

CAMPAIGN FINANCE ACT: ABOLISH REFERENCE TO OEFs

House Bill 4231 as introduced First Analysis (2-24-99)

Sponsor: Rep. Michael Bishop
Committee: Constitutional Law and Ethics

THE APPARENT PROBLEM:

Public Act 411 of 1994 amended the Michigan Campaign Finance Act to, among other things, prohibit "elected public officials" (which the act does not define; see BACKGROUND INFORMATION) from establishing officeholder expense funds (OEFs) beginning January 1, 1995. Elected public officials who had OEFs on January 1, 1995, could still accept contributions to their funds after that date, but only if the contribution was necessary to pay a debt incurred by the officeholder before that date. Assets held by an OEF could be transferred to a candidate committee of the elected public official who established the OEF if it did not contain any money received from an entity (such as a corporation, labor organization, or Indian tribe) prohibited by the act from making contributions and expenditures. The 1994 amendment also gave a January 1, 1996 deadline to elected officials with OEFs to disburse unexpended OEF funds in one of three ways: by giving the funds to a tax-exempt charitable organization, by returning the funds to the contributors, or by giving the funds to a political party committee so long as the OEF didn't have funds received from entities prohibited from making contributions and expenditures under the act. Finally, someone who knowingly violates this section of the campaign finance act is guilty of a misdemeanor, punishable by a fine of up to \$1,000 or imprisonment for up to 90 days, or both.

Although the total number of elected public officials in the state who still have officeholder expense funds apparently is unknown, reportedly at least eight officeholder expense funds are still in existence in compliance with the debt retirement provisions of current law. Also, reportedly some people believe that the language of the existing section of the campaign finance act referring to officeholder expense funds is confusing and could lead some people to believe that they still could establish such funds if elected to public office. Legislation has been introduced that would repeal this entire section of the campaign finance act.

THE CONTENT OF THE BILL:

The bill would repeal section 49 (MCL 169.249) of the Michigan Campaign Finance Act, which contains the only remaining references to officeholder expense funds in the act.

BACKGROUND INFORMATION:

Elected public official. Although the Michigan Campaign Finance Act refers to "elected public officials" in section 49, regarding officeholder expense funds, the act does not define that specific term. However, the act does define "elective office" and "public body."

A "public body" (MCL 169.211) means one or more of the following:

- (a) *A state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.*
- (b) *The legislature or an agency, board, commission, or council in the legislative branch of state government.*
- (c) *A county, city, township, village, intercounty, intercity, or regional governing body; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council.*
- (d) *Any other body that is created by state or local authority or is primarily funded by or through state or local authority, which body exercises governmental or proprietary authority or performs a governmental or proprietary function.*

"Elective office" means "a public office filled by an election, except for federal offices." (MCL 169.205) A person who is appointed to fill a vacancy in a public

office that is ordinarily elective holds an elective office, under this definition, but "elective office" does not include the office of precinct delegate or (except for the purposes of sections 47, 54, and 55) a school board member in a school district that has a pupil membership of 2,400 or less enrolled on the most recent pupil membership count day unless a candidate committee of a candidate for the office of school board member in such school districts receives or spends more than \$1,000.

Section 49 of the Michigan Campaign Finance Act reads in full as follows:

Sec. 49. (1) Subject to subsection (3), an elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund shall not be used to make contributions and expenditures to further the nomination or election of that public official.

(2) The contributions and expenditures made pursuant to subsection (1) are not exempt from the contribution limitations of this act, but the contributions and expenditures shall be recorded and shall be reported on forms provided by the secretary of state and filed not later than January 31 of each year. The report shall have a closing date of January 1 of that year.

(3) Beginning January 1, 1995, an elected public official shall not establish an officeholder expense fund. An elected public official who has an officeholder expense fund on January 1, 1995, shall not accept contributions to the officeholder expense fund on or after that date unless the contribution is necessary to pay a debt incurred by the officeholder before January 1, 1995. On or before January 1, 1996, unexpended funds in an officeholder expense fund shall be disbursed in 1 of the following ways:

(a) Given to a tax-exempt charitable organization.

(b) Returned to the contributors of the officeholder expense fund.

(c) Given to a political party committee if the officeholder expense fund does not contain funds received from an entity that is prohibited from making contributions and expenditures under section 54.

(4) Notwithstanding subsection (3), assets held by the officeholder expense fund may be transferred to a candidate committee of the elected public official who established the officeholder expense fund if the

officeholder expense fund does not contain funds received from an entity that is prohibited from making contributions and expenditures under section 54.

(5) A person who knowingly violates this section is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 90 days, or both.

[Section 54 applies to contributions by corporations, joint stock companies, domestic dependent sovereigns, and labor organizations.]

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an indeterminate state fiscal impact associated with the elimination of certain penalty provisions in the Michigan Campaign Finance Act. The repeal of section 49 of the act could result in a loss of state revenue associated with the penalty provisions that otherwise would apply to those elected public officials who had not dissolved their officeholder expense funds. Presumably, the penalty provisions (criminal fines up to \$1,000 and imprisonment for up to 90 days, or both) no longer would apply to these elected officials. The number of elected officials who have not dissolved their OEFs is unknown at this time, and therefore so is the potential state revenue loss. The actual revenue loss would be contingent on the number and amount of fines assessed. In addition, there might be some costs to the state associated with the administration of such penalties, were they not repealed. (2-23-99)

ARGUMENTS:

For:

The bill would eliminate current remaining references to officeholder expense funds in the campaign finance act. Some people argue that current language in this section of the act could possibly mislead some elected public officials to believe that they still could open officeholder expense funds when in fact they cannot. For, the first sentence in the first subsection of this section (section 49) of the act says in part that "an elected public official may establish an officeholder expense fund", even though the beginning of the sentence is prefaced with "[s]ubject to subsection (3)", which prohibits elected public officials from establishing officeholder expense funds beginning on January 1, 1995. The bill would eliminate any possible confusion over whether or not someone can open an officeholder fund today by eliminating altogether any

references to officeholder expense funds in the campaign finance act.

Against:

The bill raises several questions. On the one hand, there is the question of whether any, and if so, how many, OEFs still are in existence. Although the act does not define "elected public official" it does define "elective office" and "public body" in such a way that it applies to any elected public official (other than federal offices, elected precinct delegates and, under certain circumstances, school board members of very small school districts), whether at the state or local level. Of the thousands of elected public officials in the state, how many still have officeholder expense funds? If, as reportedly is the case, there still are some OEFs in existence, what is their legal status? And why are they still in existence, if, under the 1994 amendment to the campaign finance act, OEFs were to have disposed of their funds no later than January 1, 1996? Aren't the current or former elected officeholders who still have OEFs in violation of this section of the campaign finance act, and thereby subject to the criminal penalties imposed under this section of the act? Would the bill, by eliminating this section of the act, exempt current or former elected officeholders who still have OEFs from the act's criminal sanctions? Should they be so exempted? Moreover, would the bill allow current or former elected officeholders who still have OEFs to dispose of these funds in any way they wished, including being relieved of legal obligations to repay debts from the funds?

Rather than completely eliminate this particular section of the campaign finance act, some have suggested that the first two subsections of the act -- which originally allowed officeholder expense funds to be established and "used for expenses incidental to the person's office" and which imposed certain reporting requirements on contributions and expenditures made to and from OEFs -- be eliminated, while keeping the current provisions prohibiting the establishment of OEFs after January 1, 1995, and specifying how any funds in OEFs are to be disbursed.

Response:

According to committee testimony, the statute of limitations on debts is only six years, so that repealing this section of the campaign finance act without giving the repeal immediate effect would mean that it would

go into effect roughly at the same time the statute of limitations for debt repayment would take effect. So the bill would not deprive anyone of their legal rights

to repayment of debts that might be owed them from no-longer legal officeholder expense funds.

Furthermore, according to the Department of State, there are only about eight known officeholder expense funds in existence, none of which are being used for anything other than debt retirement, which is entirely in accordance with existing law. So apparently no one is in violation of the current provisions of section 49 of the campaign finance act (though its repeal would, in fact, remove current requirements on how OEFs are to be disposed of and, in general, all other requirements on OEFs).

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (2-23-99)

The League of Women Voters has no position on the bill. (2-23-99)

Common Cause of Michigan has no position on the bill. (2-23-99)

Analyst: S. Ekstrom

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