



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5219 (Substitute H-1 as passed by the House)
Sponsor: Representative Lisa Posthumous Lyons
House Committee: Elections
Senate Committee: Elections and Government Reform

Date Completed: 3-21-16

CONTENT

The bill would amend the Michigan Campaign Finance Act to revise a prohibition against communication by public body about a local ballot question within 60 days before an election on that question, as follows:

- **The bill specifies that "communication" would not include the language of a ballot question, the date of an election, or factual or neutral information about the purpose or direct impact of the ballot question on a public body or the voters.**
- **A person who violated the prohibition would be subject to a civil fine, rather than a misdemeanor fine and/or imprisonment.**
- **The 60-day time frame no longer would apply.**
- **The prohibition would not apply to certain activities that are exempt from a prohibition against the use of public funds or other resources to make a contribution or expenditure.**

Currently, except for an election official in the performance of his or her duties under the Michigan Election Law, Section 57 of the Act prohibits a public body, or a person acting for a public body, within 60 days before an election in which a local ballot question will appear on the ballot, from using public funds or resources for a communication by means of radio or television, mass mailing, or prerecorded telephone message, if that communication refers to a local ballot question and is targeted to the electorate where the question will appear on the ballot.

The bill specifies that, as used in this provision, "communication" would not include the following:

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

The bill also would refer to a communication by means of radio or television "advertisement", and would delete the 60-day time frame.

Currently, a person who violates Section 57 is guilty of a misdemeanor punishable by a maximum fine of \$1,000 or imprisonment for up to one year, or both, if the violator is an individual. If the violator is not an individual, the penalty is a maximum fine of \$20,000 or a fine equal to the amount of the improper contribution or expenditure, whichever is greater.

Under the bill, an individual who violated Section 57 would be subject to a maximum civil fine of \$1,000. A violator other than an individual would be subject to a civil fine of up to \$20,000 or a fine equal to the amount of the improper contribution or expenditure, whichever was greater.

Section 57 also prohibits a public body or a person acting for a public body from using or authorizing the use of funds, personnel, office space, computer hardware or software, property, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services, subject to a number of exceptions. The exceptions include the following:

- The production or dissemination of debates, interviews, commentary, 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 on his or her own personal time, is expressing his or her own personal views, spending his or her own personal funds, or providing his or her own personal volunteer services.

Under the bill, these activities and individuals also would not be subject to the prohibition against communication by a public body referring to a local ballot question. In addition, the bill would include meetings of a public body in the first exception listed above.

MCL 169.257

BACKGROUND

Public Act 269 of 2015 made a number of amendments to the Michigan Campaign Finance Act and added the language, now found in Section 57(3), that prohibits communication by a public body that refers to a local ballot question within 60 days before the election in which the question will appear on the ballot. Section 57 already had contained the prohibition against the use of public funds or other resources to make a contribution or expenditure, the misdemeanor penalty for a violation, and exceptions to the prohibition. One of those exceptions is for the production or dissemination of factual information concerning issues relevant to the function of the public body. Public Act 269 made that exception subject to the new prohibition against communication about a local ballot question.

After Public Act 269 was enacted and took effect on January 6, 2016, various public officials and an individual brought an action in the U.S. District Court for the Eastern District of Michigan. The lawsuit challenged the constitutionality of Section 57(3) and sought an injunction. The plaintiffs claimed that Section 57(3) violated their First and Fourteenth Amendments rights to free speech and their Fifth and Fourteenth Amendment rights to due process. The Court found that the plaintiffs had demonstrated a strong likelihood of success on the merits of their claim that Section 57(3) is unconstitutionally vague and thus void. The Court granted the plaintiffs' motion for a preliminary injunction and enjoined the enforcement of Section 57(3) until further order of the Court (*Robert Taylor, et al. v. Ruth Johnson as Secretary of State, and the State of Michigan*, No. 16-10256, 2-5-16.) The Court also stated that the provision of the statute that prohibits the use of public funds to *advocate* for ballot measures remains in effect.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a positive fiscal impact on State and local government. It would create several exceptions to the prohibition against communication by a public body, or a person acting for a public body, referring to a local ballot question. As described above, a violator would be subject to a civil fine, rather than a misdemeanor penalty. A decrease in misdemeanor arrests and convictions could incrementally reduce resource demands on local court systems, law enforcement, probation offices, and jails. Civil fines imposed for civil violations of the Act must be deposited in the General Fund.

Fiscal Analyst: Ryan Bergan

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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.