Legislative Analysis

REGULATE USE OF ARTIFICIAL INTELLIGENCE FOR POLITICAL CAMPAIGNS

House Bills 5141 and 5144 as reported from committee
Sponsor: Rep. Penelope Tsernoglou

House Bill 5142 as reported
Sponsor: Rep. Ranjeev Puri

House Bill 5143 as reported
Sponsor: Rep. Matthew Bierlein

House Bill 5145 as reported
Sponsor: Rep. Noah Arbit

Committee: Elections
Complete to 10-25-23

BRIEF SUMMARY: Together, House Bills 5141, 5143, and 5144 would restrict the use of artificial intelligence and manipulated media in political campaigns and would generally require campaign advertisements and other political media to disclose of the use of artificial intelligence systems. House Bills 5142 and 5145 are companion bills to HBs 5141 and 5144, respectively, that would make complementary changes to the Code of Criminal Procedure.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and on local units of government (see *Fiscal Information*, below).

THE APPARENT PROBLEM:

The rapidly evolving nature of artificial intelligence could pose a particular problem for political campaigns, as content generated by artificial intelligence is becoming indistinguishable from real-life media to an unsuspecting eye. Concerns have been raised that without intervention and requirements for proper disclosure, "deepfakes" and other forms of artificial intelligence that intend to mislead voters will become prevalent in campaign media.

THE CONTENT OF THE BILLS:

House Bill 5143 would amend the Michigan Campaign Finance Act to define *artificial intelligence*, for purposes of the act, as a machine-based system that can make predictions, recommendations, or decisions influencing real or virtual environments for a given set of human-defined objectives.

The bill is tie-barred to House Bill 5141, meaning that it cannot go into effect unless HB 5141 is also enacted.

MCL 169.202

House Bill 5141 would amend the Michigan Campaign Finance Act to prohibit the use of artificial intelligence, as defined by House Bill 5143, in campaign materials without the required disclosures. The bill is tie-barred to House Bill 5143.

Political advertisements

The bill would provide that if a person, committee, or other entity creates, publishes, or originally distributes a *qualified political advertisement*, the advertisement would have to clearly and conspicuously state that it was partially or wholly generated by artificial intelligence.

> *Qualified political advertisement* would mean any advertisement or sponsored content involving a candidate for federal, state, or local office in Michigan, an election to federal, state, or local office in Michigan, or a ballot question that is made by or on behalf of a candidate or committee and contains any visual or audio media partially or wholly generated with the use of artificial intelligence.

If the advertisement is a *text or graphic communication*, the statement would have to appear in letters at least as large as the majority of the text in the communication.

If the advertisement is an *audio communication*, the statement would have to be at least three seconds in length and spoken in a clearly audible and intelligible manner at either the beginning or end of the communication.

If the advertisement is a *video communication that includes audio*, the statement would have to meet the requirements for an audio communication and appear for at least four seconds in letters that are as large as the majority of any text included in the advertisement.[1]

A first violation of these provisions would be a misdemeanor punishable by up to 93 days' imprisonment, a fine of up to $1,000, or both. For a second violation, the maximum fine would be raised to $1,500. A third or subsequent violation would be a felony punishable by up to two years' imprisonment, a fine of up to $2,000, or both. Each advertisement aired or distributed to the public in violation of these provisions would be a separate violation.

Other media

If a person creates, publishes, or distributes a communication partially or wholly generated by artificial intelligence that references an election, candidate, or ballot question and is *not* a qualified political advertisement, the communication would have to contain the following disclaimer:

> "This communication was generated in whole or part by artificial intelligence."

A first violation by a person other than a campaign committee would be a state civil infraction, and the person could be ordered to pay a civil fine of up to $250. A second or subsequent offense by a person other than a committee, and any violation by a committee, would be a misdemeanor punishable by up to 93 days' imprisonment, a fine of up to $1,000, or both.

If a prerecorded telephone message is partially or wholly generated by artificial intelligence, the message would have to contain the following disclaimer:[2]

> "This message was generated in whole or in part by artificial intelligence."

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[1] If there is no text included in the video, the statement would have to be in a size that is easily readable by the average viewer.

[2] Currently, a prerecorded phone message advocating for the election or defeat of a candidate or for the qualification, passage, or defeat of a ballot question must contain the contact information of the person paying for the message but is not required to contain a disclaimer.

If a candidate for office has been or is likely to be injured by a violation of the bill's provisions regulating qualified political advertisements and other political communications, they or the attorney general could apply to the appropriate circuit court for injunctive relief.[3]

Exemptions
The bill would not apply to any of the following:
- A radio or television broadcasting station that broadcasts materially deceptive audio or visual media as part of a newscast, news interview, news documentary, or live coverage of news events, if the broadcast clearly acknowledges in a manner that can be easily heard or read by the average viewer that the deceptive media does not accurately represent the speech or conduct of the depicted individual.
- A radio or television broadcasting station paid to broadcast political advertisements.
- A website or regularly published newspaper, magazine, or other generally circulated periodical that routinely carries news and commentary of general interest and that publishes qualified political advertisements, if the publication clearly states that the advertisement was generated by artificial intelligence.
- A qualified political advertisement that is a satire or parody.

MCL 169.247 (amended) and MCL 169.259 (proposed)

House Bill 5142 would amend the sentencing guidelines chapter of the Code of Criminal Procedure to incorporate the proposed new felony of failing to disclose the use of artificial intelligence in a political communication. Under the bill, a third or subsequent offense would be a Class G felony against the public trust punishable by a statutory maximum term of imprisonment of two years.

The bill is tie-barred to House Bill 5141, meaning that it cannot go into effect unless HB 5141 is also enacted.

MCL 777.11e

House Bill 5144 would amend the Michigan Election Law to prohibit the distribution of *materially deceptive media* (commonly known as "deepfakes") with the intention to influence the outcome of an election.

> *Materially deceptive media* would mean any image, audio, or video where all of the following apply:
> - The media falsely depicts an individual engaging in speech, conduct, or appearance in which the individual did not actually engage.
> - A reasonable viewer or listener would incorrectly believe that the depicted individual engaged in the speech, conduct, or appearance.
> - The media was produced by substantially relying on technical means other than an individual's ability to physically impersonate the depicted individual.

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[3] The candidate or the attorney general could apply to the Ingham County circuit court, the circuit court for the county in which a party to the alleged violation resides, or the circuit court for the county in which a violation could deceive and influence voters in an upcoming election.

Under the bill, a person would be prohibited from distributing or agreeing to distribute materially deceptive media pertaining to any federal, state, legislative, judicial, county, or local election, including a primary election, if all of the following apply:

- The person knows or recklessly disregards whether the media falsely represents a depicted individual.
- The distribution occurs within 90 days before an election.
- The distribution is intended and likely to harm the reputation or electoral prospects of a candidate.
- The distribution is intended and likely to influence voter behavior by deceiving voters into incorrectly believing that an individual engaged in the speech, conduct, or appearance depicted in the media.

Disclaimers

The above prohibition would not apply if the media includes a disclaimer informing the viewer that it has been manipulated to depict speech or conduct that did not occur. The bill provides that the following disclaimer would be sufficient, but not necessary, to satisfy this requirement:

> "This [image, audio, or video] has been manipulated by technical means and depicts speech or conduct that did not occur."

If the media is a video, the disclaimer would have to appear throughout its entirety, be clearly visible to and readable by an observer, and be in letters that are at least as large as the majority of any text communication in the video.[4]

If the media is audio only, the disclaimer would have to be read at the beginning and end of the communication in a clearly spoken manner and in a pitch that the average listener could easily hear.

If the media is an image, the disclaimer would have to be clearly visible to and readable by the average viewer, and if the image contains other text, it would have to be printed in letters that are at least as large as a majority of the other text.

Violations

A first violation of these provisions would be a misdemeanor punishable by up to 90 days' imprisonment, a fine of up to $500, or both. If a subsequent violation occurs within five years, that violation would be a felony punishable by up to five years' imprisonment, a fine of up to $1,000, or both.

If a depicted individual or candidate has been or is likely to be injured by the distribution of the materially deceptive media, that person or the attorney general could seek permanent injunctive relief in the appropriate circuit court.[5] A plaintiff would have to prove by clear and convincing evidence that the defendant knew that or recklessly disregarded whether the media falsely represents the depicted individual.

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[4] If the video does not contain any text, the disclaimer would have to be in a size that is easily readable by the average viewer.

[5] The person or the attorney general could apply to the Ingham County circuit court, the circuit court for the county in which a party to the alleged violation resides, or the circuit court for the county in which a violation could deceive and influence voters in an upcoming election.

If a court determines that a complaint is frivolous, it would have to issue an order suspending the defendant's obligation to respond and order the plaintiff to show cause as to why the complaint should not be dismissed. If the plaintiff's response assures the court that the complaint is not frivolous, the court would have to direct the defendant to answer to the complaint. If the plaintiff fails to respond or their response confirms that the complaint is frivolous, the court would have to dismiss the complaint, and it could award costs and attorney fees to the defendant and issue any appropriate sanctions against the plaintiff or their attorney.

Proposed MCL 168.932f

House Bill 5145 would amend the sentencing guidelines chapter of the Code of Criminal Procedure to incorporate the proposed new felony of distributing or agreeing to distribute materially deceptive media within five years of an initial violation. Under the bill, such a repeated offense would be a Class E felony against the public trust punishable by a statutory maximum term of imprisonment of five years.

The bill is tie-barred to House Bill 5144, meaning that it cannot go into effect unless HB 5144 is also enacted.

MCL 777.11d

BACKGROUND INFORMATION:

In August 2023, the Federal Election Commission (FEC) published a petition from an advocacy group seeking to increase federal regulation of the use of artificial intelligence to spread disinformation during political campaigns.[6] The FEC has begun the process for a proposed rule on this subject and is currently accepting public comment on the petition.

Texas,[7] Minnesota,[8] and Washington[9] currently restrict the use of deepfakes in political media. California passed a similar law in 2019, which was only in effect until January 1, 2023.[10]

FISCAL INFORMATION:

The bills would have no fiscal impact on the Department of State or the Department of the Attorney General.

House Bill 5141 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not

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[6] See: https://sers.fec.gov/fosers/showpdf.htm?docid=423639.

[7] In 2019, Texas banned the creation and distribution of deepfakes intended to influence the outcome of an election during the 30 days before the election. See: https://capitol.texas.gov/tlodocs/86R/billtext/html/SB00751F.htm.

[8] Minnesota passed a law in 2023 that regulates the use of deepfakes distributed within 90 days of an election. See: https://www.revisor.mn.gov/bills/text.php?number=HF1370&type=bill&version=3&session=ls93&session_year=2023&session_number=0.

[9] Washington's law, passed in 2023, requires the disclosure of the use of deepfakes in campaign communications. See: https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5152-S.SL.pdf?q=20231018130213.

[10] California's law regulated the use of deepfakes during the 60 days before an election. See: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB730.

known. Violations could be either misdemeanors, felonies, or civil infractions depending on the circumstances and offense committed. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly $47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues. Also, revenue collected from payment of civil fines is used to support public and county law libraries. Under section 8827(4) of the Revised Judicature Act, $10 of the civil fine is required to be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

House Bill 5142 is a companion bill to HB 5141 and would amend sentencing guidelines to include campaign finance failure to disclose use of artificial intelligence – third or subsequent offense as a Class G felony. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bill 5144 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations could be either misdemeanors or felonies depending on the circumstances. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly $47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about $5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5145 is a companion bill to HB 5144 and would amend sentencing guidelines to include distributing or agreeing to distribute materially deceptive media, if the offense occurs within 5 years of a previous offense, as a Class E felony. The bill would not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Supporters of the bills argue that the legislation would provide initial guardrails on the use of artificial intelligence for elections, which is necessary to ensure that voters are not misled by digitally manipulated images, video, or audio. Requiring disclaimers for the use of artificial intelligence would allow for a proper level of disclosure so that voters can engage with political information in an informed manner without restricting free speech.

Against:

No arguments opposing the bills were presented during committee testimony, but concerns were raised about the appropriate penalties and remedies for violations and about how to ensure that the legislation only targets bad actors.

POSITIONS:

Representatives of the following entities testified in support of the bills (10-17-23):
- Department of State
- Public Citizen
- Voters Not Politicians

Pure Integrity for Michigan Elections indicated opposition to the bills. (10-17-23)

Legislative Analyst: Holly Kuhn
Fiscal Analysts: Robin Risko
Michael Cnossen