



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 335 and 336 (as introduced 4-27-17)
Sponsor: Senator Dave Robertson
Committee: Elections and Government Reform

Date Completed: 5-4-17

CONTENT

Senate Bill 335 would amend the Michigan Campaign Finance Act to do the following:

- Permit the creation of independent expenditure committees.
- Redefine "independent expenditure".
- Allow an independent expenditure committee to make contributions to another such committee or a ballot question committee, or other distributions for a lawful purpose.
- Prohibit an independent expenditure committee from making a contribution to a political committee, candidate committee, or certain other committees, and prescribe a felony penalty for a person who knowingly violated the prohibition.
- Prescribe penalties that would apply if the independent nature of an independent expenditure were defeated through the request of, cooperation with, or action in concert with certain other committees.
- Provide that the independent nature of an independent expenditure would not be defeated under certain circumstances.
- Require an independent expenditure committee to file campaign statements according to a schedule that applies to an independent committee.
- Prescribe late filing fees and a misdemeanor penalty for failing to report an independent expenditure as required.
- Allow a corporation, joint stock company, labor organization, or domestic dependent sovereign to make a contribution to an independent expenditure committee.
- Provide that a corporation, joint stock company, labor organization, or domestic dependent sovereign could make an independent expenditure in any amount advocating the election or defeat of a candidate or the passage or defeat of a ballot question, and would not become a committee unless it solicited or received contributions in excess of \$500 to make the independent expenditure.
- Require such entity to file a report of an independent expenditure, and provide that an entity making a contribution to or an expenditure for an independent expenditure committee would have no reporting obligations.
- Require a separate segregated fund established by a connected organization to be organized as a political committee or an independent committee, and permit it to contribute to independent expenditure committees.
- Prohibit a member of a connected organization from maintaining its own separate segregated fund unless that fund and the fund of the other entity were treated as a single independent committee.

Senate Bill 336 would the Code of Criminal Procedure to include the felony established by Senate Bill 335 (regarding a prohibited contribution by an independent expenditure committee) in the sentencing guidelines as a Class H offense against the public trust with a statutory maximum of three years' imprisonment.

Senate Bill 336 is tie-barred to Senate Bill 335. Each bill would take effect 90 days after its enactment.

A detailed description of Senate Bill 335 follows.

Independent Expenditure Committee

The bill would allow one or more people to create and maintain an independent expenditure committee. "Independent expenditure committee" would mean a committee that receives contributions and makes independent expenditures pursuant to the Act and that may make expenditures or disbursements otherwise not prohibited by the Act.

The Act defines "independent expenditure" as an expenditure by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee. The bill would define the term, instead, as an expenditure by a person if the expenditure is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a ballot question committee or a candidate, a candidate committee or its agents, or a political party committee or its agents.

A person creating an independent expenditure committee would have to file a statement of organization. An independent expenditure committee would have to file campaign statements as required by the bill.

In addition to any independent expenditures, an independent expenditure committee could make contributions to another independent expenditure committee or to a ballot question committee, or other distributions for any other lawful purpose not prohibited by the Act.

An independent expenditure committee could receive contributions from any person, except a person prohibited from making a contribution under 52 USC 30121 (i.e., a foreign national). Within 30 days after receiving a contribution from a person prohibited from making one, the committee would have to return it.

Currently, a person, other than a committee registered under the Act, making an expenditure to a ballot question committee may not, for that reason, be considered a committee for purposes of the Act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee. Under the bill, this also would apply to a person making an expenditure to an independent expenditure committee. In addition, the person making an expenditure to either type of committee would not have any reporting obligations under the Act, subject to the existing exception.

The bill also would amend the definition of "contribution" to exclude an independent expenditure, unless it were made directly to a candidate or committee, or made to offset or reimburse a fee, fine, debt or obligation, or other payment owed to a candidate or committee.

Prohibited Independent Expenditure Committee Contribution

An independent expenditure committee would be prohibited from making a contribution to a candidate committee, independent committee, political committee, political party committee, or House or Senate political party caucus committee. A person who knowingly violated or

caused a person to violate this prohibition would be guilty of a felony punishable by imprisonment for up to three years or a maximum fine of \$5,000, or both.

In addition to any civil or criminal penalties, the Secretary of State could require an individual to reimburse a person in an amount of up to the full cost of any improper contribution or expenditure the individual caused. If the person violating the prohibition were not an individual, the person would be subject to the greater of the following:

- A maximum fine of \$20,000.
- A fine of not more than triple the amount of the improper contribution or expenditure.

Improper Independent Expenditure

Under the bill, if the independent nature of an independent expenditure were defeated through the request or suggestion of, or cooperation, consultation, or action in concert with a ballot question committee or a candidate, a candidate committee or its agents, or a political party committee or its agents, the resulting contribution would be punishable as follows:

- For an independent expenditure committee or its agent, the penalty would be the same as provided above for a prohibited contribution by an independent expenditure committee, if that prohibition were violated.
- For a corporation, joint stock company, domestic dependent sovereign, or labor organization, or a person acting for such an entity, the penalty would be what the Act prescribes for a violation of Section 54 if the resulting contribution violated that section.
- For any other person, the penalty would be as otherwise provided for a violation of the Act.

(Section 54 prohibits a corporation, joint stock company, domestic dependent sovereign, or labor organization, or a person acting for such an entity from making a contribution or expenditure or providing volunteer personal services that are excluded from the definition of "contribution" under an exclusion for such services provided without compensation. A person who knowingly violates Section 54 is guilty of a felony punishable by a maximum fine of \$5,000 and/or imprisonment for up to three years if the violator is an individual, or a maximum fine of \$10,000 if the violator is not an individual.)

The independent nature of an independent expenditure would not be defeated where a person making an independent expenditure related to a ballot question committee, candidate, candidate committee, or political party committee engaged an attorney, vendor, or other agent that also was engaged by that candidate or committee, if the attorney, vendor, or other agent did not do any of the following:

- For the creation, production, or distribution of an independent expenditure, convey information to the person making the expenditure about the campaign plans, projects, activities, or needs of that candidate or committee that he or she also provided services for and that had been obtained from that candidate or committee or its agents.
- For the creation, production, or distribution of an independent expenditure, 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 had been obtained from that candidate or committee or its agents.
- Convey information about the creation, production, or distribution of the independent expenditure to the candidate or committee that he or she also provided services for.

The independent nature of an independent expenditure also would not be defeated where a candidate, candidate committee, political party committee, or agent of the candidate or

committee solicited contributions on behalf of an independent expenditure committee but did not request or suggest action by, or further cooperate, consult, act in concert, or otherwise coordinate in any way with the independent expenditure committee related to any independent expenditure made on behalf of that candidate or committee. This provision would not preserve the independent nature of an independent expenditure if the independent expenditure committee made independent expenditures during an election cycle related solely to one candidate and that candidate, his or her candidate committee, or his or her agent solicited funds on behalf of the independent expenditure committee.

Campaign Statement Requirements

The Act requires the campaign statement of a committee to contain specified information, including certain information about contributions and expenditures. An independent committee or political committee must report all cumulative amounts on a calendar year basis. Under the bill, this also would apply to an independent expenditure committee.

Currently, an independent committee, or a political committee other than a House or Senate political party caucus committee required to file with the Secretary of State (SOS), must file campaign statements required by the Act according to the following schedule:

- By April 25 each year with a closing date of April 20.
- By July 25 of each year with a closing date of July 20.
- By October 25 of each year with a closing date of October 20.

The bill would extend the filing requirement to an independent expenditure committee.

The bill also would require the campaign statement of a committee to include the electronic mail address of the committee treasurer or other designated individual.

Independent Expenditure Reporting Requirements

Under the Act, if an independent expenditure is made within 45 days before a special election by an independent committee, or a political party committee required to file a campaign statement with the SOS, the committee must file a report of the expenditure with the SOS within 48 hours after the expenditure. The bill would extend this requirement to an independent expenditure committee.

Currently, a person, other than a committee, that makes an independent expenditure advocating the election or defeat of a candidate or the qualification, passage, or defeat of a ballot question, in an amount of \$100.01 or more in a calendar year, must file a report of the expenditure within 10 days with the clerk of the county of the person's residence. Under the bill, the person would have to file the report with the SOS instead of filing with a county clerk if the expenditure were \$500 or more and advocated the election or defeat of a candidate for State elective office or the qualification, passage, or defeat of a statewide ballot question, or if the person making the expenditure were not a resident of the State.

The Act specifies information that the required report must include. The bill also would require the report to identify the candidate or ballot question for or against which the expenditure was made.

Under the bill, if a person failed to file a report as described above, the person would have to pay a late filing fee. If the person had made independent expenditures totaling less than \$10,000, the late fee would be \$25 for each business day the report remained unfiled, but not more than \$1,000. If the person had made independent expenditures totaling \$10,000 or

more, the late fee would be \$50 for each business day the report remained unfiled, but not more than \$5,000. A person who failed to file a required report for more than 30 days after it was required to be filed would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$1,000.

Expenditure/Contribution by Corporation, Joint Stock Company, or Labor Organization

The Act permits a corporation, joint stock company, labor organization, or domestic dependent sovereign to make a contribution to a ballot question committee and to make an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. Under the bill, such an entity also could make a contribution to an independent expenditure committee, and could make an independent expenditure in any amount advocating for the election or defeat of a candidate.

Currently, a corporation, joint stock company, labor organization, or domestic dependent sovereign that makes an independent expenditure is considered a ballot question committee for purposes of the Act. The bill would delete this provision.

Under the bill, a corporation, joint stock company, domestic dependent sovereign, or labor organization making an independent expenditure as described above would not for that reason become a committee, unless it solicited or received contributions in excess of \$500 to make the independent expenditure, but would be subject to the independent expenditure reporting requirements.

A corporation, joint stock company, labor organization, or domestic dependent sovereign that made a contribution to an independent expenditure committee, or an expenditure for the establishment or administration of, or solicitation of funds to, an independent expenditure committee, would have no reporting obligations under the Act.

Connected Organization/Separate Segregated Fund

The Act allows a connected organization to make an expenditure for the establishment or administration of, and solicitation, collection, or transfer of contributions to, a separate segregated fund established by the organization. The fund is limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, independent committees, and other separate segregated funds. The bill would require the fund to be organized as a political committee or an independent committee, and permit it to make contributions to an independent expenditure committee in addition to the other committees listed.

Currently, if a corporation, joint stock company, domestic dependent sovereign, or labor organization that obtains contributions for a separate segregated fund from certain individuals (e.g., stockholders, officers, directors, or employees) pays to one or more of them a bonus or other remuneration for the purpose of reimbursing those contributions, the entity is subject to a civil fine equal to two times the total contributions obtained from all individuals for the separate segregated fund during that calendar year. Under the bill, this provision would apply to a connected organization, rather than a corporation, joint stock company, domestic dependent sovereign, or labor organization, and the fine would be not more than, rather than equal to, twice the amount of total contributions.

The Act defines "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 a foreign country, or a member of such an entity that is not an individual. The bill would refer to a member of such an entity

that is not an individual and that does not maintain its own separate segregated fund, unless its fund and the separate segregated fund of the entity of which it is a member are treated as a single independent committee as provided in the Act.

MCL 169.203 et al. (S.B. 335)
777.11e (S.B. 336)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 335

The bill would have an indeterminate impact on State and local government. It is unknown whether the provisions in the bill would lead to more or fewer violations of the Act. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

The bill also would have a minimal, indeterminate impact on the Department of State regarding the administration of reporting requirements. The late filing fees proposed by the bill also could generate revenue to the State or local units. As a rule, under the Act, late filing fees are payable to the filing official with whom a statement or report is required to be filed.

Senate Bill 336

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Ryan Bergan
Joe Carrasco

SAS\S1718\s335sa

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.