

Legislative Analysis



LEGAL DEFENSE FUND ACT

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House Bill 4001 as enrolled
Public Act 288 of 2008
Sponsor: Rep. Steve Bieda

Senate Bill 1263 as enrolled
Public Act 289 of 2008
Sponsor: Sen. Michelle A. McManus
House Committee: Ethics and Elections
Senate Committee: Campaign and Election Oversight

Third Analysis (1-7-09)

BRIEF SUMMARY: House Bill 4001 would create a new act to be known as the Legal Defense Fund Act, which would require legal defense funds to file statements of organization and contribution reports with the Secretary of State and would prohibit anonymous contributions. Senate Bill 1263 would make a complementary amendment to the Lobbyist Registration Act in order to prohibit lobbyists from making contributions to legal defense funds under certain circumstances.

FISCAL IMPACT: The fiscal impact to the state is indeterminate. The Department of State will incur costs as a result of the required reports. However, these costs might be offset as the bill requires late filing fees and civil fines to be paid to the Department of State in an effort to offset expenses of administering the act. The amount of late filing fees and civil fines to be paid to the department is indeterminate and will depend on the number of violations.

THE APPARENT PROBLEM:

Currently Michigan does not require either financial reporting or public disclosure for legal defense funds that are set up by public officials who are accused of violating the law. Consequently, elected officials accused of breaking the law can solicit funds to pay for their defense in court without having to make contributors known to the public.

This legislation would create a new law to require financial reporting and public disclosure with the Office of the Secretary of State, prohibit anonymous contributions and contributions from lobbyists, and provide for the orderly dissolution of a fund to ensure that its contributions were returned to those who made them, were deposited in the state's General Fund, or sent to the State Bar of Michigan Client Protection Fund.

THE CONTENT OF THE BILLS:

House Bill 4001 would create a new act to be known as the Legal Defense Fund Act, and Senate Bill 1263 would amend the Lobbyist Registration Act (MCL 4.414 et al.). House

Bill 4001 would require legal defense funds to file statements of organization and to file contribution reports. The bill also would prohibit anonymous contributions. Senate Bill 1263 would prohibit lobbyists from contributing to legal defense funds under certain circumstances. They are effective September 1, 2008. A more detailed description of each bill follows.

House Bill 4001

The bill defines "legal defense fund" to mean all contributions received, held, or expended for the legal defense of an elected official. For purposes of this act, a legal defense fund does not include a fund of a local government association that is an exempt organization under Section 501(c)(4) of the Internal Revenue Code of 1986, or of a local government organization, if money in the organization's fund is composed of money that is excluded from the definition of gross income under Section 115(s) of the Internal Revenue Code.

The bill defines "treasurer" to mean the individual designated as responsible for a legal defense funds' record keeping, report preparation, or report filing or, in the absence of such an individual, the elected official who is the beneficiary of the legal defense fund.

Statement of Organization. Under the bill, a legal defense fund would be required to file a statement of organization with the Office of the Secretary of State (within the Department of State) within 10 days after receiving its first contribution. That statement of organization would have to include the following:

- The name, street address, and telephone number of the legal defense fund (which must include the first and last name of the elected official who is the beneficiary of the fund and the words "legal defense fund").
- The name, street address, and telephone number of the individual designated as the fund treasurer.
- The name and address of each financial institution in which the fund's money is deposited (or may be deposited).
- The full name of and office held by the elected official intended to be the beneficiary of the fund.
- A description of the criminal, civil, or administrative action arising directly out of the conduct of the elected official's duties for which a contribution to or expenditure from the legal defense fund was made.

An elected official who failed to file a statement of organization would be fined a \$10 late filing fee for each business day the statement remained unfiled; however, the fee could not exceed \$300. An elected official who failed to file a statement of organization would be guilty of a misdemeanor, punishable by imprisonment for not more than 93

days or a fine of not more than \$1,000, or both. When the fund dissolved, the elected official would be required to file a statement of dissolution with the Secretary of State, and to return any unexpended funds to the contributor of the funds, or forward them to the State Treasurer for deposit into the General Fund, or to the State Bar of Michigan for deposit into the State Bar of Michigan Client Protection Fund.

Transaction Reports. A legal defense fund would be required to file transaction reports, disclosing all of the following:

- The legal defense fund's name, address, and telephone number, and the full name, residential and business addresses, and a telephone number of the fund's treasurer.
- Every contributor's full name.
- Every contributor's full address.
- The amount contributed.
- The date each contribution was received.
- The cumulative amount contributed by person.
- The person's occupation, employer, and place of business if the cumulative contributions are more than \$100.
- The following information itemized as to each expenditure from the fund that exceeds \$50, and as to expenditures made to one person that cumulatively total \$50 or more during a covered period: the amount of the expenditure; the name and address of the person to whom the expenditure was made; the purpose of the expenditure; and the date of the expenditure.

The treasurer of the legal defense fund would be required to file transaction reports on (or before) each of the following dates:

- January 25, with a closing date of December 31 of the previous year.
- April 25, with a closing date of March 31.
- July 25, with a closing date of June 30.
- October 25, with a closing date of September 30.

Record-keeper Responsibilities; Penalties. Under the bill, a transaction report would have to include a verification statement, signed by the treasurer for the legal defense fund and the elected official, stating that he or she used all reasonable diligence in preparing the report, and that it was, to his or her knowledge, true and complete. A treasurer or other person responsible for the legal defense fund's record keeping, report preparation, or report filing would be required to keep detailed accounts, records, bills, and receipts as required to substantiate the information contained in a statement or report. The records

of a legal defense fund would have to be preserved for five years, and be made available for inspection as authorized by the Secretary of State. A treasurer who knowingly violated these requirements would be subject to a civil fine of not more than \$1,000. A treasurer or elected official who knowingly submitted false information would be guilty of a misdemeanor punishable by imprisonment for not more than 180 days or a fine of not more than \$5,000, or both.

Late Filing Fees. If a contribution report were filed late, the fund or the treasurer would be required to pay a late filing fee, based on the amount of money the fund had raised. 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 fee could not exceed \$1,000, and would be determined as follows: (a) \$25 for each business day the report remained unfiled; (b) an additional \$25 for each business day after the first three business days; (c) an additional \$50 for each business day after the first 10 days.

Failure to File. A legal defense fund's treasurer who failed to file two contribution reports 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. A fund's treasurer who knowingly filed an incomplete or inaccurate contribution report would be subject to a civil fine of not more than \$1,000. A late filing fee or civil fine assessed would be paid to the secretary of state, and used to pay the expenses of administering the act.

Public Inspection of Reports. The bill would require the Secretary of State to make the contribution reports and organization statements available for public inspection and reproduction as soon as practicable but not later than three days after receipt. (The manner of making the documents public could include displaying them on the Internet.) The Secretary of State would be required to keep the filings until five years after the legal defense fund's dissolution.

The bill would prohibit an individual or entity from making or accepting an anonymous contribution. Such a contribution could not be deposited into an account, but rather, would have to be given to a nonprofit organization that was exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Further, a contribution could not be made, directly or indirectly, by a person in a name other than the name by which that person was identified for legal purposes. A violation of this section would be a misdemeanor, punishable as follows: (a) if an individual, by imprisonment for not more than 90 days or a fine of not more than \$1,000 or both; (b) if a partnership, corporation, association, governmental entity, or other legal entity, by a fine of not more than \$10,000.

Dissolution. Under the bill, when a legal defense fund is dissolved it would be required to file a statement of dissolution in the form required by the Bureau of Elections. The fund would be required to return any unexpended money to its contributors, or forward

the unexpended funds to the state treasurer for deposit into the state's General Fund, or to the Michigan State Bar Foundation for deposit into the Client Protection Fund.

The bill specifies that the Secretary of State could promulgate rules to implement this act, and could issue declaratory rulings under the Administrative Procedures Act.

Senate Bill 1263

The bill would amend the Lobbyist Registration Act to prohibit a lobbyist from contributing anything of value to aid the defense of an official in the legislative or executive branch against a legal action not directly related to his or her governmental duties; and to establish procedures for the Secretary of State to respond to a request for a declaratory ruling.

The bill would establish procedures and deadlines for the Secretary of State to respond to a request for a declaratory ruling, including the following:

- If the person requesting it had provided a reasonably complete statement of facts necessary for the ruling or, with the permission of the Secretary of State, had supplied supplemental facts necessary for the ruling.
- If a declaratory hearing were requested, then it would be made available to the public within 48 hours after its receipt, and any interested person could submit comments to the Secretary of State within 10 business days.
- The declaratory ruling would have to be issued within 60 business days after a request had been received, but the response period could be extended by up to 30 days under extenuating circumstances.
- The Secretary of State would have to make available to the public an annual summary of the declaratory rulings and interpretive statements he or she issued.

Currently under the law, the Lobbyist Registration Act prohibits a lobbyist or lobbyist agent (or anyone acting on behalf of a lobbyist or lobbyist agent) from making a gift or loan, other than a loan made in the normal course of business by a financial institution. The act defines "gift" as a payment, advance, forbearance, or the rendering of money, services, or anything of value, whose value exceeds \$25. Senate Bill 1263 would retain that language but extend it to include *a payment, advance, forbearance, or deposit of money, services, or anything of value to aid the defense of an official in the legislative or executive branch against a legal action not directly related to the governmental duties of the official.*

ARGUMENTS:

For:

These bills should be enacted into law since they would require a public official who created a legal defense fund to let the public know who was making contributions to it. The bills also prohibits one defense fund from transferring its money to another, and would require a fund that was dissolving either to return its contributions to its contributors or deposit any unspent funds in one of two places: the state's General Fund

or the Michigan Client Protection Fund created by the Michigan State Bar Foundation. The Client Protection Fund currently allocates financial resources to 40 civil legal aid providers across Michigan. Since its founding, attorneys have donated more than \$6 million to ensure that low income citizens have access to representation before the law in civil suits.

Against:

In committee testimony, a spokesman from the Michigan State Chamber of Commerce pointed out that House Bill 4001 did not *limit* the amount of money that could be contributed to a Legal Defense Fund, nor did it restrict the *sources* of funding, such as banning contributions from corporations, labor unions, Indian Tribes, or casinos. He also noted that lobbyists could contribute, but expressed concern that expenditures by a legal defense fund would not be subject to regulatory oversight. In light of these omissions—no limits and few source restrictions—he argued the bill allowed yet another opportunity for public officials to raise money for a fund having too little regulatory oversight, and as a result the new policy could have unintended consequences, creating more problems than it would solve.

Response:

As amended during further committee deliberations, the bills now prohibit contributions to a legal defense fund by lobbyists, and also require that expenditures made by legal defense funds be reported to the Secretary of State on a quarterly basis.

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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.