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BILL ANALYSIS



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Senate Bill 638 (as introduced 12-3-15)
Sponsor: Senator Dave Robertson
Committee: Elections and Government Reform

Date Completed: 12-8-15

CONTENT

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

- **Permit the creation of independent expenditure committees.**
- **Allow an independent expenditure committee to make unlimited contributions to another such committee, a ballot question committee, or a person or account not subject to the Act, or for any other lawful purpose.**
- **Provide that an independent expenditure committee would not lose its independent nature if it used an attorney or other vendor also used by another type of committee, if certain conditions were met.**
- **Require an independent expenditure committee to file campaign statements according to a schedule that applies to an independent committee, and delete the February date from that schedule.**
- **Allow a corporation, joint stock company, labor organization, or domestic dependent sovereign to make an independent expenditure; contribute to an independent expenditure committee; and make an expenditure in any amount for the establishment or administration, or solicitation of contributions to, an independent expenditure committee.**
- **Require such entity to file a report of an independent expenditure, and provide that an entity making a contribution to or an expenditure for an independent expenditure committee would have no reporting obligations.**
- **Redefine "independent expenditure".**
- **Allow a separate segregated fund to make contributions to, and expenditures on behalf of, an independent expenditure committee.**
- **Revise the county in which a report of an independent expenditure of \$100.01 or more must be filed; require the report to be filed with the Secretary of State if it involved a State elective office or statewide ballot question; and prescribe late filing fees if the report were not filed.**
- **Make an exception for an exempt organization to certain requirements regarding disclaimers in printed matter or radio or television ads, and make an exception for prerecorded phone messages.**
- **Require a statement of organization to contain e-mail addresses.**

Independent Expenditure Committee

The bill would allow one or more people to create and maintain an independent expenditure committee. "Independent expenditure committee" would mean a committee that receives contributions and makes independent expenditures pursuant to the Act, expenditures authorized under the Act, or disbursements not prohibited by the Act.

The Act defines "independent expenditure" as an expenditure by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee. The bill would define the term, instead, as an expenditure by a person if the expenditure is not made in concert or cooperation with, or at the request or suggestion of, a ballot question committee or a candidate, a candidate's authorized political committee or its agents, or a political party committee or its agents, and is not a contribution made directly to a candidate's authorized political committee or a political party committee.

A person creating an independent expenditure committee would have to file a statement of organization. If the person were a corporation, joint stock company, domestic dependent sovereign, or labor organization, the name of the committee would have to contain the name of the person, or its acronym if the acronym reasonably identified the person.

In addition to any independent expenditures, an independent expenditure committee could make unlimited contributions to another independent expenditure committee, to a ballot question committee, to a person or account not subject to the Act, or for any other lawful purpose.

An independent expenditure committee could receive contributions from any person, except a person prohibited from making a contribution under 52 USC 30121 (i.e., a foreign national). Within 30 days after receiving a contribution from a person prohibited from making one, the committee would have to return it.

An independent expenditure committee could use an attorney or other vendor that also was used by a ballot question committee, candidate, candidate committee, or political party committee that was the subject or beneficiary of the independent expenditure, without defeating the independent nature of the independent expenditure committee, if the attorney or vendor did not convey material information to the committee about the campaign plans, projects, activities, or needs of the other committee.

An independent expenditure would not be precluded under either of the following:

- Where a candidate or his or her agent, a candidate committee or its agent, or a political party committee or its agent solicited contributions on behalf of a person that could finance independent expenditures on behalf of candidates and political parties.
- Where an independent expenditure committee or person engaged agents or vendors of candidates, candidate committees, or political party committees to assist that independent expenditure committee or person in areas unrelated to preparing an independent expenditure subject to the Act.

Filing Campaign Statements

Currently, an independent committee, or a political committee other than a House or Senate political party caucus committee required to file with the Secretary of State (SOS), must file campaign statements required by the Act according to the following schedule:

- By February 15 each year with a closing date of February 10.
- By April 25 each year with a closing date of April 20.
- By July 25 of each year with a closing date of July 20.
- By October 25 of each year with a closing date of October 20.

The bill would delete the February 15 reporting date, and would extend the filing requirement to an independent expenditure committee.

Under the Act, if an independent expenditure is made within 45 days before a special election by an independent committee, or a political party committee required to file a campaign

statement with the SOS, the committee must file a report of the expenditure with the SOS within 48 hours after the expenditure. The bill would extend this requirement to an independent expenditure committee.

Currently, in addition to any other requirements of the Act for filing a campaign statement, a committee, other than an independent committee or a political committee required to file with the SOS, must file a campaign statement by January 31 of each year. The bill would excuse an independent expenditure committee from this requirement.

Report of Independent Expenditure

The Act requires a person, other than a committee, to file a report of an independent expenditure if a person makes an independent expenditure of \$100.01 or more advocating the election or defeat of a candidate or the qualification, passage, or defeat of a ballot question. The report must be filed within 10 days with the clerk of the county of the person's residence.

The bill would require the report to be filed, instead, with the clerk of the county where the election occurred, if the candidate or the candidate's opponents were seeking election to local elective office, or the ballot question applied only to a local unit of government. The report would have to be filed with the Secretary of State if the candidate or the candidate's opponents were seeking election to State elective office, or the ballot question applied statewide.

A person who failed to file the required report would have to pay a late filing fee, as follows:

- \$25 for each business day the report remained unfiled, but not more than \$1,000, if the independent expenditure were less than \$10,000.
- \$50 for each business day the report remained unfiled, but not more than \$5,000, if the independent expenditure were \$10,000 or more.

Expenditure/Contribution by Corporation, Joint Stock Company, or Labor Organization

The bill would permit a corporation, joint stock company, labor organization, or domestic dependent sovereign to do any of the following:

- Make an independent expenditure.
- Make a contribution to an independent expenditure committee.
- Make an expenditure for the establishment or administration of, or solicitation of contributions to, an independent expenditure committee in any amount.

A corporation, joint stock company, labor organization, or domestic dependent sovereign that itself made an independent expenditure would not for that reason become a committee, but would be required to file a report of any independent expenditure as described above. Such an entity that made a contribution to an independent expenditure committee, or an expenditure for the establishment or administration of, or solicitation of funds to, an independent expenditure committee, would have no reporting obligations under the Act.

Separate Segregated Fund

Under the Act, a corporation organized on a for-profit or nonprofit basis, a joint stock company, a labor organization, or a domestic dependent sovereign may make an expenditure for the establishment and administration of, and solicitation of contributions to, a separate segregated fund to be used for political purposes. The fund must be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, independent committees, and other separate segregated funds.

The bill also would allow a separate segregated fund to make contributions to, and expenditures on behalf of, independent expenditure committees.

Disclaimers

Except as otherwise provided, the Act requires a billboard, placard, poster, pamphlet, or other printed matter referring to an election, a candidate, or a ballot question to bear the name and address paying for the matter. With certain exceptions, if the printed matter relating to a candidate is an independent expenditure that is not authorized in writing by the candidate's candidate committee, it must contain the following disclaimer: "Not authorized by any candidate committee".

A radio or television paid advertisement referring to an election, a candidate, or a ballot measure also must identify the sponsoring person and bear the name of the person paying for the ad. If it relates to a candidate and is an independent expenditure, the ad must contain the following disclaimer: "Not authorized by any candidate". If the ad relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate, it must contain a disclaimer indicating that it is authorized by the candidate or the candidate's committee.

Under the bill, these disclaimer requirements would not apply to a communication otherwise entirely exempt from the Act under Section 6(2)(j). (That section excludes from the definition of "expenditure" an expenditure for a communication that does not in express terms advocate the election or defeat of a clearly identified candidate so as to restrict the application of the Act to communications containing express words of advocacy of election or defeat, such as "vote for", "elect", "support", "vote against", or "defeat".)

In addition, the Act requires a prerecorded phone message to bear the name and telephone number, address, or other contact information of the person paying for it, if the message in express terms advocates the election or defeat of a clearly identified candidate, or the qualification, passage, or defeat of a ballot question. Under the bill, a prerecorded phone message subject to this provision would not be required to contain a disclaimer.

Statement of Organization: E-Mail Addresses

The Act requires a committee, within 10 days after being formed, to file a statement of organization with designated filing officials. The statement must contain information specified in the Act, including the name, street address, and, if available, telephone number of the committee, as well as its treasurer or other individual designated as responsible for record-keeping, report preparation, or report filing. The bill also would require the statement to include the electronic mail address of the committee, the candidate, and the treasurer or other designated individual.

MCL 169.203 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The bill would allow a corporation, joint stock company, labor organization, or domestic dependent sovereign to make independent expenditures and contributions to independent expenditure committees. It also would, however, add reporting requirements for an entity that made an independent expenditure, and a violation would be a felony. It is unknown whether the combination of these provisions would lead to more or fewer arrests and convictions under the Act.

An increase in felony arrests and convictions could increase resource demands on local court systems, law enforcement, and prisons. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Conversely, to the extent that the bill prevented misdemeanor or felony arrests and convictions, costs would be avoided.

The bill would have a negligible impact on the Department of State regarding reporting requirements.

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