

# Legislative Analysis



## PUBLIC BODY COMMUNICATIONS ABOUT LOCAL BALLOT QUESTIONS

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**House Bill 5219 (reported from committee as H-1)**  
**Sponsor: Rep. Lisa Posthumus Lyons**  
**Committee: Elections**  
**Complete to 2-9-16**

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

**BRIEF SUMMARY:** House Bill 5219 would amend the rules for communications by local units of government about ballot questions recently introduced in Public Act 269 of 2015, and remove the prohibition on communication within 60 days of an election.

**FISCAL IMPACT:** The bill would have an indeterminate impact on state and local government. The Department of State could see increased complaints under the changes made in the bill, but a calculation of that cost, if any, cannot be determined at this time.

The bill could impact future revenues of local governments by impacting the educational efforts local public bodies and officials can and cannot take around future ballot questions. However, there is no way to calculate a fiscal impact for local governments at this time.

### **THE APPARENT PROBLEM:**

In response to concerns that the language introduced in Public Act 269 of 2015 (better known as Senate Bill 571) would be more restrictive than intended, this bill intends to clarify the rules for communication by public bodies about local ballot questions.

### **THE CONTENT OF THE BILL:**

House Bill 5219 would amend the Michigan Campaign Finance Act by clarifying that the act does not prohibit all communication about ballot questions by public bodies. Specifically, the bill provides that any limit on communication does not cover certain allowable activity already included in the law, as described below, and also that the term "communication" does not include:

- The language of a local ballot question,
- The date of an election, or
- Factual and strictly neutral information concerning the direct impact of a local ballot question on a public body or the electorate, except if the communication can reasonably be interpreted as an attempt to influence the outcome of a local ballot question.

Other allowable activity cited in the bill that is already protected by the Campaign Finance Act includes:

- The production or dissemination of debates, interviews, commentary, meetings of a public body, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.
- The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the facility.

- The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.
- An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on personal time, is expressing personal views, expending personal funds, or providing personal volunteer services.

Also, significantly, the bill would remove the prohibition on communication within 60 days of an election where a local ballot question appears on the ballot. Instead, the communication requirement of "factual and strictly neutral information" described above will apply at all times.

MCL 169.257.

### **BACKGROUND INFORMATION:**

Senate Bill 571 was recently enacted as Public Act 269 of 2015; the bill made numerous amendments to the Michigan Campaign Finance Act. Section 57 of Senate Bill 571 provides that, except for an elected official in the performance of duties under the Michigan Election Law, ***a public body or person acting for a public body may not use public funds or resources for certain communications about a local ballot question during the period 60 days before an election.*** It states that the communications cannot take the form of radio, television, mass mailing, or prerecorded telephone message, if those communications refer to a local ballot question and target the relevant electorate where the local ballot question appears on the ballot.

Governor Snyder issued a signing letter when approving the bill in which he said, in part:

*[However]recognizing that many local governmental entities and schools have raised concerns regarding confusion with the new language in Section 57, I am calling on the Legislature to enact new legislation to address those concerns, and clarify that the new language does not impact the expression of personal views by a public official, the use of resources or facilities in the ordinary course of business, and that it is intended only to prohibit the use of targeted, advertisement style mass communications that are reasonably interpreted as an attempt to influence the electorate using taxpayer dollars. Local governmental entities and schools should still be allowed to distribute basic information about an election including the proposed or final ballot language and the date of the election. This is keeping within the spirit of the existing restrictions in the Act.*

### **ARGUMENTS:**

#### **For:**

Proponents argued that a change to Section 57 of the Michigan Campaign Finance Act was necessary because local bodies were disseminating supposedly factual information which was actually advocacy for a certain ballot question outcome. Taxpayer funds should not be used to advocate for or advance an agenda. While Senate Bill 571 might have gone

further than intended, they see the purpose of protecting taxpayer money from abuse as important, and advance this legislation as a fair compromise.

***Against:***

Opponents argue that the pre-Senate Bill 571 language, allowing "the production or dissemination of factual information concerning issues relevant to the function of the public body" was sufficient to prevent abuse. They point to the fact that of the hundreds of local ballot questions presented since 2012, there were only 24 complaints of abuse, with just 13 of those found to be in violation. Of these, only five were found to be in violation of Section 57 specifically. They argue that the legislature is attempting to solve a problem which does not exist.

Additionally, while the language in House Bill 5219 may be an improvement over that in Senate Bill 571, the additional language actually creates more confusion around Section 57. The addition of "strictly neutral," "direct impact" on a local body, and the invocation of the reasonable person standard will create misunderstandings in local communities and an increase in legal challenges.

***POSITIONS:***

A representative of the West Michigan Talent Triangle testified in support of this bill. (2-3-16)

A representative of the Michigan Municipal League testified in opposition to this bill. (2-3-16)

A representative of the Michigan Townships Association testified in opposition to this bill. (2-3-16)

Wayne County Regional Education Service Agency opposes this bill. (2-3-16)

Michigan Freedom Fund opposes this bill. (2-3-16)

Other positions expressed before introduction of the H-1 substitute are in the process of being verified.

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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.