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BILL ANALYSIS



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Senate Bill 1299 (Substitute S-1 as reported)  
Sponsor: Senator Michelle A. McManus  
Committee: Campaign and Election Oversight

*(as passed by the Senate)*

Date Completed: 10-20-08

### **RATIONALE**

Under the Michigan Campaign Finance Act, a person may file with the Secretary of State (SOS) a complaint alleging a violation of the Act. The process for resolving complaints requires the SOS to notify the alleged violator of the complaint, accept a response from that person and a rebuttal statement from the complainant, investigate, and then decide whether there may be a violation of the Act. If the SOS believes that there may be a violation, he or she must attempt to correct the violation or prevent future violations through informal means, including meetings and conciliation agreements. If the violation is not resolved, the SOS may hold a formal hearing to determine whether a civil violation has occurred. There is no deadline by which a complaint must be resolved. While, on average, the process lasts about seven months, there currently are approximately 30 unresolved complaints, some of which have been pending for over two years.

Some people believe that, because the SOS is not required to hold formal hearings on alleged violations or resolve complaints by a certain date, some complaints before him or her might not be resolved in a timely manner, if at all. Additionally, it has been suggested that the public should have access to information regarding complaints of alleged violations of campaign finance laws.

### **CONTENT**

**The bill would amend the Michigan Campaign Finance Act to require the Secretary of State to do the following:**

- **Post on the internet any complaint, response, or rebuttal statement regarding an alleged violation of the Act.**
- **Post on the internet, within 60 business days after receiving a rebuttal statement, or if no response or rebuttal were received, whether there could be reason to believe that a violation of the Act had occurred.**
- **Commence a hearing to determine whether a civil violation of the Act had occurred or refer the matter to the Attorney General for enforcement of any criminal penalties**

**The bill also would make it mandatory, rather than permissive, that the SOS impose a fine for an improper contribution or expenditure, and would increase the fine to triple the amount of the contribution or expenditure.**

#### Complaint, Response, & Rebuttal

Under the Act, a person may file with the Secretary of State a complaint that alleges a violation of the Act. Within five business days after a complaint is filed, the SOS must give notice and a copy of the complaint to the person against whom it is filed. That person then has 15 business days to submit a response to the SOS. The Secretary of State may extend this period an additional 15 business days for good cause. He or she must provide a copy of a response to the complainant, who has 10 business days to submit a rebuttal statement. The SOS may extend this period an additional 10 business days for good cause. The SOS must give a

copy of the rebuttal statement to the person against whom the complaint was filed.

Under the bill, the Secretary of State would have to post on his or her internet website any complaint, response, or rebuttal statement received under these provisions.

Under the Act, every 60 days after a complaint that meets the requirements of the Act is filed and until the matter is terminated, the Secretary of State 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 the requirement for the SOS to mail a notice every 60 days.

#### Correction of Violations

The Secretary of State must investigate the allegations in a complaint under the rules promulgated under the Act. If the SOS determines that there may be reason to believe that a violation of the Act has occurred, he or she must endeavor to correct the violation 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. If the SOS is unable to correct or prevent further violation by these informal methods, then he or she may refer the matter to the Attorney General for the enforcement of a criminal penalty provided by the Act, or commence a hearing (as described below).

Under the bill, within 60 business days after receiving a rebuttal statement, or if no response or rebuttal were received, the Secretary of State would have to post on his or her internet website whether there could be reason to believe that a violation of the Act had occurred. If the Secretary determined that there could be reason to believe that a violation occurred, he or she would have to endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and could enter into a conciliation agreement with the person involved. If, after 30 business days, the SOS were unable to correct or prevent further violation by these informal methods, he or she would have to refer the matter to the Attorney General for the enforcement of any criminal penalty

provided by the Act or commence a hearing for enforcement of any civil violation.

If the SOS referred a matter to the Attorney General, the Attorney General could refer the matter to the prosecuting attorney of the county where the violation occurred for the enforcement of any criminal penalty provided by the Act. Within 60 business days after a matter was referred to the Attorney General or county prosecuting attorney, he or she would have to determine whether to proceed with enforcement of that penalty.

#### Hearing; Fine

Under the Act, the Secretary of State may commence a hearing to determine whether a civil violation of the Act has occurred. The bill would require the SOS to do so.

A hearing may not be commenced during the period beginning 30 days before an election in which a 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.

A hearing must be conducted in accordance with the procedures set forth in Chapter 4 of the Administrative Procedures Act (which pertains to parties in contested cases, time and notice of hearings, evidence, official records of hearings, and rehearings). If, after a hearing, the Secretary of State determines that a violation of the Campaign Finance Act 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 a maximum of \$1,000 for each violation. Under the bill, the SOS would have to issue an order requiring the person to pay a civil fine equal to triple the amount of the improper contribution or expenditure plus up to \$1,000 per violation.

MCL 169.215

#### **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**

The bill would require the SOS to determine within 60 days of receiving a complaint (if no response or rebuttal were received) whether there was reason to believe that a violation of the Act had occurred. The bill also would require the SOS to hold a hearing on a complaint that was not resolved by informal means after 30 days, or refer the matter to the Attorney General for enforcement of criminal penalties. Although it takes on average about seven months for the SOS to process and resolve a complaint, recently it has taken longer for some complaints to be addressed, and several complaints remain unresolved after more than two years. The resolution of complaints and the correction of violations of the Act are important to the campaign and election process in the State and should be conducted quickly. By setting deadlines and requiring the SOS to move to the formal phase of the process, the bill should ensure that resolution of open complaints would be forthcoming.

### **Supporting Argument**

The bill would enable Michigan residents to monitor the actions of the SOS and conciliation proceedings by requiring the SOS to publish complaints and responses to complaints of alleged violations of the Act. This would increase public oversight of the office and could encourage the SOS to complete the process in a timely manner.

**Response:** The proposed internet disclosure requirements actually could hinder the conciliation process. Because the process is based on informal meetings, relies on open communication, and functions best when parties are truthful and cooperative, too much transparency, such as on-line postings, could inhibit cooperation and discourage parties from admitting mistakes. While public access to government proceedings is important, the proper resolution of a violation or complaint should take priority.

### **Opposing Argument**

The bill would require the SOS to hold a hearing on every complaint filed, regardless of the likelihood that the alleged violator committed a violation. This would allow political operatives to use the Campaign Finance Act to hinder the campaigns of opponents and tie-up the resources of the SOS with unwarranted complaints. The SOS should not be compelled to hold a hearing

on every complaint filed, and should have the discretion to hold hearings or not.

**Response:** The SOS would have to commence a formal hearing only if he or she had determined that a violation of the Act could have occurred and had unsuccessfully attempted to resolve the matter through informal means.

Legislative Analyst: Craig Laurie

### **FISCAL IMPACT**

The bill could have a minimal fiscal impact on the Secretary of State's resources. The proposed time lines for responding to complaints along with the posting of information on the Secretary of State's web page could, at times, require additional staff and/or staff time. These potential costs, however, would be minimal and supported by current appropriations. The exact amount of the potential additional costs is indeterminate.

The bill also would increase the amount of civil fine revenue that is deposited in the State's General Fund. The bill would have no fiscal impact on 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.