

## INDEPENDENT EXPENDITURE COMMITTEES

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**Senate Bills 335 (S-3) & 336 as passed by the Senate**  
**Sponsor: Sen. David Robertson**  
**House Committee: Elections & Ethics**  
**Senate Committee: Elections & Government Reform**  
**Complete to 9-18-17**

Analysis available at  
<http://www.legislature.mi.gov>

*(Public Acts 119 and 120 of 2017)*

### BRIEF SUMMARY:

Senate Bill 335 would amend several sections of the Michigan Campaign Finance Act to define independent expenditure committees (IECs) and incorporate references to them in various sections of the Act. Additionally, it would create two new sections of the Act, Sections 24b and 24c, which would prescribe rules for IECs. (MCL 169.203 et al)

Senate Bill 336 would incorporate violations of those rules into the Code of Criminal Procedure. (MCL 777.11e)

### DETAILED SUMMARY:

Senate Bill 335 would amend the definition for independent expenditure and define IECs as follows.

- ***Independent expenditure***: an expenditure by a person if the expenditure is not a contribution to a committee and is not made in cooperation, consultation, or concert with, or at the request or suggestion of any of the following:
  - A ballot question committee or a candidate,
  - A candidate committee or its agents, or
  - A political party committee or its agents.

This amended definition replaces the previous requirement that an independent expenditure must be "at the direction of, or under the control of, another person" with the "in cooperation, consultation, or concert with, or at the request or suggestion of" language.

The bill specifically exempts an independent expenditure from qualifying as a "contribution."

[Note: The bill uses the legal notion of "person," which gives any business, corporation, or any other organization or group of persons acting jointly the same status as an individual (although the bill distinguishes between the two in assigning penalties). Corporate personhood opens these organizations up to some of the same liability an individual may face, such as being sued, but also endows the organization with some of the same rights traditionally reserved to individuals, such as freedom of speech.]

- ***Independent expenditure committee:*** a committee formed under Section 24b for the purpose of making independent expenditures pursuant to the Campaign Finance Act. (Section 24 also provides that a political committee formed for the purpose of making independent expenditures that was formed before this Act takes effect would be considered an IEC, and the Secretary of State may amend that committee's statement of organization accordingly).

### **Rules for Independent Expenditure Committees (IECs) [Section 24b]**

Under the bill, one or more people may create an IEC, and must submit a statement of organization under Section 24 of the Act. Additionally, the IEC must file campaign statements under the same schedule required of independent or political committees. (This bill eliminates the February filing date, but retains those in April, July, and October.)

***Allowable receipt of contributions:*** An IEC could receive contributions from any person, except from a foreign national. If an IEC receives a contribution from a foreign national, it must return the contribution within 30 business days.

***Allowable contributions:*** An IEC could make contributions to another IEC, to a ballot question committee, or any independent expenditures or other disbursements not prohibited by this Act or any other law.

***Prohibited contributions:*** An IEC could not make a contribution to a candidate committee, independent committee, political committee, political party committee, or House or Senate political party caucus committee. An individual who knowingly violated this prohibition, or causes another person to violate it, would be guilty of a felony punishable by imprisonment for not more than three years or a fine of not more than \$5,000, or both.

If the violator is not a person (for instance, if the violator is a corporation), the penalty would be a fine of not more than \$20,000 or a fine of not more than triple the amount of the improper contribution or expenditure, whichever is greater.

If an IEC or its agent defeats the independent nature of an independent expenditure in this way, that party would be subject to the penalty described above.

### **Improper independent expenditures [Section 24c]**

If an IEC or its agent defeats the independent nature of an independent expenditure by making a contribution to a candidate committee, independent committee, political committee, political party committee, or House or Senate political party caucus committee, that party would be penalized as described above.

The independent nature of an independent expenditure would not be defeated when a person making an independent expenditure related to a ballot question committee, candidate, candidate committee, or political party committee engages an attorney, vendor, or other agent that has been or is engaged by that candidate or committee, as long as the attorney, vendor, or agent does not do the following:

- For the creation, production, or distribution of a communication, convey information to the person making the communication about the campaign plans, projects, activities, or needs of that candidate or committee that he or she also provided services for and that was obtained from that candidate or committee or its agents.
- For the creation, production, or distribution of a communication, use any information about the campaign plans, projects, activities, or needs of that candidate or committee that he or she also provided services for and that was obtained from the candidate or committee or its agents.
- Convey information about the creation, production, or distribution of the communication to the candidate or committee for which he or she also provided services.

The independent nature of an independent expenditure would not be defeated when a candidate, candidate committee, political party committee, or an agent of the candidate or any such committee solicits contributions on behalf of an IEC but does not request or suggest action by, or further cooperate, consult, act in concert, or otherwise coordinate in any way with the IEC related to any independent expenditure made on behalf of that candidate or committee. (This provision does not preserve the independent nature of an independent expenditure if the IEC makes independent expenditures during an election cycle related solely to one candidate, and that candidate or his or her candidate committee or agent solicits funds on the IEC's behalf).

**Independent expenditure reporting requirements [Section 51]**

The current Act requires a person, other than a committee, to file a report of an independent expenditure when the independent expenditure advocates for the election or defeat of a candidate or the qualification, passage, or defeat of a ballot question and is over \$100 in a calendar year. This report must be filed with the county clerk in the person's county of residence within 10 days of the expenditure.

The bill adds a provision that the person must file the report with the Michigan Secretary of State (instead of the county clerk) if the person making the independent expenditure is not a resident of Michigan, or if the candidate in question is running for state elective office or the ballot question is statewide.

If the person fails to file the report as required, that person must pay a late filing fee. If the person's independent expenditures total less than \$10,000, the late filing fee is \$25 per business day, but not to exceed \$1,000. If the person's independent expenditures total \$10,000 or more, the late filing fee is \$50 per day, but not to exceed \$5,000. Additionally, if a person fails to file within 30 days, that person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000, or both.

**Contributions by a corporation, joint stock company, labor organization, or domestic dependent sovereign [Section 54]**

Currently under the Act, a corporation, joint stock company, domestic dependent sovereign, or labor organization may make a contribution to a ballot question committee, and those parties may make an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. The bill would allow those parties to contribute to an IEC as

well, and allow them to make an independent expenditure in any amount advocating for the election or defeat of a candidate.

Under the Act, if one of those parties makes an independent expenditure as described above, it is considered a ballot question committee for purposes of the Act. The bill would remove that provision.

The bill would also provide that, if one of those parties makes an independent expenditure as described above, that party does not for that reason become a committee unless it solicits or receives contributions over \$500 for the purpose of making the independent expenditure. However, the parties would be subject to existing reporting requirements for independent expenditures, as described above.

### **Connected organizations [Section 55]**

The bill would add IECs to the list of committees and funds to which a connected organization could direct contributions to and expenditures on behalf of from its separate segregated fund. Additionally, it would provide that a separate segregated fund established by a connected organization would be organized as a political committee or an independent committee.

The bill also would expand the definition of a connected organization. Currently, the Act defines a connected organization as a corporation organized on a for-profit or nonprofit basis, a joint stock company, a domestic dependent sovereign, or a labor organization formed under the laws of this or another state or foreign country. The bill would add that a connected organization also includes a member of one of those listed entities that is not an individual and that does not maintain its own separate segregated fund, unless its separate segregated fund and that of the entity of which it is a member are treated as a single independent committee as provided in the Act.

Senate Bill 336 would amend the Code of Criminal Procedure to add the felony established in SB 335 to the list of Class H offenses against the public trust. Such a prohibited IEC contribution would be punishable by up to three years' imprisonment.

## **BACKGROUND INFORMATION:**

Senate Bill 335 would enshrine in Michigan law several campaign contribution principles laid out in the 2010 United States Supreme Court *Citizens United* case.<sup>1</sup> *Citizens United* overturned the Bipartisan Campaign Reform Act of 2002 (also known as the BRCA or the McCain-Feingold Act), which sought to limit certain contributions.

The BRCA was an effort to limit so-called "soft money" contributions, by prohibiting national political party committees from raising or spending money not subject to federal limits. It also prohibited corporations and unions from broadcasting "electioneering communications" in the 30 days before a primary or caucus, or 60 days before a general election.

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<sup>1</sup> *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

In 2008, the nonprofit group Citizens United created a political documentary critical of Hillary Clinton, and sought to air the movie in the month before the presidential primaries, in apparent violation of BRCA. After the case made its way through the lower courts, the Supreme Court ruled that the BRCA's prohibition of independent expenditures by corporations and unions violated the right to free speech under the First Amendment. The Court held that political speech is "indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation."

The rules for independent expenditures in the various states can be found in the following 2014 report from the National Conference of State Legislatures:

[http://www.ncsl.org/Portals/1/documents/legismgt/2014\\_Independent\\_Expenditures\\_Chart.pdf](http://www.ncsl.org/Portals/1/documents/legismgt/2014_Independent_Expenditures_Chart.pdf)

## **FISCAL IMPACT:**

Senate Bill 335 would have an indeterminate fiscal impact on the state's correctional system and on local court systems. Information is not available on the number of persons that might be convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2015-16, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

SB 335 would have a minimal, indeterminate fiscal impact to the Department of State resulting from costs of the bill's added administrative requirements as well as additional potential revenue from late filing fees. The bill transfers certain report filing responsibilities from county clerk offices to the Secretary of State as well as adding some administrative duties. The bill would also add late filing fees, associated with the report required in Sec. 51, which would be "retained by and for the use of the filing officials collecting the fees or charges to cover their expenses in administering this act."

County clerk offices would be subject to a minimal fiscal impact similarly to DOS except would not be subject to the costs of the additional administrative requirements.

Senate Bill 336 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.