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House Bill 4446 (Substitute H-3 as passed by the House)

Sponsor: Representative Julie Calley

House Committee: Elections and Ethics  
Ways and Means

Senate Committee: Elections and Government Reform

Date Completed: 9-4-19

### **CONTENT**

**The bill would amend the Michigan Campaign Finance Act to do the following:**

- **Allow a candidate committee or other committee to deposit the proceeds of a joint fund-raiser in a secondary depository for certain purposes.**
- **Require a separate segregated fund to report certain information pertaining to payment for a prize.**
- **Allow a connected organization to pay the actual costs related to mailing or shipping an item or prize for its separate segregated fund.**
- **Modify provisions pertaining to contributions that could be transferred to a separate segregated fund.**
- **Specify conditions for when a connected organization could make an in-kind contribution to pay costs for a prize.**
- **Delete February 15 from the list of dates by which a ballot question campaign committee must file a campaign statement.**
- **Allow an independent expenditure committee to indicate in a written statement that it did not expect in a calendar year to receive or spend more than \$1,000.**
- **Allow certain in-kind contributions and expenditures to be made by credit or debit card.**
- **Extend to December 31, 2019 the deadline for which a political committee organized for the purpose of making independent expenditures would be considered an independent expenditure committee.**
- **Modify various definitions.**

### **Definitions**

Under the Act, the terms "contribution" and "expenditure" both refer 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.

The Act excludes from the definitions of "contribution" and "expenditure" a contribution or expenditure for the establishment or administration of, or solicitation, collection, or transfer or contributions to a separate segregated fund if that contribution or expenditure was made by a connected organization of that fund as authorized under Section 55. The bill also would exclude from the definitions a contribution or expenditure for mailing or shipping of an item

or prize purchased under Section 55 for a fund if that contribution or expenditure was made by a connected organization of that fund.

The Act defines "incidental expense" as expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office. Among other things, the term includes a donation to a tax-exempt organization, including the purchase of tickets to charitable or civic events. Under the bill, an "incidental expense" would include a donation to a tax-exempt charitable organization as long as the candidate was not an officer or director of or did not receive compensation, either directly or indirectly, from that organization.

"Qualifying contribution" means a contribution of money made by a written instrument by an individual to the candidate committee of a candidate for governor that is \$100 or less. The bill would include in the definition a contribution of money made by credit or debit card.

#### Using Secondary Depositories for Joint Fund-Raisers

"Committee" means a person that receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party, if contributions received total \$500 or more in a calendar year or expenditures made total \$500 or more in a calendar year.

A candidate must form a candidate committee within 10 days of becoming a candidate, and must have a treasurer who is a qualified elector in Michigan. A committee other than a candidate committee must have a treasurer who is a qualified elector in Michigan if it conducts business through an office or other facility located in the State. If a committee is not required to have as its treasurer an individual who is a qualified elector of the State, it may have as its treasurer an individual who is a resident of another state.

Except as otherwise provided by law, a candidate committee or a committee other than a candidate committee must have one account in a financial institution in the State as an official depository for all contributions received by the committee and to make all expenditures. The committee must designate that financial institution as its official depository. The establishment of an account in a financial institution is not required until the committee receives a contribution or makes an expenditure. Candidate committees may use secondary depositories only for the purpose of depositing contributions and must promptly transfer the deposits to the committee's official depository.

Generally, the same requirements apply to a committee with a treasurer who is a resident of another state.

The bill would allow a candidate committee, a committee other than a candidate committee, or a committee with a treasurer who is a qualified elector of another state to use a secondary depository also to deposit the proceeds of a joint fund-raiser and transfer each committee's share of any receipts from the joint fund-raiser. A committee could use secondary depositories only for the following:

- To deposit contributions and promptly transfer the deposits to the committee's official depository.
- To deposit the proceeds of a joint fund-raiser and transfer each committee's share of any receipts from the joint fund-raiser.
- To deposit, divide, and transfer contributions that were aggregated with dues or other payments.

### Separate Segregated Fund Reporting

Under the bill, for a reporting period in which a connected organization of a separate segregated fund made a payment for a prize or one or more items to be sold or offered in exchange for a contribution, the fund would have to report both of the following, as applicable:

- The amount of any payment of costs for a prize, the value of the prize, the amount raised by the prize, and the amount, if any, reimbursed to the connected organization by the fund for the prize.
- The amount per item of any payment of costs for items to be sold or offered in return for a contribution as part of fundraising activities for the fund, the amount per item that each item was offered at or offered for sale at, the value of each item, the aggregate amount paid for those items, and the amount, if any, reimbursed to the connected organization by the fund for any items.

If one or more of the same items were sold or offered in return for a contribution, a report by item type would satisfy the reporting requirement.

"Value" would mean the regular purchase price offered by the vendor from whom an item is purchased, less any customary discount offered based on the number of items purchased in the same transaction.

### Connected Organization Expenditures

Mailing & Shipping Prizes. Section 55 of 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 to be used for political purposes. Under the bill, a connected organization also could pay actual costs related to mailing or shipping of an item or purchased prize for its separate segregated fund.

Affirmative Consent. Section 55 also allows a connected organization to solicit or obtain contributions for a separate segregated fund on an automatic basis only if the individual who is contributing to the fund affirmatively consents to the contribution. Under the bill, affirmative consent would expire upon revocation by the individual who provided it.

Contributions for Transfer to Fund. Under Section 55, a contribution by an individual to a separate segregated fund that is aggregated with a dues or other payment to the connected organization may be collected by or made payable first to the connected organization for subsequent transfer to the fund if certain conditions (described below) are met. The Act would delete the language referring to the aggregation with dues or other payment to the connected organization.

Section 55 specifies that the individual making the contribution must do either of the following:

- Specifically indicate in a record or electronic record that the amount collected, or a specified portion of the total amount if remitted as part of a dues or other payment to the connected organization, is a contribution to the separate segregated fund.
- Fail to return a second or electronic record, but remit payment to the connected organization in response to a specifically requested amount that includes a solicited contribution, the solicitation for a contribution that was clearly distinguishable from any dues or other fees requested as part of the total, and the connected organization maintains a record or electronic record of the solicitation that includes the amount of the contribution

and the amount of any dues or other fees charged in conjunction with the solicitation for each contributor.

Under the bill, this provision would apply to contributions that were aggregated with dues or other payments.

Section 55 also requires the connected organization to transfer the entire specified amount of any contribution, individually or aggregated with other contributions, for deposit to the separate segregated fund electronically or by written instrument.

Any transfer of designated contributions must be accompanied by or logically associated with a record or electronic record setting for all information required for each individual contributor whose contribution is transferred. The bill would delete this provision.

Additionally, Section 55 requires the connected organization to account for the contributions in a manner that documents all of the following:

- The identity of the individual contributor.
- The date, amount, and method of receipt for each individual contribution.
- The date, amount, and method of all transfers to the separate segregated fund.

The bill, instead, would require the connected organization to report all information required for each individual contributor, and a transfer of contributions for deposit to the separate segregated fund by a connected organization would have to be accompanied by or logically associated with a record or electronic record that set forth all required information for each individual whose contribution was transferred.

In-Kind Contributions. Under the bill, in addition to any other expenditures or disbursements allowed for the establishment or administration of, and solicitation, collection, or transfer of contributions to, a separate segregated fund to be used for political purposes, a connected organization could make an in-kind contribution to pay costs for a prize, or one or more items to be sold or offered in exchange for a contribution, as part of fundraising activities for the separate segregated fund. Any in-kind contribution for payment of costs by the connected organization for a prize or per individual item to be sold or offered in exchange for a contribution could not be disproportionately valuable related to the amount raised by that prize or the amount to be raised or contributed per individual item sold or offered. It would not be a violation of this provision if the connected organization made an in-kind contribution for a payment of costs that was disproportionately valuable and the separate segregated fund reimbursed at least the impermissible portion to the connected organization within 60 days of the payment, or as directed by the Secretary of State. An in-kind contribution for a payment of costs would not be disproportionately valuable if both of the following applied:

- The in-kind contribution were equal to or less than \$5 per prize or per individual item to be sold or offered in exchange for a contribution.
- The in-kind contribution were equal to or less than 10% of the total amount raised by the prize, or if the payment of costs per item sold or offered in exchange for a contribution were equal to or less than 10% of the amount to be raised per individual item sold or offered.

### Campaign Statement

The Act requires a ballot committee to file a campaign statement as required by the Act according to a prescribed schedule. A campaign statement must be filed no later than the following dates each year:

- February 15 with a closing date of February 10.
- April 25 with a closing date of April 20.
- July 25 with a closing date of July 20.

The bill would delete the February filing deadline.

#### Independent Committee Statement

Currently, when filing a statement of organization, an independent committee, a political committee, or a political party committee may indicate in a written statement signed by the treasurer of the committee that it does not expect in a calendar year to receive or spend more than \$1,000.

The bill would allow an independent expenditure committee also to indicate in a written statement signed by the treasurer of the committee that it did not expect in a calendar year to receive or spend more than \$1,000.

#### Separate Segregated Fund Campaign Statement

Section 35 of the Act requires a committee to file a campaign statement no later than January 31 of each year.

The bill would require a separate segregated fund filing a campaign statement to report on the statement the number of items for each item type sold or offered in exchange for a contribution for fundraising purposes where a connected organization paid any costs of the item during the previous calendar year.

#### In-Kind Contributions & Expenditures

The Act specifies that a person may not make or accept a single contribution of more than \$20 in cash or make or accept a single expenditure of more than \$50 in cash. Contributions of more than \$20 and expenditures more than \$50, or other than an in-kind contribution or expenditure must be made by written instrument, containing the names of the payor and the payee.

The bill would delete the requirement that the written instrument contain the names of the payor and the payee. The bill would allow contributions of more than \$20 and expenditures more than \$50, other than an in-kind contribution or expenditure, also to be made by credit or debit card.

#### Individual Independent Expenditures

Under the Act, a person, other than a committee, that 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 must file a report of the independent expenditure, within 10 days after making it, with the clerk of that person's county or residence. If the independent expenditure advocates for the election or defeat of a candidate for State elective office or for the qualification, passage, or defeat of a statewide ballot question, the person must file the report with the Secretary of State, instead of the county clerk.

The bill also would allow an independent expenditure that advocated the election or defeat of a candidate for judicial office to file the report with the Secretary of State.

**FISCAL IMPACT**

The bill would have no fiscal impact on State or 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.