

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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House Bill 5058 (Substitute H-1 as reported without amendment)
Sponsor: Representative Bruce Patterson
House Committee: Constitutional Law and Ethics
Senate Committee: Government Operations

Date Completed: 12-21-99

RATIONALE

Under the Michigan Campaign Finance Act, a person may file a complaint with the Secretary of State alleging a violation of the Act. Reportedly, in recent election cycles there have been instances in which people filed complaints that appeared to have no basis in fact, but instead were made for the purpose of harassing a candidate, causing a candidate to spend resources to defend himself or herself, or simply to damage a candidate. It has been pointed out that the Act contains no provisions to deter anyone from filing false or misleading complaints. It has been suggested that filing a false complaint should be a civil infraction, under certain circumstances, and that the Secretary of State and/or a person against whom a false complaint was filed should be able to recover expenses incurred as a result of responding to it.

CONTENT

The bill would amend the Michigan Campaign Finance Act to require a person filing a complaint (alleging a violation of the Act) to certify that it was not filed for improper purposes and that, to the best of the complainant's knowledge, it was supported by evidence; make it a civil infraction for a person to file a complaint with a false certificate; allow the Secretary of State to require a person who filed a complaint with a false certificate to pay the Secretary of State, and/or the person against whom the complaint was filed, for some or all of the expenses incurred as a direct result of the filing of the complaint; and require the Secretary of State to develop a form to be used for the filing of complaints.

The bill would require that a complaint state the complainant's name, address, and telephone number, be signed by the complainant, and certify the following:

- That the complaint was not filed for any improper purpose, such as to harass or cause a person to expend resources defending against a complaint in proceedings under the

Act or in the media.

- That, to the best of the complainant's knowledge, information, and belief, each factual contention of the complaint was supported by evidence; or that specific factual contentions were likely to be supported by evidence after a reasonable opportunity for investigation.

(Under the Act, a "person" is an individual, business, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other group or organization of persons acting jointly.)

MCL 169.215

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Currently, any person may file a complaint with the Secretary of State alleging a violation of the Campaign Finance Act; violations are subject to civil fines of up to \$1,000 per violation. The Act does not, however, contain any provisions to penalize people who file false or frivolous complaints against persons subject to the Act. This means, then, that anyone with a personal vendetta against a candidate for office, or an unscrupulous opponent of the candidate, can file a complaint that has no basis in fact, without fear of violating the Act.

Thus, the system for taking and investigating complaints, that was intended to expose and deter violators of the Act, can be used by those beyond the reach of the Act to embarrass or damage candidates.

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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.

By requiring a complainant to certify that a complaint was not filed for improper purposes, and subjecting a complainant to a civil penalty for filing a false certificate, the bill would help to prevent the use of complaints as a weapon against candidates, while preserving the ability of the Secretary of State to investigate legitimate complaints.

Opposing Argument

The bill would make it a civil infraction to file a false certificate alleging a violation of the Act, knowing the complaint was false. Since there is no definition of "false certificate", however, it would be possible that complaints filed in good faith that later were determined to be untrue could result in the complainant's being charged with a civil infraction. This could have the effect of deterring legitimate complaints, if potential complainants were afraid they would be liable for a civil fine if the Secretary of State ruled unfavorably on a complaint.

Response: If a complainant certified that the complaint was not filed for improper purposes, and that to the best of his or her knowledge, information, and belief the contentions of the complaint were supported by evidence or likely to be supported by evidence, then the complainant would not have committed a violation. This would not prevent legitimate complaints, but would weed out those filed with no factual basis and for improper purposes.

Legislative Analyst: G. Towne

FISCAL IMPACT

Depending on the number of individuals filing false complaints, the provisions of the bill could increase revenue to the State. The Department of State could incur administrative costs for the creation of forms on which complaints would be filed.

Fiscal Analyst: E. Limbs