

HOUSE BILL 2596

This bill alters the GSPC preliminary review process. It would extend the length of the Preliminary Review Phase from 90 days to 135 days, and allow a delay for complaints filed against candidates for public office within 61 days before the election. It would also extend the length of the GSPC Investigatory Phase from 120 days to 180 days.

As a general principle, it seems a good idea to make these extensions of time. The kinds of cases likely to come before GSPC are likely to sometimes be complex, their investigation detailed, and the legal issues sometimes difficult. It does not help the interests of justice or good government to hurry these things.

However, with the extension proposed for when a filing is made against a candidate in an election, the question gets more complex. On the one hand, he or she should have time, and not feel pressed by the election, to mount a perhaps hasty defense. On the other hand, the public has a right to know, before voting, whether the candidate has broken the law. Further, if the person is found guilty by GSPC after the election, then perhaps the election, if won by the candidate filed against, might have been lost had a more timely GSPC decision been reached. But does even that warrant a process that, by its haste, may do injustice? There is no clear "better thing to do" in this question, though if I absolutely had to choose, I would not include this change in the bill. Whether it outweighs the virtues of the other provisions lengthening the preliminary review process, which I think worthwhile, I leave to the reader to decide.

This bill also apparently allows a person subject to commission action to request a transfer of the action to Marion County Circuit Court in lieu of a contested case proceeding. Thus the editor's explanation says, though in reading the text, it seems that this authority exists prior to the bill. I will assume the editor is right, and not me. It also allows the commission to transfer action to that court or proceed with contested case under the condition that the decision of an administrative law judge is a final order in contested case (which, I expect, expedites removal of the case to the said Court). The transfer thus allowed – or more often allowed - to Marion County court would have procedural effects beyond the scope of my knowledge, and so I am hesitant to comment on this. However, I expect there is a case to be made that if the official involved feels he cannot get a fair hearing before GSPC, he or she should be allowed to go directly to the specified Circuit Court. In that event, I also expect, the GSPC, rather than the citizen who initiated the investigation, would be the party plaintiff (as the citizen might not have the resources nor legal understanding to pursue the court case).

This bill, like one previously reviewed, also would authorize a public official to establish legal expense trust fund for use by that public official to defray legal expenses incurred by him or her in defending in legal proceedings relating to GSPC. This, as I stated above, is surely fair and appropriate (and, as I also stated earlier, must already be the practice, as a practical matter. Or so one would hope.).

However, once again, as with the previously reviewed bill, this bill's mandate for approval of the trust fund by GSPC seems unfair. Could we not rather legislate that GSPC can challenge the creation or details of such a fund in court (not before itself) if

for some reason the creation or use or contents of the fund appear wrongful?

Also, this bill would prohibit personal use of trust fund proceeds and would prohibit public officials from soliciting contributions to trust fund. Again, subject to the laws of disclosure and limitations upon donations, this seems to tilt the playing field severely against the official charged with breaking the law. Not all public officials are personally wealthy. It would be better, I think, to keep the portion of the bill that directs the trustee of such a trust fund to file with the commission quarterly reports of contributions received and expenditures made, and to also authorize GSPC to go to court, on some expedited basis, to oppose what it may feel are illegal uses, contents or actions by such a trust fund.