporation, labor organization, joint stock company, or domestic dependent sovereign from making a contribution or expenditure, or providing volunteer personal services that are excluded from the definition of a contribution, subject to certain exceptions.

One of the exceptions permits a corporation, labor organization, joint stock company, or domestic dependent sovereign to make a contribution to a ballot question committee and to make an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. Under the bill, such an entity also could make a contribution to an independent expenditure committee, and could make an independent expenditure in any amount advocating for the election or defeat of a candidate.

A corporation, labor organization, joint stock company, or domestic dependent sovereign making an independent expenditure would not for that reason become a committee, unless it solicited or received contributions in excess of $500 for the purpose of making the independent expenditure, but would be subject to the independent expenditure reporting requirements.

A corporation, labor organization, joint stock company, or domestic dependent sovereign that made a contribution to an independent expenditure committee, or an expenditure for the establishment or administration of, or solicitation of funds to, an independent expenditure committee, would have no reporting obligations under the Act.

Currently, a corporation, labor organization, joint stock company, or domestic dependent sovereign that makes an independent expenditure is considered a ballot question committee for purposes of the Act. The bill would delete this provision.

Campaign Statement Requirements

The Act requires the campaign statement of a committee to contain specified information, including certain information about contributions and expenditures. An independent committee or political committee must report all cumulative amounts on a calendar year basis. Under the bill, this also would apply to an independent expenditure committee.

Currently, an independent committee, or a political committee other than a House or Senate political party caucus committee required to file with the Secretary of State (SOS), must file campaign statements required by the Act according to the following schedule:

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

The bill would extend the filing requirement to an independent expenditure committee.

The bill also would require the campaign statement of a committee to include the electronic mail address of the committee treasurer or other designated individual.

Independent Expenditure Reporting Requirements

Currently, if a person, other than a committee, makes an independent expenditure advocating the election or defeat of a candidate or the qualification, passage, or defeat of a ballot question, in an amount of $100.01 or more in a calendar year, the person must file a report of the expenditure within 10 days with the clerk of the county of the person's residence. Under the bill, the person would have to file the report with the SOS instead of a county clerk if the expenditure advocated the election or defeat of a candidate for State elective office or the qualification, passage, or defeat of a statewide ballot question, or if the person making the expenditure were not a resident of the State.

The Act specifies information that the required report must include. The bill also would require the report to identify the candidate or ballot question for or against which the expenditure was made.

Under the bill, if a person failed to file a report as described above, the person would have to pay a late filing fee. If the person had made independent expenditures totaling less than $10,000, the late fee would be $25 for each business day the report remained unfiled, but not more than $1,000. If the person had made independent expenditures totaling $10,000 or more, the late fee would be $50 for each business day the report remained unfiled, but not more than $5,000. A person who failed to file a required report for more than 30 days after it was required to be filed would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of $1,000.

Under the Act, if an independent expenditure is made within 45 days before a special election by an independent committee, or a political party committee required to file a campaign statement with the SOS, the committee must file a report of the expenditure with the SOS within 48 hours after the expenditure. The bill would extend this requirement to an independent expenditure committee.

Connected Organization/Separate Segregated Fund

The Act allows a connected organization to make an expenditure for the establishment or administration of, and solicitation, collection, or transfer of contributions to, a separate segregated

fund established by the organization. The fund is limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, independent committees, and other separate segregated funds. The bill would require the fund to be organized as a political committee or an independent committee, and permit it to make contributions to an independent expenditure committee in addition to the other committees listed.

Currently, if a corporation, labor organization, joint stock company, or domestic dependent sovereign that obtains contributions for a separate segregated fund from certain individuals (e.g., stockholders, officers, directors, or employees) pays to one or more of them a bonus or other remuneration for the purpose of reimbursing those contributions, the entity is subject to a civil fine equal to two times the total contributions obtained from all individuals for the separate segregated fund during that calendar year. Under the bill, this provision would apply to a connected organization, rather than a corporation, labor organization, joint stock company, or domestic dependent sovereign, and the fine would be not more than, rather than equal to, twice the amount of total contributions.

The Act defines "connected organization" as a corporation organized on a for-profit or nonprofit basis, a joint stock company, a domestic dependent sovereign, or a labor organization formed under the laws of this or another state or a foreign country, or a member of such an entity that is not an individual. The bill would refer to a member of such an entity that is not an individual and that does not maintain its own separate segregated fund, unless its fund and the separate segregated fund of the entity of which it is a member are treated as a single independent committee as provided in the Act.

MCL 169.203 et al. (S.B. 335)
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BACKGROUND

Austin v. Michigan Chamber of Commerce (494 U.S. 652)

In *Austin v. Michigan Chamber of Commerce*, the United States Supreme Court found that Section 54(1) of the Michigan Campaign Finance Act did not violate the First Amendment to the U.S. Constitution or the Equal Protection Clause of the 14th Amendment. The case arose after a special election was scheduled to fill a vacancy in the Michigan House of Representatives in 1985. According to the Court's opinion, the Chamber of Commerce had established and funded a separate political fund, but wanted to use its general treasury funds to place an advertisement supporting a specific candidate in a local newspaper, which would have been a felony under the Act. The Chamber brought a suit in the U.S. District Court for an injunction against enforcement of the Act. The District Court upheld the statute but the Sixth Circuit Court of Appeals reversed, finding that the expenditure restriction violated the First Amendment (which includes the protection of freedom of speech).

The U.S. Supreme Court cited an earlier decision in which it held that a Federal statute requiring corporations to make political expenditures only through special segregated funds burdened corporate freedom of expression. Similarly, the Court stated, "Michigan's segregated fund requirement still burdens the Chamber's exercise of expression because 'the corporation is not free to use its general funds for campaign advocacy purposes.'" The Court concluded, however, that the State had "articulated a sufficiently compelling reason to support its restriction on the independent expenditures by corporations".

The Court based its reasoning on the State's interest in preventing corruption or the appearance of corruption, specifically: "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas".

In addition, the Court found that the Act's classifications did not violate the Equal Protection Clause of the 14th Amendment. The Court stated that the regulation of only corporations was "precisely tailored to serve the compelling state interest of eliminating from the political process the corrosive effect of political 'war chests' amassed with the aid of the legal advantages given to corporations".

Citizens United v. Federal Election Commission (558 U.S. 310)

In *Citizens United,* the U.S. Supreme Court addressed the constitutionality of a Federal law (referred to as §441b) that prohibits corporations and labor organizations from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication" or that expressly advocates the election or defeat of a candidate, although corporations and unions may establish a separate segregated fund (commonly known as a political action committee, or PAC) for this purpose. The case involved a documentary called "Hillary: The Movie", which was about then-Senator Hillary Clinton, who was a candidate in the 2008 presidential primary election at the time. The film was released by a nonprofit corporation called Citizens United. In addition to making the film available through video-on-demand services, Citizens United produced an ad that it wanted to run on broadcast and cable television. Because airing the film and the ad might have violated §441b, Citizens United sought declaratory and injunctive relief against the Federal Election Commission, claiming in part that the law was unconstitutional. After the U.S. District Court denied Citizens United's motion, the case was reargued in the U.S. Supreme Court.

The Court found that §441b was an outright ban on corporate speech, in violation of the First Amendment, "notwithstanding the fact that a PAC created by a corporation can still speak". According to the Court, "A PAC is a separate association from the corporation… Even if a PAC could somehow allow a corporation to speak--and it does not--the option to form PACs does not alleviate the First Amendment problems with §441b. PACs are burdensome alternatives…".

The Court discussed a line of a cases in which it recognized that the protection of the First Amendment applies to corporations. "This protection has been extended by explicit holdings to the context of political speech... Under the rationale of these precedents, political speech does not lose First Amendment protection 'simply because its source is a corporation.'" The Court found that it was confronted with conflicting lines of precedent, and stated, "No case before Austin had held that Congress could prohibit independent expenditures for political speech based on the speaker's corporate identity."

The Court found that *Austin* was not well reasoned. In overruling *Austin*, the Court concluded, "We return to the principal…that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations." In addition, the Court overruled part of a 2003 decision that had relied on *Austin* (*McConnell v. Federal Election Commission*, 540 U.S. 93).

Michigan Chamber of Commerce v. Land (725 F. Supp. 2d 665)

The Michigan Chamber of Commerce, Michigan Chamber Political Action Committee III, and Sterling Consulting Corporation brought an action against then-Secretary of State Terri Lynn Land in U.S. District Court for the Western District of Michigan, challenging the Secretary of State's interpretation and application of Section 54(1) of the Michigan Campaign Finance Act (described above). The plaintiffs complained that the Secretary of State's interpretation violated their First Amendment rights to freedom of speech and freedom of association by restricting their right to make certain independent political expenditures during and in connection with campaigns for State elective office. According to the Secretary of State, "*Citizens United* only lifted the section 54 ban on independent expenditures. The ban on contributions remains intact and cannot be avoided by transferring corporate funds to MCPAC III and then contributing those funds to another committee." The Secretary of State also stated that an MCPAC III contribution to another political committee would not be an "independent expenditure" permitted under *Citizens United*.

In July 2010, the U.S. District Court granted the plaintiff's application for a preliminary injunction in part, stating, "The Michigan Secretary of State may *not* enforce…[Section 54 of the Act] to restrict or prohibit the plaintiff corporations from making payments to the plaintiff political action committee for the purpose of the political action committee making expenditures in connection with a campaign for government office where those expenditures are *in no way* directly or indirectly coordinated with any candidate or the candidate's campaign committee, political party, or political party committee." (Emphasis in original.) In August 2010, the Court entered a judgment in favor of the plaintiffs and against the defendant.

SpeechNow Org. v. Federal Election Commission (599 F.3d 686)

In this case, decided in March 2010, the U.S Court of Appeals for the District of Columbia Circuit addressed the constitutionality of limits in Federal law on the amount that a person may contribute to a political committee. The plaintiffs included SpeechNow (a nonprofit association registered as a political organization), an individual who was the president of the association, and four other individuals. SpeechNow intended to acquire donations from individuals and operate through independent expenditures, and the individual plaintiffs were proposing to make donations to it in excess of the contributions allowed by the Federal Election Campaign Act. The limits in question 1) prohibited any person from making contributions to a political committee in any calendar year that, in the aggregate, exceeded $5,000; 2) prohibited an individual, during a biennial period, from making contributions aggregating more than a) $37,500 in the case of contributions to candidates and the authorized committees of candidates, and b) $57,500 in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees that are not political committees of national political parties. (These amounts are subject to annual or biennial adjustments to reflect changes in the Consumer Price Index.)

The Court of Appeals held that 1) both of these limits violated the First Amendment by preventing SpeechNow's president from accepting contributions to the association in excess of the limits; 2) the $5,000 limit violated the First Amendment by preventing the individual plaintiffs from contributing to SpeechNow in excess of that limit; and 3) the biennial contribution limits violated the First Amendment by preventing one the individual plaintiffs (who proposed to donate $110,000) from making contributions to SpeechNow that would exceed his biennial aggregate limit.

The Court of Appeals stated, "The Supreme Court has recognized only one interest sufficiently important to outweigh the First Amendment interests implicated by contributions for political speech: preventing corruption or the appearance of corruption." Since the Supreme Court had held in *Citizens United* that the government has no anti-corruption interest in limiting independent expenditures, "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption". The Court of Appeals concluded that "the government has no anti-corruption interest in limiting contributions to an independent expenditure group such as SpeechNow". The Court pointed out, however, that it was only deciding the questions "as applied to contributions to SpeechNow, an independent expenditure-only group", and that its holding did not affect the statutory limits on direct contributions to candidates.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan has a history of amending the Campaign Finance Act to bring it into conformity with judicial decisions. In 1986, for example, the U.S. District Court for the Eastern District of Michigan found that a limit on the amount corporations could spend on ballot questions was unconstitutional (*Michigan State Chamber of Commerce v. Austin*, 637 F. Supp. 1192). Subsequently, Public Act 95 of 1989 amended the Act to delete that limit. In 1996, the U.S. Supreme Court held that an Ohio law prohibiting anonymous campaign literature violated the First Amendment (*McIntyre v.*

Ohio Elections Commission, 514 U.S. 334); in reliance on that opinion, Michigan's Attorney General found that a similar provision in the Campaign Finance Act was unconstitutional (Opinion No. 6895). In response, Public Act 225 of 1996 amended the relevant provisions of the statute.

It now has been seven years since the U.S. Supreme Court invalidated Michigan's restrictions on corporate campaign expenditures, and since the U.S. District Court found that the law, as interpreted by a former Secretary of State, was unenforceable. The Campaign Finance Act still reads, however, as if those decisions had not been made. The bill would bring the statute up to date and codify what is current practice.

Supporting Argument

The bill would make a number of positive changes to the Act, including the revised definition of "independent expenditure". The proposed definition is more comprehensive and explicit than the current definition and would be more consistent with Federal law. While the term presently refers to an expenditure that is not made at the direction or under the control of another person, the proposed definition would refer to an expenditure not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate committee or its agent, a political party committee or its agent, or a ballot question committee.

The bill also would clarify that an independent expenditure would not be a "contribution" if it were made properly, and would create a clear pathway for the imposition of criminal penalties if an independent expenditure were made in violation of the law. This would occur, for example, if an individual knowingly caused an independent expenditure committee to make a contribution to a political party committee, or if a consultant retained by both an independent expenditure committee and a candidate improperly conveyed information about campaign plans.

In addition, the bill would prescribe late filing fees as well as a misdemeanor penalty for failure to file an independent expenditure report as required, and would subject independent expenditure committees to the reporting requirements. These measures would enhance transparency and help ensure that independent expenditures were disclosed.

Opposing Argument

The bill would go well beyond codifying *Citizens United* and related case law. Under *Citizens United*, the U.S. Supreme Court essentially said that government cannot put limits on independent expenditures by corporations and labor organizations. The spending, however, needs to be truly independent of candidates and uncoordinated with their campaigns. Although the proposed definition of "independent expenditure" would be consistent with the Federal definition, and would be an improvement over the current definition, other provisions of the bill would undermine the independence of independent expenditure committees (commonly referred to as superPACs).

First, the bill would give candidates and their supporters broad ability to share consultants, attorneys, and other vendors. For example, a person could make an expenditure on behalf of a superPAC for advertising in support of a candidate even though the candidate hired the same advertising firm. Although the bill would prohibit the vendor from conveying or using information about campaign plans, projects, and activities that it had obtained from the candidate, proving a violation would be very difficult and essentially would require one of the parties involved to admit guilt.

In addition, while Federal law limits the solicitation of contributions by Federal candidates, the bill would allow a candidate to solicit unlimited contributions to his or her superPAC. In a 2011 advisory opinion, the Federal Election Commission concluded that, although independent expenditure-only committees may *accept* unlimited contributions from individuals, corporations, and labor organizations, statutory restrictions continue to apply to contributions *solicited by* Federal officeholders and candidates. Under the Michigan Campaign Finance Act, an individual may not contribute more than $6,800 for a candidate for State elective office except the office of State legislator. (The limits are $2,000 for a candidate for State Senator and $1,000 for a candidate for

State Representative.) Under the bill, however, a candidate could ask a supporter to contribute unlimited amounts to his or her superPAC, making those individual contribution limits meaningless.

Rather than weakening the Act, the bill could codify *Citizens United* and, at the same time, set up real barriers between candidates and superPACs that support them, improve transparency, and allow the tracking of expenditures in a timely manner.

Response: Regarding a candidate's solicitation of unlimited contributions to an independent expenditure committee, the independent nature of an expenditure could be defeated if the committee made independent expenditures during an election cycle related solely to *one* candidate, and that candidate or his or her candidate committee solicited funds on behalf of the independent expenditure committee.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 335 (S-1)

The bill would have an indeterminate impact on State and local government. It is unknown whether the provisions in the bill would lead to more or fewer violations of the Act. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately $3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately $3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

In addition, the bill would have a minimal, indeterminate impact on the Department of State regarding the administration of reporting requirements. The late filing fees proposed by the bill also could generate revenue to the State or local units. As a rule, under the Act, late filing fees are payable to the filing official with whom a statement or report is required to be filed.

Senate Bill 336

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Ryan Bergan
Joe Carrasco

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