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BILL ANALYSIS

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Senate Bill 1263 (Substitute S-1 as reported)
House Bill 4001 (Substitute S-2 as reported)
Sponsor: Senator Michelle A. McManus
Committee: Campaign and Election Oversight

CONTENT

House Bill 4001 (S-2) would create the "Legal Defense Fund Act" to prescribe filing and record-keeping requirements concerning legal defense funds of elected officials; prohibit certain activities related to contributions to such funds; prescribe late filing fees; establish civil and criminal penalties for violations; and require the Secretary of State to perform various duties. Senate Bill 1263 (S-1) 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 establish procedures for the Secretary of State to respond to a request for a declaratory ruling.

The bills are tie-barred.

House Bill 4001 (S-2) would do the following:

- Require an elected official who was the beneficiary of a legal defense fund to file statements of organization and dissolution with the Secretary of State, subject to a late filing fee of \$10 for each business day a statement was not filed; and prescribe a misdemeanor penalty of up to 93 days' imprisonment and/or a maximum fine of \$1,000 not filing a statement.
- Prohibit an elected official, or a person on behalf of an elected official, from soliciting or accepting a contribution for the purpose of defending the elected official in a criminal, civil, or administrative action that arose directly out of the conduct of his or her governmental duties unless the contribution were included in a legal defense fund that complied with the proposed Legal Defense Fund Act.
- Prohibit a person from making and the elected officer or treasurer of a legal defense fund from accepting an anonymous contribution or making a contribution to another person with the arrangement to transfer that contribution to a legal defense fund.
- Require any funds remaining in a fund when it was dissolved to be returned to the contributor of the funds or forwarded to the State Treasurer for deposit into the State's General Fund or to the State Bar of Michigan for deposit into the Client Protection Fund.
- Require the treasurer of a legal defense fund to file quarterly transaction reports, including itemized information for each expenditure from a fund that exceeded \$50 and for expenditures made to one person that cumulatively totaled \$50 or more.
- Require a treasurer or other individual to keep detailed accounts, records, bills, and receipts to substantiate the information in a statement or report; require the documents to be preserved for five years and available for inspection by the Secretary of State; and subject a treasurer who knowingly violated the provision to a maximum civil fine of \$1,000.
- Prescribe a misdemeanor penalty of up to 180 days' imprisonment and/or a maximum fine of \$5,000 for a treasurer or elected official who knowingly submitted false information in a report.

- Prescribe a minimum fee of \$25 per business day up to \$1,000 for the late filing of a report.
- Prescribe a misdemeanor penalty of up to 90 days' imprisonment and/or a maximum fine of \$1,000 for a treasurer who failed to file two transaction reports if both of the reports remained unfiled for more than 30 days.

A person could make expenditures from a legal defense fund only for its administration, attorney fees, or related costs, which could not include direct or indirect payments for media purchases, media consulting, or mass mailings and could be made for the legal defense of only the elected official for whom the fund was established. A person who knowingly violated these provisions would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$1,000, or by a maximum fine of \$10,000 if the person were other than an individual.

The proposed Act would apply to any contribution made, received or spent after its effective date and to any contribution received before that date if it were returned to the contributor within 90 days after the Act's effective date.

The Secretary of State would have to do the following:

- Make a statement or report available for public inspection and reproduction on the internet.
- Preserve a statement of organization for 15 years from a fund's dissolution and all other documents for 15 years from the date of filing or from the date upon which a determination was made that a violation of the Act had occurred.
- Determine whether a statement or report filed under the Act complied with it.

Senate Bill 1263 (S-1) would establish procedures and deadlines for the Secretary of State to respond to a request for a declaratory ruling, including the following:

- The Secretary would have to issue a declaratory ruling only if the person requesting it had provided a reasonably complete statement of facts necessary for the ruling or, with the permission of the Secretary, had supplied supplemental facts necessary for the ruling.
- A request for a declaratory ruling would have to be made available to the public, and an interested person could submit comments to the Secretary of State.
- The Secretary would have to issue a declaratory ruling within 60 business days after receiving a request, but could extend the period for a response 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.

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. The bill would 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. Also, the \$25 amount would be as adjusted according to the Detroit Consumer Price Index.

MCL 4.414 et al. (S.B. 1263)

Legislative Analyst: Craig Laurie

FISCAL IMPACT

House Bill 4001 (S-2). There could be an indeterminate fiscal impact on the Department of State for costs associated with administering the proposed Act; however, these costs could be offset by the late filing fees and the civil fines proposed by the bill. Currently, legal defense funds are not required to file statements of organization or contribution reports with the Secretary of State. Depending on the number of legal defense funds that were created, the extra workload and associated costs could be absorbed within the Department's current appropriations. Any excess costs associated with administering the Act not covered by the late filing fees and civil fines could require additional appropriations; however, the amount is unknown.

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Senate Bill 1263 (S-1). There could be an indeterminate fiscal impact on the Department of State for costs associated with issuing declaratory rulings. There also could be unknown additional costs to the Department associated with providing the public with an annual summary of the declaratory rulings and interpretive statements. The extra workload and associated costs could be absorbed within the Department's current appropriations; however, any excess costs could require additional appropriations, the amount of which is unknown.

The bill would have no fiscal impact on local government.

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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.