

EXTEND BAN ON HONORARIA TO COVER ALL ELECTED OFFICIALS

House Bill 4039 (Substitute H-1) First Analysis (11-4-03)

Sponsor: Rep. Sal Rocca
Committee: Government Operations

THE APPARENT PROBLEM:

Among other things, Public Act 385 of 1994 amended the Michigan Campaign Finance Act to prohibit legislators from accepting honoraria, with the term "honorarium" defined as a payment of money, to a person holding elective office, for an appearance, speech, article, or any activity related to or associated with his or her duties as an elected official. ("Honorarium" doesn't include reimbursement for transportation, accommodations, or meals; awards; or governmental authorized payment of wages, salaries, or other employee compensation.) Anyone knowingly violating this section of the act is guilty of a misdemeanor, punishable by a fine of up to \$1,000, imprisonment for up to 90 days, or both. At the time the legislation was enacted in 1995, some people argued that by applying only to legislators -- state senators or representatives -- the prohibition did not go far enough, and should apply at least to all elected officials. Legislation has been introduced to extend this ban to all elected officials.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Campaign Finance Act to extend to all elected officials the prohibition against accepting honoraria that currently applies only to legislators. Currently, a violation of this provision (as it applies to legislators) is a misdemeanor punishable by a fine of up to \$1,000, imprisonment for 90 days, or both. The bill would also change the penalty to a maximum of 93 days imprisonment.

MCL 169.250

BACKGROUND INFORMATION:

Similar bills were introduced in the previous three legislative sessions. In 1997-1998, House Bill 4160 passed both the House and the Senate but was vetoed by then-Governor John Engler. He said in his veto message (dated 12-21-98) that he found the bill "overbroad in its application. The fact that the

legislation ha[d] been given immediate effect means that any local official that would now be covered in this section could unwittingly be engaging in criminal activity and find himself or herself subject to fines and up to 90 days in jail." In 1999-2000, House Bill 4381 passed the House but not the Senate. In 2001-2002, House Bill 4016 passed the House but not the Senate.

FISCAL IMPLICATIONS:

Based on analyses by the House Fiscal Agency of similar bills in previous sessions, the bill would have no direct fiscal impact on state or local government, although there could be administrative costs to the Department of State. There also could be additional revenue from fines.

ARGUMENTS:

For:

The bill could improve public confidence in elected officials by extending the ban on honoraria, which currently applies only to state legislators, to all state and local elected officials. Public confidence in government depends partly on citizens believing that elected public officials exercise their judgment and make official decisions based on honest, informed assessments of what is in the public interest. But all too often, the public's perception of their elected officials is that their decisions and actions are driven by special interest groups whose influence over elected officials stems from contributions and special favors to those officials. While honoraria do not appear to be a significant source of influencing elected officials, banning the acceptance of such fees could only serve to strengthen the public perception of the professional ethics of elected public officials. Besides, it is only fair that if such a ban applies to state legislators, it should also apply to other elected officials.

Response:

Representatives of local officials, while supporting in general the concept of the bill, are concerned about unforeseen consequences. Many local officials are part-time; they have other full-time employment. Care should be taken so that opportunities for income from activities related to other employment are protected and not confused with, or interpreted as, honoraria attributable to their public office. Reportedly, language is being developed to clarify the characterization of honoraria.

The Michigan Municipal League has indicated opposition to the bill. (11-3-03)

For:

When elected public officials, whether state or local, make speeches, participate in panel discussions, or otherwise make appearances as part of their public duties, they should not accept payment for so doing since they already are being paid (by the state or their local unit of government) to perform their public duties. Public officials know, or should know, what their responsibilities and rates of compensation are when they take office, and they should be willing to carry out the duties of their office without added compensation from private interest groups.

Against:

Although the bill would extend the ban on honoraria from state legislators to all state or local elected officials, it still does not go far enough. For one thing, the ban on accepting honoraria should apply to all public officials, whether elected or appointed. Secondly, however, the bill still would allow public officials to accept reimbursement for the costs of transportation, meals, and accommodations, and the lobbying act doesn't even require that lobbyists report any travel or lodging expenses paid to a public official unless the amount is greater than \$500. If public officials are going to be allowed to continue to receive money from private interest groups for travel, meals, and lodging expenses incurred in the course of performing their official duties, at the very least the public official should be required to report such income. And, since both current legislation and the bill do not have any notification requirements, how are violations of the act and the bill going to be discovered or reported? Further, some have suggested that the ban on accepting honoraria should apply to candidates for office, and to former officeholders.

POSITIONS:

The Michigan Townships Association supports the concept of the bill but has concerns about the current definition of "honorarium". (10-31-03)

Analyst: C.Couch/D. Martens

■ 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.