

Legislative Analysis



LEGAL DEFENSE FUND ACT & DISCLOSURE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5937 as introduced
Sponsor: Rep. Edward Gaffney
Committee: House Oversight, Elections, and Ethics

Complete to 5-18-06

A SUMMARY OF HOUSE BILL 5937 AS REPORTED FROM COMMITTEE

House Bill 5937 would create a new act to be known as the Legal Defense Fund Act for elected officials, and require the disclosure of contributions to the fund.

[Note: With minor differences in phrasing, the bill is nearly identical to House Bill 4983, which was reported by the committee earlier in the legislative session.]

Statement of Organization. The bill would require that a legal defense fund file a statement of organization with the secretary of state within 10 days after receiving its first contribution. The statement of organization would have to include all of the following:

- ** The name, street address, and telephone number of the legal defense fund (its name having to include the first and last name of the elected official intended to be its beneficiary).
- ** The name, street address, and telephone number of the individual designated as the treasurer of the legal defense fund.
- ** The name and address of each financial institution in which the money of the fund is, or will be, deposited.
- ** The full name of and office held by the elected official intended to be the fund's beneficiary.

Penalties for Failure to File. Under the bill, a legal defense fund that failed to file a statement of organization would be required to pay a late filing fee of \$10 for each business day the statement remained unfiled. However, a late filing fee could not exceed \$300. A defense fund that failed to file a statement of organization for more than 30 days would be subject to a civil fine of not more than \$1,000. When the fund was dissolved, it would be required to file a statement of dissolution with the secretary of state (on a form designated by the secretary of state).

Contribution Reports. From the time a legal defense fund received its first contribution until it filed a statement of dissolution, the fund would be required to file contribution reports on or before each of the following dates covering the period beginning on the day after the closing of the preceding contribution report and ending on the indicated closing

date, as follows: January 31, with a closing date of December 31 of the previous year; and July 25, with a closing date of July 20.

The contribution report would have to disclose all of the following:

** The legal defense fund's name, address, and telephone number, and the full name, residential and business addresses, and telephone number of the fund's treasurer.

** The following information about each person from whom a contribution was received during the covered period: the person's full name; the person's street address; the amount contributed; the date on which each contribution was received; the cumulative amount contributed by that person; and if the person was an individual whose cumulative contributions were more than \$100, then the person's occupation, employer, and principal place of business.

The beginning date of the first contribution report would be the date the first contribution was received. The fund would be required to file its final contribution report with its statement of dissolution. That report would cover the period beginning on the day after the closing date of its preceding contribution report and end on the last date that the fund received a contribution.

A contribution report would have to include a verification statement, signed by the treasurer for the fund, stating that he or she used all reasonable diligence in preparing the report, and that to his or her knowledge, the statement was true and complete.

Late Filing Penalties. If a report were filed late, the defense fund or the treasurer would be required to pay a late filing fee. If the fund had raised \$10,000 or less during the previous two years, then the late filing fee would be \$25 for each business day the report remained unfiled, but could not exceed \$500. If the fund had raised more than \$10,000 during the previous two years, then the late filing fee would be determined as follows, but could not exceed \$1,000: \$25 for each business day the report remained unfiled; an additional \$25 for each business day after the first three business days; or an additional \$50 for each business day after the first 10 business days.

A legal defense fund's treasurer who failed to file two contribution reports, if both of the reports remained unfiled for more than 30 days, 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.

Public Availability of Reports. Under the bill, the secretary of state would be required to make a statement or report available for public inspection and reproduction as soon as practicable after receipt, but not later than the third business day following the day of receipt. The manner of making the statement or report available to the public could include displaying it on the Internet.

The secretary of state would be required to keep a statement or report until five years after the date of the fund's dissolution.

A late filing fee or civil fine assessed under the act would be paid to the secretary of state and used to pay the expenses of administering the act.

Ban on Anonymous Contributions. The bill prohibits a person from intentionally making or accepting an anonymous contribution. An anonymous contribution received by a legal defense fund would not be deposited into an account that the fund maintained, but would, instead, be given to a person that was exempt from taxation under section 501(c)(3) of the Internal Revenue Code. The person receiving the donation from the fund would be required to provide the fund with a receipt, which would have to be retained by the fund's treasurer.

Further, a contribution could not be made, directly or indirectly, by a person in a name that was intentionally other than the name by which that person was identified for legal purposes.

A person who violated these prohibitions would be guilty of a misdemeanor, punishable as follows: if the person was an individual, then by imprisonment for not more than 90 days, or a fine of not more than \$1,000, or both; or if the person were not an individual, by a fine of not more than \$10,000. [Under the bill, "person" is defined to mean an individual, partnership, corporation, association, governmental entity, or other legal entity.]

Definition of Contribution. The bill would define "contribution" to mean a transfer of money, services, or anything of ascertainable monetary value made for the purpose of defending an elected official of this state against a criminal, civil, or administrative action. Contribution does not include a transfer from the elected official or a member of the official's immediate family. "Immediate family" is defined to mean a child residing in the elected official's household, the elected official's spouse, or an individual claimed by the elected official or the official's spouse as a dependent for federal income tax purposes.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: J. Hunault
Fiscal Analyst: Robin Risko

■ 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.