

Legislative Analysis



CAMPAIGN FINANCE ACT AMENDMENTS

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House Bill 4997 as passed by the House

Sponsor: Rep. Douglas Geiss

Committee: Ethics and Elections

First Analysis (10-30-09)

BRIEF SUMMARY: The bill would amend the Michigan Campaign Finance Act to:

- Increase from one to six the number of campaign statements for committees other than independent or political committees.
- Limit detailed reporting to campaign contributions of more than \$20.
- Require aggregate reporting of contributions of \$20 or less.
- Prohibit candidates seeking office from being paid wages or a salary.
- Prescribe the timing of and disclaimers for 'robo' calls and email ads.
- Remove labor organizations from the list of those who are considered to be single independent committees, and for whom election cycle contribution limits apply.
- Allow public employees to contribute to political action committees through payroll deduction, if their collective bargaining unit provides full compensation to the public body for the service.
- Eliminate the need to file a signature card for a voluntary payroll deduction to a PAC, but require that the first affirmative consent to a contribution be in writing.

FISCAL IMPACT: House Bill 4997 would have an indeterminate fiscal impact on the Department of State. The department may experience an increase in administrative costs because of the bill's provisions that require additional departmental oversight and possible enforcement activities by the Department of State.

THE APPARENT PROBLEM:

In 1994 the legislature made extensive revisions to the Michigan Campaign Finance Act, including changes that required the reporting of every campaign contribution no matter how small, and modifications to the requirements for consent to payroll deductions for political action committees (customarily called PACs), as well as the prohibition of such payroll deductions to PACs when they are made by public employees.

The provisions of the act that prohibit public employees from making voluntary payroll deductions to PACs have resulted in ongoing litigation for over a decade, while the requirement that private sector employees annually authorize their voluntary contributions through payroll deduction has imposed unnecessary and time-consuming record-keeping on corporate personnel departments. Further, while the treasurers of political campaigns meet a welter of reporting requirements for contributions, including different filing deadlines for different kinds of committees, as well as different filing deadlines depending on whether contributions are made in odd- or even-numbered years,

the treasurers of committees other than independent or political committees have far less public transparency in their reporting, filing but once each year.

Finally, the Michigan Campaign Finance Act is silent about the regulation of new communications technologies now used to inform voters about candidates and issues, including electronic communication techniques and telephonic methods such as 'robo' calling.

Legislation has been introduced to update the Michigan Campaign Finance Act so that it addresses all of these issues. That bill, described below, embodies, among other things, three bills passed by the House of Representatives earlier in this legislative session: House Bill 4245, which would allow public employees to make voluntary payroll deductions for donations to political action committees; House Bill 4284, which would eliminate private sector employees' annual signature requirement to make voluntary payroll deductions to political action committees; and House Bill 4985, which would regulate electronic and telephone communications.

THE CONTENT OF THE BILL:

House Bill 4997 (H-4) would amend 13 sections of the Michigan Campaign Finance Act (MCL 169.215 et al) and would add two new sections. Among other things, the bill would:

- Increase from one to six the number of campaign statements for committees other than independent or political committees.
- Limit, generally speaking, detailed reporting to campaign contributions of more than \$20.
- Require aggregate reporting of contributions of \$20 or less.
- Prohibit candidates seeking office from being paid wages or a salary.
- Prescribe the timing of and disclaimers for 'robo' calls and email ads.
- Remove labor organizations from the list of those who are considered to be single independent committees, and for whom election cycle contribution limits apply.
- Allow public employees to contribute to political action committees through payroll deduction, if their collective bargaining unit provides full compensation to the public body for the service.
- Eliminate the need to file a signature card for a voluntary payroll deduction to a PAC, but require that the first affirmative consent to a contribution be in writing.

A detailed summary of the bill follows.

Campaign Act violations by the attorney general

Currently under the Michigan Campaign Finance Act, the secretary of state must investigate allegations that the law or its rules have been violated. If the secretary of state determines that there has been a violation, then he or she must try to correct the violation, or prevent a further violation, by using informal methods such as a conference, conciliation, or persuasion, and can enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement is a complete bar on any further action. If the secretary of state is unable to correct or prevent further violation by these

informal methods, the matter may be referred to the attorney general for the enforcement of a criminal penalty, or to commence a hearing. The same referral protocol applies to violations concerning reports or statements that must be filed under the act. House Bill 4997 would retain these provisions, but specify that if any violation involved the attorney general or a campaign or committee with which the attorney general was connected (directly or indirectly), the director of elections would be required to refer the matter to the Ingham County prosecuting attorney for the enforcement of a criminal penalty provided by the act.

Distinguish between contributions/loans above and below \$20

Under the Michigan Campaign Finance Act, a campaign committee treasurer (or other designated individual) is responsible for the committee's record keeping, report preparation, or report filings, and must keep detailed accounts, records, bills, and receipts to substantiate the information in the reports. The records must be preserved for five years, and made available for inspection. A treasurer who knowingly violates this section is subject to a civil fine or not more than \$1,000. In addition, the treasurer must record the name and address of a person from whom a contribution is received. House Bill 4997 would retain these provisions, but add that the treasurer must record the name and address of a person from whom a contribution is received *except for contributions of \$20 or less received under section 41(3)*.

The Michigan Campaign Finance Act specifies all of the information that must be contained in a campaign statement of a committee, including among other things all receipts, expenditure, loans, in-kind contributions, cash-on-hand, and contributions. House Bill 4997 would retain all of these requirements, but modify the reporting of contributions to include *the total amount of contributions received during the period covered by the campaign statement from persons who contributed more than \$20; the total amount of contributions received during the period covered by the campaign statement from persons who contributed \$20 or less; and the total amount of contributions of \$20 or less received during the period covered by the campaign statement and the cumulative amount of the contributions received by the filer under Section 41(3)*.

The Campaign Finance Act also specifies the information that is required to be reported for each fundraising event, including among other things the type of event, date held, address and name of the place where the activity was held, the total amount of all contributions, the gross receipts, the expenditures incident to the event, the full name of each individual from whom contributions are received, including the occupation, employer, and principal place of business if an individual's cumulative contributions are more than \$100. House Bill 4997 would retain all of these provisions, but require that the report include *the total amount of contributions of \$20 or less*, and the full name of each individual from whom contributions *totaling more than \$20* were received.

In addition, the Campaign Finance Act specifies the information a candidate committee or ballot question committee must report, including all cumulative amounts required under the act on a per election cycle basis. In contrast, an independent committee or political committee must report all cumulative amounts on a calendar year basis, and the information that must be included in the reports is described in detail within the act. The

bill would retain all of these provisions. Further, the act describes the information that must be reported for bundled contributions to statewide candidates, and the manner in which bundling committees must report both to the secretary of state, and to the campaign committee. House Bill 4997 would retain all of these provisions, but require that the reports include among other things the amount of each contribution *of more than \$20*, the date it was received, the intended recipient, and the name and address *of each person that contributes more than \$20 during the period covered by the statement*.

Under the act, a committee must report loans on a separate schedule attached to the campaign statement, and include the name and address of the lender and each person who is liable directly, indirectly, or contingently on each loan. House Bill 4997 would modify this provision to require this information on each loan *of more than \$20*. Currently the act also requires that a campaign statement report the receipt of a contribution from a person whose treasurer is out-of-state. House Bill 4997 would also modify this provision to require this information for those who made a contribution *of more than \$20*.

The Campaign Finance Act also describes in detail the information that must be filed by a political party committee in its campaign statements, including the full name and street address of each person from whom contributions are received in a calendar year, the amount, and the date or dates contributed; and, if the person is a committee (including an out-of-state committee), the name and address of the committee and the full name of the committee treasurer. Further, the occupation, employer, and principal place of business must be listed for each person having contributions totaling more than \$100 in a calendar year. House Bill 4997 would require the full name and street address of each person from whom contributions *totaling more than \$20* were received in a calendar year.

House Bill 4997 specifies that a contribution received as the result of a fund-raising event or casual services, or from the sale of political merchandise that is \$20 or less in the aggregate from a person in any calendar year is not considered an anonymous contribution. Further, a contribution received from membership fees, dues, or subscriptions for political purposes to an independent committee or a political party committee that is \$20 or less in the aggregate from a person in any calendar year is not considered an anonymous contribution. Finally, a person making such a contribution that is more than \$20 in any calendar year when added to all other contributions made to that committee by that person must furnish the recipient with the donor's name, address, and the total amount contributed.

Currently under the law, a contribution from a person whose treasurer does not reside in, whose principal office is not located in, or whose funds are not kept in Michigan cannot be accepted for purposes of supporting or opposing candidates for elective office, or the qualification, passage or defeat of a ballot question, unless that contribution is accompanied by a statement certified as true and correct by an officer of the contributing person, setting forth the full name and address, along with the amount contributed. House Bill 4997 would retain this requirement but specify that it would apply only to contributions of more than \$20. Further and under the law, a person cannot receive a contribution from a person other than a committee unless the contribution is accompanied by the name and address of each person who contributed to the total amount of the contribution and the name, address, occupation, employer, and principal place of business

of each person who contributed more than \$100 to the total contribution. House Bill 4997 would retain this requirement, but specify that the reporting a person's name and address would apply to those making contributions of more than \$20.

Candidate committee campaign statement

Under the Campaign Finance Act, a committee other than a candidate committee must file a campaign statement for each period during which expenditures are made for the purpose of influencing the nomination or election of a candidate or for the qualification, passage, or defeat of a ballot question. House Bill 4997 would eliminate the phrase, *other than a candidate committee*.

Schedule of campaign statement filings: unchanged

The Michigan Campaign Finance Act requires that independent and political committees file complete campaign statements with the secretary of state, and sets a schedule for filing the reports, which varies depending upon the type of committee. Currently, an independent committee or a political committee other than a House or Senate political party caucus committee files reports in an odd numbered year, not later than January 31 (with a closing date of December 31), July 25 (with a closing date of July 20), and October 25 (with a closing date of October 20). Further, the committee files statements in even numbered years not later than April 25 (with a closing date of April 20), July 25 (with a closing date of July 20), and October 25 (with a closing date of October 20). House Bill 4997 would retain these provisions.

Currently under the law, a House or Senate political party caucus committee must file campaign statements with the secretary of state each year, not later than January 31 (with a closing date of December 31), and by April 25, July 25, and October 25 (with closing dates of April 20, July 20, and October 20, respectively). House Bill 4997 would retain these provisions.

Schedule for committees that still must file annually

Under the Campaign Finance Act, a committee, other than an independent committee or a political committee is required to file a year-end campaign statement not later than January 31 of each year (with a closing date of December 31). House Bill 4997 would require two reports in even-numbered years, filed by January 31 (with a December 31 closing date) and April 30 (with a March 31 closing date). Further the bill would require four reports in odd-numbered years, due not later than January 31 (with a December 31 closing), April 25 (with an April 20 closing), July 25 (with a July 20 closing), and October 25 (with a closing date of October 20).

No salary or wages for a candidate from candidate committee

House Bill 4997 would add a new section to the Michigan Campaign Finance Act to prohibit a candidate committee from paying a candidate wages, a salary, or other employment compensation. The bill specifies, however, that this prohibition would not prohibit reimbursements from a candidate committee to a candidate for campaign-related expenses made by the candidate on behalf of the committee. A person who knowingly violated this prohibition would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both. A committee that violated this prohibition would be subject to a fine of not more than \$10,000.

Limits & requirements on "Robo" calling

House Bill 4997 would add a new section to the Michigan Campaign Finance Act to require that a communication advocating the election or defeat of a candidate that was designed to contact electors through automated telephonic, electronic mail, or other electronic means clearly state the name and the address or telephone number of the person paying for the communication. The disclaimer would have to appear at the beginning of a telephonic communication. Further, a telephonic communication could not take place between the hours of 8 p.m. and 9 a.m. in the time zone within which the recipient of the telephonic communication is located.

If the communication advocated the election or defeat of a candidate and was an independent expenditure not authorized in writing by that candidate's committee, then the communication would have to clearly state the following disclaimer: "Not authorized by any candidate committee." If the communication advocated the election or defeat of a candidate and was not an independent expenditure, but was paid for by a person other than the whose election or defeat it advocates, the communication would have to clearly state the following disclaimer: "Authorized by (name of candidate or name of candidate committee)."

The bill specifies that for a visual communication, the bureau of elections would be required to promulgate rules regulating the size and placement of an identification or disclaimer. A person who knowingly violated the new provisions would be guilty of a crime as follows:

- For a first violation, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500, or both.
- For a second violation, a misdemeanor punishable by imprisonment for not more than 93 days and a fine of not more than \$1,000, or both.
- For a third and all subsequent violations, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$2,500, or both.

Committees established by labor unions, etc.

The Michigan Campaign Finance Act sets limits for contributions to a candidate during an election cycle, both for individuals and independent committees. The law also specifies that, with certain exceptions, House and Senate political party caucus committees are not limited in the amount of contributions they can contribute to a candidate committee for the office of a state legislator. House Bill 4997 would retain these provisions. The law further specifies that for purposes of the limitations provided, all contributions made by political committees or independent committees established by any corporation, joint-stock company, domestic dependent sovereign, or labor organization, including any parent, subsidiary, branch, division, department, or local unit thereof, shall be considered to have been made by a single independent committee. The law then says that by way of illustration and not limitation, all of the following apply as a result of the application of this requirement:

- (A) All of the political committees and independent committees established by a for-profit corporation or joint-stock company, by a subsidiary of the for-profit

corporation or joint-stock company, or by any combination thereof, are treated as a single independent committee.

(B) All of the political committees and independent committees established by a single national or international labor organization, by a labor organization of that national or international labor organization, by a local labor organization of that national or international labor organization, or by any other subordinate organization of that national or international labor organization, or by any combination thereof, are treated as a single independent committee.

(C) All of the political committees and independent committees established by an organization of national or international unions, by a state central body of that organization, by a local central body of that organization, or by any combination thereof, are treated as a single independent committee.

(D) All of the political committees and independent committees established by a nonprofit corporation, by a related state entity of that nonprofit corporation, by a related local entity of that nonprofit corporation, or by any combination thereof, are treated as a single independent committee.

House Bill 4997 would eliminate labor organizations from the list of those who are considered to be single independent committees, and for whom the contribution limits apply. Further, the bill would eliminate sections (b) and (c), above.

Consent for automatic contributions not required annually

Currently the Michigan Campaign Finance Act allows a profit or a nonprofit corporation, a joint stock company, a domestic dependent sovereign, or a labor organization to solicit or obtain contributions for a separate segregated fund established under Section 55 of the act from an individual on an automatic basis, including but not limited to a payroll deduction plan, only if the individual who is contributing to the fund affirmatively consents to the contribution at least once in every calendar year. House Bill 4997 would delete the words "*at least once in every calendar year.*" The bill also specifies that the individual who is contributing to the fund affirmatively consent in writing.

Public employee campaign contributions through payroll deduction

The Michigan Campaign Finance Act prohibits a public body or an individual acting for a public body from using or authorizing the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure, or to provide volunteer personal services that are excluded from the definition of contribution under Section 4(3)(a) of the act. However, the law also specifies that this prohibition does not apply in six instances: during the expression of views by an elected or appointed public official who has policy-making responsibilities; during the production or dissemination of factual information concerning issues relevant to the function of the public body; during the production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, or magazine; during the use of a public facility if any candidate or committee has an equal opportunity to use the public facility; during the use of a public facility if that facility is primarily used as a family dwelling and is not used to

conduct a fund-raising event; and when an elected or appointed public official is on his or her own personal time, and is expressing his or her own personal views, expending personal funds, or is providing personal volunteer services.

House Bill 4997 would retain all of these exceptions. In addition, the bill would add a seventh exception: *"the use of public resources to permit a public employee, including but not limited to employees of public universities, to contribute to a separate segregated fund of the employee's collective bargaining unit by payroll deduction, provided that the collective bargaining representative provides full compensation for the value of the resources used, to the public body."*

ARGUMENTS:

For:

Proponents of eliminating the annual signature card requirement to authorize voluntary payroll deductions for private sector employees note that Michigan is the only state in the union that requires these annual signature cards. They argue that the annual affirmative consent requirement is inefficient, costly, and time-consuming. They note that there is no need to annually authorize other voluntary payroll deduction--for example, auto loans, mortgages, charitable contributions. In the case of voluntary political deductions, however, the law requires that a signature card be filed each year, essentially forcing contributors to "re-declare" their support on an annual basis, even if no changes are made to an individual's voluntary contribution. In her written testimony to the Ethics and Elections Committee, Assistant Professor Jocelyn Benson of the Wayne State University Law School notes that "the requirement creates additional and unnecessary barriers for citizens who wish to become politically involved." She argues that "Eliminating the annual affirmative consent requirement will streamline the ability for citizens to make contributions while substantially reducing transaction costs for both the citizen and the recipients of contributions."

For:

The provisions that regulate "robo" calling are an important first step in providing accountability for campaign advertising done via "new media." Currently, automated political phone calls that infuriate countless voters have escaped the identification and disclaimer requirements of the Michigan Campaign Finance Act. This bill corrects that omission, and imposes the same requirements for "robo" calls that are now required for radio ads. Under the bill, "robo" calls, website communication, and email would have to meet identification and disclaimer requirements. In addition, the bill would limit the hours during which "robo" calls could be made, prohibiting them during the late night. The people who receive such calls or information should know, up front, the names of the organizations sponsoring political campaign communications, no matter what media is used to disseminate the ads.

For:

Those who support public sector employees being able to make voluntary payroll deductions to political action committees argue that the Michigan Campaign Finance Act should not prohibit public employees from making voluntary contributions from their paychecks to separate segregated funds of the employees' collective bargaining

representative by payroll deduction, if the costs of doing so are reimbursed in advance. They argue that courts have customarily rejected the notion that a voluntary political contribution payroll deduction program inappropriately politicizes government employment. They note that private sector employees are allowed to make political contributions through payroll deduction, and they argue that public sector employees should have the same opportunities to participate in the political process as do their counterparts in the private sector.

Against:

Those who oppose public sector employees being able to make voluntary payroll deductions to political action committees with reimbursement argue that the Michigan Campaign Finance Act currently prohibits and should continue to prohibit school districts from administering paycheck withdrawals for a union's "separate segregated fund" (more commonly referred to as a political action committee or PAC). As the Mackinac Center amicus curiae brief in *Michigan Education Association v. Michigan Secretary of State* notes, "On November 20, 2006, the secretary of state issued a declaratory ruling that school districts could not administer payroll deduction for separate segregated funds even if the union agreed to reimburse the district in advance for any costs." The brief continues, "a plain reading of the Michigan Campaign Finance Act shows that such paycheck withdrawals are illegal and that this interpretation properly recognizes the government has no appropriate role in advancing partisan political ends."

Response:

The Michigan Education Association filed suit to reverse the secretary of state's declaratory ruling, and the trial court agreed on September 4, 2007. However, on August 29, 2008, the Michigan Court of Appeals reversed the trial court's decision. Currently that case rests with the Michigan Supreme Court.

In its amicus curiae brief in *Michigan Education Association v. Michigan Secretary of State*, the Michigan Chamber of Commerce argues that the U. S. Supreme Court has recently acted to uphold statutes like Section 57 of the Michigan Campaign Finance Act, when on February 24, 2009, it issued its decision in *Secretary of State v. Pocatello Education Association*.

Against:

According to testimony offered on a similar bill during the last legislative session by the Michigan Chamber of Commerce, six states—Arkansas, Indiana, Minnesota, Montana, North Dakota, and Wyoming—have recently extended their state "do-not-call" laws to automated political calls. In three of those states, the laws have been challenged in the courts, their opponents arguing that they unconstitutionally limit non-commercial speech under the First Amendment to the U. S. Constitution. However, to date, the courts have found in favor of a state's authority to regulate automated calls used in political campaigns.

Michigan should follow the lead of these states, to allow voters to place their names on the state's do-not-call registry, and extend that registry to political robo calls.

Response:

Although Michigan perhaps should extend its do-not-call law to include automated political calls, it should first also adopt this bill to require that such calls meet identification and disclaimer requirements.

POSITIONS:

The Michigan Campaign Finance Network supports the bill. (7-15-09)

The Michigan Credit Union League supports the bill. (7-15-09)

The International Union UAW supports the bill. (7-15-09)

The Michigan AFL-CIO supports the bill. (7-15-09)

The Michigan Education Association supports the bill. (7-15-09)

The Service Employees International Union supports the bill. (7-15-09)

The Michigan Nurses Association supports the bill. (7-15-09)

The Michigan Corrections Association supports the bill. (7-15-09)

The American Federation of Teachers-Michigan supports the bill. (7-15-09)

The Secretary of State opposes the bill. (7-15-09)

The Michigan Chamber of Commerce opposes the bill. (7-15-09)

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■ 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.