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 BILL ANALYSIS

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Senate Bill 113 (Substitute S-1 as reported)
Sponsor: Senator Michelle A. McManus
Committee: Campaign and Election Oversight

Date Completed: 5-7-09

RATIONALE

Under the Michigan Campaign Finance Act, a person may file with the Secretary of State (SOS) a complaint alleging a violation of the Act. The process for resolving complaints requires the SOS to notify the alleged violator of the complaint, accept a response from that person and a rebuttal statement from the complainant, investigate, and then decide whether there may be a violation of the Act. If the SOS believes that there may be a violation, he or she must attempt to correct the violation or prevent future violations through informal means, including meetings and conciliation agreements. If the violation is not resolved, the SOS may hold a formal hearing to determine whether a civil violation has occurred. Although the Act specifies deadlines for someone to file a response or rebuttal, and for the SOS to provide notice and copies, there is no deadline by which a complaint must be resolved.

Some people believe that, because the SOS is not required to hold formal hearings on alleged violations or resolve complaints by a certain date, some complaints might not be resolved in a timely manner, if at all. At present, three open complaints have been unresolved for over two years. Additionally, it has been suggested that the public should have access to information regarding complaints of alleged campaign finance violations.

CONTENT

The bill would amend the Michigan Campaign Finance Act to require the Secretary of State to do the following:

- **Post on the internet, within 60 business days after receiving a rebuttal statement, or if no response or rebuttal were received, whether there could be reason to believe that a violation of the Act had occurred.**
- **Post on the internet any complaint, response, or rebuttal statement within five business days after determining that a violation could have occurred.**
- **Commence a formal hearing or refer the matter to the Attorney General if, after 30 business days, a violation could not be corrected by informal methods.**

The bill also would make it mandatory that the SOS impose a fine for an improper contribution or expenditure, and would increase the fine to triple the amount of the contribution or expenditure.

Complaint, Response, & Rebuttal

Under the Act, within five business days after a complaint alleging a violation is filed, the SOS must give notice and a copy of the complaint to the person against whom it is filed. That person then has 15 business days to submit a response to the SOS. The Secretary of State may extend this period an additional 15 business days for good cause. He or she must provide a copy of a response to the complainant, who has 10 business days to submit a rebuttal statement. The SOS may extend this period an additional 10 business days for good cause. The SOS must give a copy of the rebuttal statement to the person against whom the complaint was filed.

Under the bill, within five business days after determining that there could be reason to believe that a violation had occurred, the Secretary of State would have to post on his or her internet website any complaint, response, or rebuttal statement received under these provisions.

Under the Act, every 60 days after a complaint that meets the requirements of the Act is filed and until the matter is terminated, the Secretary of State must mail to the complainant and to the alleged violator notice of the action taken to date by the SOS, together with the reasons for the action or inaction. The bill would delete this requirement.

Resolution of Complaints

The Act requires the Secretary of State to investigate the allegations in a complaint. If the SOS determines that there may be reason to believe that a violation has occurred, he or she must try to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. If the SOS is unable to correct or prevent further violation by these informal methods, then he or she may refer the matter to the Attorney General for the enforcement of a criminal penalty provided by the Act, or may commence a hearing (as described below).

Under the bill, within 60 business days after receiving a rebuttal statement, or if no response or rebuttal were received, the Secretary of State would have to post on his or her internet website whether there could be reason to believe that a violation of the Act had occurred. As currently required, if the SOS determined that there could be reason to believe that a violation occurred, he or she would have to try to correct the violation or prevent a further violation by using informal methods. If, after 30 business days, the SOS were unable to correct or prevent further violation by these informal methods, he or she would have to commence a hearing for enforcement of any civil violation or refer the matter to the Attorney General for enforcement of any criminal penalty provided by the Act.

If the SOS referred a matter to the Attorney General, the Attorney General could refer it

to the prosecuting attorney of the county where the violation occurred. Within 60 business days after a matter was referred to the Attorney General or county prosecuting attorney, he or she would have to determine whether to proceed with enforcement of a criminal penalty.

Hearing; Fine

The Act permits the Secretary of State to commence a hearing under the Administrative Procedures Act to determine whether a civil violation of the Campaign Finance Act has occurred. The bill would require the SOS to do so.

A hearing may not be commenced during the period beginning 30 days before an election in which a committee has received or spent money and ending the day after that election, except with the consent of the person suspected of committing a civil violation. The bill would delete this provision.

Currently, if the Secretary of State determines after a hearing that a violation has occurred, he or she may issue an order requiring the person to pay a civil fine equal to the amount of the improper contribution or expenditure plus up to \$1,000 for each violation. Under the bill, the SOS would have to issue an order requiring the person to pay a civil fine equal to triple the amount of the improper contribution or expenditure plus up to \$1,000 per violation.

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

The bill would require the SOS, within 60 business days after receiving a complaint (or after receiving a response or rebuttal), to determine whether there was reason to believe that a violation of the Act had occurred. Then, if informal methods to resolve a complaint were unsuccessful after 30 business days, the SOS would be required to hold a formal hearing on the complaint or refer the matter to the Attorney General. Although the SOS office presently attempts to resolve 80% of

complaints within 120 business days, some complaints have taken considerably longer to be closed. At this time, the SOS has 13 open complaints; six of them would not meet the proposed deadlines and three were filed over two years ago.

The resolution of complaints and the correction of violations are important to the campaign and election process in the State and should be conducted quickly. By setting deadlines and requiring the SOS to move to the formal phase of the process, the bill should ensure the timely resolution of open complaints.

In addition, the 60-business-day time line would be consistent with other deadlines imposed on the SOS. Under both the Campaign Finance Act and the lobbyist registration law, people may request declaratory rulings from the Secretary of State, and the SOS must issue a declaratory ruling or an interpretative statement within 60 business days after receiving a request.

Response: Of the three complaints that were filed over two years ago, the oldest one was held in abeyance at the request of the Attorney General due to a question of whether records had been lawfully seized; this issue was not resolved until November 2008. In the second case, the SOS offered a conciliation agreement, which was rejected, and a formal hearing is likely to be held. In the third case, the violator can no longer be located. In the remaining three cases that would not meet the proposed deadlines, conciliation agreements are being negotiated.

Supporting Argument

The bill would give Michigan residents access to information about campaign finance violations, and the Secretary of State's activities, by requiring the SOS to post on the internet complaints and responses to complaints, as well as determinations of whether there was reason to believe that a violation had occurred. This would increase public oversight of the office and the process, and could encourage the SOS to close cases in a timely manner. At the same time, since a complaint, response, or rebuttal would not have to be posted until after the SOS made a determination, the disclosure requirements would not interfere with the conciliation process, which is based on informal meetings, relies on open

communication, and functions best when parties are truthful and cooperative.

Opposing Argument

Since staff of the SOS do not actually conduct field investigations, a 60-business-day period for making a determination would be excessively long. On the other hand, once it was determined that a violation might have occurred, 30 business days could be too short for the SOS to reach a resolution by informal means, especially in nonroutine cases.

Response: While 60 business days might be enough time to consider an individual complaint, the SOS deals with a large volume of complaints and must function within the existing time lines for filing complaints and responses, and giving notice and copies to complainants and alleged violators. In 2008, the office received 143 complaints and closed 142 (filed in 2008 or a previous year).

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could have a minimal fiscal impact on the Secretary of State's resources. The proposed time lines for responding to complaints along with the posting of information on the Secretary of State's web page could, at times, require additional staff and/or staff time. These potential costs, however, would be minimal and supported by current appropriations. The exact amount of the potential additional costs is indeterminate.

The bill also would increase the amount of civil fine revenue that is deposited in the State's General Fund. The bill would have no fiscal impact on local government.

Fiscal Analyst: Joe Carrasco

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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.