

Legislative Analysis



REVISE CAMPAIGN FINANCE ACT

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House Bill 6128

Sponsor: Rep. Chris Ward

House Bill 6129

Sponsor: Rep. Jerry O. Kooiman

House Bill 6132

Sponsor: Rep. Edward Gaffney, Jr.

House Bill 6130

Sponsor: Rep. Shelley Goodman Taub

House Bill 6133

Sponsor: Rep. Mike Nofs

House Bill 6131

Sponsor: Rep. Rick Jones

House Bill 6134

Sponsor: Rep. Rick Baxter

Committee: House Oversight, Elections, and Ethics

Complete to 6-27-06

A SUMMARY OF HOUSE BILLS 6128 - 6134 AS INTRODUCED 6-1-06

The bills amend the Michigan Campaign Finance Law to, among other things, do the following.

- Prohibit a contribution for an exchange or donation.
- Cap annual contributions to political party committees at \$50,000.
- Prohibit contributions from 527 committees.
- Add a definition of "electioneering communication."
- Increase the late filing fees for campaign statements and reports that are currently required under the law.
- Require that a report about those who have violated the campaign reporting requirement be made available to the public within 30 days after the statements are due.
- Randomly audit nine committees for each general election cycle.
- Require that independent expenditures by PACs made within 45 days before an election be reported to the Secretary of State within 48 hours.
- Require that independent expenditures of more than \$100.01 in a calendar year to advocate the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, be reported to the clerk in the person's county of residence within 48 hours.
- Prohibit a campaign committee from paying to a candidate wages, salary, or other employment compensation, and set penalties for violating this provision.
- Require that political messages include their payers' identification and whether they were approved by the candidate, as well as to revise the identifying statement for radio and television campaign ads.

- Revise the information required in campaign committee organizational statements and campaign finance statements, as well as the filing schedule for finance statements.

House Bills 6128, 6129, 6133 and 6134 would go into effect January 31, 2007 if they were enacted into law. A more detailed explanation of the bill follows.

House Bill 6128 would amend the Michigan Campaign Finance Law (MCL 169.205 et al) to revise the contribution and expenditure provisions of the act. The bill would add three new sections to the law, and set penalties for their violation. The new provisions would prohibit a contribution for an exchange or donation; cap annual contributions to political party committees at \$50,000; and prohibit contributions from 527 committees. In addition, the bill would add a definition of "electioneering communication." The bill would go into effect January 31, 2007 if it were enacted into law. A more detailed explanation of the bill follows.

Prohibit contribution for exchange; donation; penalty. In the first of the three proposed sections, the bill specifies that a person could not receive a contribution or make a contribution to a committee if the contribution was made in exchange for money from a corporation, labor organization, or domestic dependent sovereign. (A "domestic dependent sovereign" is defined as an Indian Tribe.) Further, a corporation, labor organization, or domestic dependent sovereign could not make a donation, payment, or transfer of money or anything of value, and a person could not make a donation, payment, or transfer from a financial institution account that contains money of a corporation, labor organization, or domestic dependent sovereign, to a person with the understanding, agreement, or arrangement that the person would induce an independent expenditure or a contribution to a committee.

In addition, a person could not receive a contribution that was obtained as a result of a donation payment, or transfer of money or anything of value by a corporation, labor organization, or domestic dependent sovereign, or by a person who made the donation, payment, or transfer from a financial institution account that contained money of a corporation, labor organization, or domestic dependent sovereign.

Further and under the bill, a person could not arrange for a corporation, labor organization, or domestic dependent sovereign to make a donation, payment, or transfer of money or anything of value, or for a person to make a donation, payment, or transfer from a financial institution account that contained money of a corporation, labor, organization, or domestic dependent sovereign, to a person for the purpose of inducing an independent expenditure or a contribution to a committee.

The bill specifies that this section would not apply to a donation, payment, or transfer of money or anything of value by a corporation, labor, organization, or domestic dependent sovereign to a charity to match an amount contributed to the separate segregated fund of the corporation, labor organization, domestic dependent sovereign by an individual who was allowed to be solicited for contributions to the separate segregated fund.

A person who knowingly violated this section would be guilty of a felony punishable, if the person was an individual, by imprisonment for not more than three years or a fine of not more than \$5,000, or both, or, if the person were not an individual, by a fine of not more than \$10,000.

Political party committee contribution cap; penalty. In the second of the three new sections proposed, House Bill 6128 would prohibit a person from making contributions to a political party committee that exceeded \$50,000 in a calendar year. A political party committee or a treasurer or agent of the committee could not accept a contribution with respect to an election cycle that exceeded the limitation in this section. The bill specifies that a person who knowingly violated this section would be guilty of a misdemeanor punishable, if the person were an individual, 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.

527 contribution prohibition; penalty. In the third of the three new sections proposed, House Bill 6128 would prohibit an organization that claimed tax-exempt status under Section 527 of the federal Internal Revenue Code from making a contribution or expenditure for an electioneering communication.

Definitions. The bill would provide a new definition for "*electioneering communication.*" The term would mean a communication to which all of the following apply: 1) the communication refers to a clearly identified candidate; and 2) the communication is made within 30 days before a primary election or a convention or caucus of a political party that has authority to nominate a candidate or within 60 days before a general election. "Electioneering communication" does *not* include the following: 1) a communication in a news story, commentary, or editorial distributed through the facilities of a broadcasting station, unless the facilities are owned or controlled by a candidate or a committee, other than an independent committee or a ballot question committee; 2) a communication that is an expenditure or an independent expenditure; and 3) a communication in a candidate debate or forum conducted pursuant to rules adopted by the secretary of state or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

Currently under the law, a corporation, joint stock company, domestic dependent sovereign or labor organization cannot make a contribution or expenditure, or provide volunteer personal services that are excluded from the definition of a contribution. House Bill 6128 would retain this provision, and also include a contribution or expenditure for an electioneering communication.

Currently, the law defines "*expenditure*" and also defines what is *not* an "expenditure," in considerable detail. House Bill 6128 would retain those definitions with one exception. In defining what is *not* an "expenditure," the bill would delete "an expenditure for communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference." Consequently, these types of expenditures would no longer be exempt from disclosure.

Currently, the law defines "*person*" to mean a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of person acting jointly. House Bill 6128 would retain this definition, and also add an "organization that claims tax-exempt status under section 527 of the Internal Revenue Code, 26 USC 527."

House Bill 6129 would amend the Michigan Campaign Finance Law (MCL 169.215 et al) to increase the late filing fees for campaign statements and reports that are currently required under the law; require that a report about those who have violated the law be made available to the public within 30 days after the statements are due; and randomly audit nine committees for each general election cycle. The bill would take effect January 31, 2007. A more detailed explanation of the bill follows.

Public report about violators. The bill specifies that within 30 days following the date on which statements from candidate committees are due, the secretary of state would be required to prepare and make available to the public a report of candidates and committees that have been determined to have violated the law. The report would have to contain at least all of the following: 1) the name of each violator; 2) the amount of fine assessed for the violation; and 3) whether the fine had been paid. The secretary of state also would have to make available 1) declaratory rulings under the act; 2) interpretive statements under the act; 3) the required annual summary of rulings and statements issued by the secretary of state; and 4) the report of violations required above.

Random audits. Under the bill, the secretary of state would be required to randomly audit nine committees for each general election cycle. An audit would have to include (but not be limited to), a review of all statements and reports that the committee is required by law to file, and did file, within three years before the audit, and also all accounts, records, bills, and receipts that the committee is required by law to keep. In performing the audit, the secretary of state would not review a statement or report filed before the effective date of this legislation were it enacted into law (which would be January 31, 2007). The committees audited would be: three candidate committees; three ballot question committees; and three independent or political committees.

Civil actions by secretary of state. Currently under the law, a person paying a late filing fee as a result of failing to file a campaign statement or report on time pays the fee to the filing official with whom the statement or report is filed. A late filing fee assessed by a county clerk that remains unpaid for more than 60 days is considered a debt, and is collected by the county treasurer. A late filing fee assessed by the secretary of state that remains unpaid for 180 days is referred to the Department of Treasury for collection. House Bill 6129 would retain these provisions, but alter the collection options for the secretary of state. Under the bill, the secretary of state would be allowed to begin a civil action to collect a late filing fee that remained unpaid for more than 90 days. If the late filing fee were assessed against a candidate committee, the civil action would be filed against the candidate named in the committee's statement of organization. If a civil action was not begun, and the late filing fee remained unpaid for more than 180 days, the late fee would then be referred to the Department of Treasury for collection.

Late fees paid from personal funds. The bill would require that a candidate pay, with personal funds (and not from committee funds), the late fees that resulted from the failure of a person to file a statement or report a contribution for a candidate committee.

Three-month 'grandfather' provision. The bill specifies that any person subject to a late fee because of failure to comply with these requirements, when that failure to comply occurred before the effective date of this legislation, would be subject only to the amount of the late filing fee that he or she would have had to pay before these new provisions were added. However, this 'grandfather clause' would apply only to those who paid their late filing fee within three months of the effective date of this legislation.

Late filing fees. Currently the late filing fee for a *statement of organization* is \$10 for each business day beyond the due date, not to exceed \$300. Under the bill, the late fee would increase to \$16 per business day, not to exceed \$480.

Currently the late filing fee for a *late contribution report* from a political campaign is \$25 for each business day the report remain unfiled, an additional \$25 for each day after the first three days, and an additional \$50 after the first 10 days the report remains unfiled. However, the late fee cannot exceed \$2,000. Under the bill, the late fee would be \$40 for each business day the report remain unfiled, an additional \$40 for each day after the first three days, and an additional \$80 after the first 10 days the report remains unfiled. However, the late fee could not exceed \$3,200.

Currently the late filing fee for an *independent committee or a political committee* (that files statements with the secretary of state) varies depending on the amount of money raised by the committee. If the committee raised \$10,000 or less during the previous two years, then the fee is \$25 for each business day the statement remains unfiled, but cannot exceed more than \$500. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee is \$25 for each business day the report remains unfiled, an additional \$25 for each business day after the first three, and an additional \$50 for each business day after the first 10. The late fee cannot exceed \$1,000. Under the bill, if the committee raised \$10,000 or less during the previous two years, then the fee would \$40 for each business day the statement remains unfiled, but could not exceed more than \$800. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee would be \$40 for each business day the report remained unfiled, an additional \$40 for each business day after the first three, and an additional \$80 for each business day after the first 10. The late fee could not exceed \$1,600.

Currently the late filing fee for a *ballot question committee* if it fails to file a pre-election statement is \$25 the first day, \$50 the second day, \$75 the third day, and \$100 for the fourth and each subsequent day, not to exceed \$1,000. Under the bill, the late fee for failing to file a pre-election statement would be \$40 the first day, \$80 the second day, \$120 the third day, and \$160 for the fourth and each subsequent day, not to exceed \$1,600.

If the ballot question committee fails to file other statements required under the law, the late fee varies depending on the amount of money raised by the committee. If the ballot question committee raised \$10,000 or less during the previous two years, then the fee is \$25 for each business day the statement remains unfiled, but cannot exceed more than \$1,000. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee is \$50, not to exceed \$2,000.

Under the bill, if the ballot question committee raised \$10,000 or less during the previous two years, then the fee would be \$40 for each business day the statement remains unfiled, but could not exceed more than \$1,600. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee would be \$80 for each business day the report remained unfiled, not to exceed \$3,200.

Currently the late filing fee for a *ballot question committee other than a statewide ballot question* that fails to file timely statements depends on the amount of money it has raised. If the local ballot question committee raised \$10,000 or less during the previous two years, then the fee is \$25 for each business day the statement remains un-filed, but cannot exceed more than \$1,000. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee is \$50, not to exceed \$2,000.

Under the bill, if the local ballot question committee raised \$10,000 or less during the previous two years, then the fee would be \$40 for each business day the statement remains unfiled, but could not exceed more than \$1,600. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee would be \$80 for each business day the report remained unfiled, not to exceed \$3,200.

Currently the late filing fee for a *state committee's annual campaign statement* submitted to the secretary of state no later than January 31, varies depending upon the amount of money raised by the committee. If the committee raised \$10,000 or less during the previous two years, then the fee is \$25 for each business day the statement remains unfiled, but cannot exceed more than \$500. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee is \$50, not to exceed \$1,000.

Under the bill, if the committee raised \$10,000 or less during the previous two years, then the fee would be \$40 for each business day the statement remains unfiled, but could not exceed more than \$800. If, however, the committee raised more than \$10,000 during the previous two years, then the late filing fee would be \$80 for each business day the report remained unfiled, not to exceed \$1,600.

Currently the late filing fee for a *local (non-state or non-judicial) committee's annual campaign statement* is \$25 for each business day the statement remains unfiled, but cannot exceed more than \$500. Under the bill, the late fee would increase to \$40 per business day, not to exceed \$800.

House Bill 6130 would amend the Michigan Campaign Finance Law (MCL 169.233) to require that independent expenditures by PACs made within 45 days before an election be reported to the secretary of state within 48 hours. Currently this provision in the law applies only in the case of special elections.

House Bill 6131 would amend the Michigan Campaign Finance Law (MCL 169.251) to require that independent expenditures of more than \$100.01 in a calendar year to advocate the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, be reported to the clerk in the person's county of residence within 48 hours. Currently under the law, the report must be made within 10 days.

House Bill 6132 would amend the Michigan Campaign Finance Act (MCL 169.201 et al) to prohibit a campaign committee from paying to a candidate wages, salary, or other employment compensation. An individual who knowingly violated this section 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 committee that violated this section would be subject to a fine of not more than \$10,000.

House Bill 6133 would amend the Michigan Campaign Finance Act (MCL 169.247) to require that political messages include their payers' identification and whether they were approved by the candidate, as well as to revise the identifying statement for radio and television campaign ads. The bill would take effect January 31, 2007.

The bill requires that a communication relating to a candidate that was designed to contact electors through telephonic, electronic mail, or other electronic means clearly state the name and address of the person paying for the communication. If the communication related to a candidate and *was* an independent expenditure not authorized in writing by that candidate's committee, then the communication would have to clearly state the following disclaimer: "Not authorized by any candidate committee." If the communication related to a candidate and *was not* an independent expenditure, but was paid for by a person other than the candidate, the communication would have to clearly state the following disclaimer: "Authorized by_____."

The bill specifies that for a visual communication, the secretary of state would be required to promulgate rules regulating the size and placement of an identification or disclaimer.

A person who knowingly violated this section of the law would be guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500, or both.

House Bill 6134 would amend the Michigan Campaign Finance Act (MCL 169.224 et al) to revise the information required in campaign committee organizational statements and campaign finance statements, as well as the filing schedule for finance statements. The bill would go into effect January 31, 2007.

The bill would require that a campaign committee's organizational statement include the name, street address, and, if available, telephone number of the successor treasurer who would serve as the treasurer or other individual designated as responsible for the committee's record-keeping, report preparation, or report filing if the individual named resigned, died, or was incapacitated.

The bill would eliminate a section of the law that requires the following information for each fund raising event: 1) the type of event, date held, address and name, if any, of the place where the activity was held, and the approximate number of individuals anticipated or in attendance; 2) the total amount of all contributions; 3) the gross receipts of the fundraising event; and 4) the expenditures incident to the event.

Currently the Campaign Finance Law prescribes the form of a campaign statement that is filed by a political party committee. House Bill 6134 would retain these provisions, and clarify the meaning of the terms "receipts" and "debts and obligations." The bill specifies that under the heading "receipts", one would provide the total amount of contributions and other money and things of value received during the period covered by the campaign statement. Further, under the heading "debts and obligations," one would provide the total amount owed *by* the committee and the total amount owed *to* the committee. In addition, the campaign statement would have to include a statement showing the ending balance on the closing date of the last statement filed, the amount received during the reporting period, the amount expended during the reporting period, and the ending balance on the closing date of the statement. Finally, the organization statement would be required to include the cumulative contributions, other receipts, in-kind contributions and in-kind expenditures, and expenditure for the calendar year.

Currently under the law, a committee (other than an independent committee or a political committee) is required to file a campaign statement not later than January 31 of each year. The statement has a closing date of December 31 of the previous year, and the period covered by the statement begins the day after the closing date of the previous campaign statement. Filing the statement can be waived if a post-election statement is filed having a deadline within 30 days of the closing date of December 31. Under House Bill 6134, this filing date would be retained, however the committee would also be required to file all of the following campaign statements: 1) in each year in which the committee was *not* required to file pre-election and post-election, then campaign statements not later than April 40, July 31, and October 31 with closing dates of March 31, June 30, and September 30; and 2) in each year in which a committee was required to file pre-election and post-election campaign statements, a statement not later than April 30 with a closing date of March 31.

Finally and under the bill, if a committee reported an expenditure of money paid to an agent or independent contractor and if that person made an expenditure after the closing date of the campaign statement, then the committee treasurer (or other designated individual noted in the statement of organization as responsible for the committee's record keeping and report filing) would be required to file an amended campaign statement that contained a detailed itemization of the expenditure. An amended

campaign statement would have to be filed with the filing official within 48 hours after the expenditure was made by the agent or independent contractor.

FISCAL IMPACT:

The Department of State will incur costs because the additional responsibilities will require more staff. The amount of revenue generated from late filing fees and penalty fines would depend on the number of violations.

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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.