

PROHIBIT USE OF PUBLIC MONEY FOR CAMPAIGN-RELATED PAYROLL DEDUCTION PLANS

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House Bill 5085

Sponsor: Rep. Mike Shirkey

House Bill 5086

Sponsor: Rep. Paul Opsommer

Committee: Redistricting and Elections

Complete to 12-5-11

A SUMMARY OF HOUSE BILLS 5085 - 5086 AS INTRODUCED 10-18-11

The bills would prohibit employers and employees from using public resources to administer payroll deduction plans that are used to collect and deliver contributions to election-related committees. A more detailed description of each bill follows.

House Bill 5085 would amend Public Act 390 of 1978 (MCL 408.477), which regulates the payment of wages and fringe benefits to employees, to prohibit an employer that is a public body, as defined in Section 11 of the Michigan Campaign Finance Act, from deducting—directly or indirectly—any amount from an employee's wages for a contribution to a separate segregated fund established under Section 55 of the Michigan Campaign Finance Act.

[The Michigan Campaign Finance Act defines "public body" to mean one or more of the following: (a) a state agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government; (b) the legislature or an agency board, commission, or council in the legislative branch of state government; (c) a county, city, township, village, inter-county, inter-city, or regional governing body; a council, school district, special district, or municipal corporation; or a board, department, commission, or council or an agency of a board, department, commission, or council; and (d) any other body that is created by state or local authority or is primarily funded by or through state or local authority, which body exercises governmental or proprietary authority or performs a governmental or proprietary function.

Further, a "separate segregated fund" established under Section 55 of the Campaign Finance Act would include a political action committee established by a labor organization to make contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees.]

House Bill 5086 would amend the Michigan Campaign Finance Act (MCL 169.206 et al) to prohibit the use of public resources to establish or administer payroll deduction plans used for the purpose of making contributions to campaign committees.

Currently under the law, during a political campaign a public body (or a person acting for a public body) is prohibited from using or authorizing the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services. House Bill 5086 would retain these prohibitions and expand them. In addition the bill, specifies that *"the prohibition under this subsection includes, but is not limited to, using or authorizing the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to a committee."* The bill continues: *Advance payment or reimbursement to a public body does not cure a use of public resources otherwise prohibited by this subsection.*

House Bill 5086 would also add a detailed new section to the Michigan Campaign Finance Act (Section 57a), that would set penalties for the violation of this prohibition. For example, if a public body violated the prohibition, any person who resided or had a place of business in its jurisdiction could bring a civil action, in the name of the state, to seek declaratory, injunctive, mandamus, or other equitable relief, and to recover losses that a public body suffered. Further, a civil action filed in this manner could not be dismissed unless the attorney general had been notified, and had an opportunity (for a period of 28 days) to appear and oppose the dismissal.

Generally, throughout this new section, further action on a complaint cannot be taken until the attorney general has had an opportunity to intervene. Consequently, copies of all complaints and material evidence would have to be forwarded to the attorney general for review. Following that review, the attorney general would notify the court, to let the judge know whether he or she would proceed with the action, or decline it. The bill specifies that at any time, the court could permit the attorney general to intervene in the action, upon a showing of good cause, and without affecting the rights of status of the person initiating the action.

House Bill 5086 also specifies that upon a showing that actions of the person initiating the action during discovery would interfere with the attorney general's investigation or prosecution of a criminal or civil matter, the court could stay the discovery for not more than 90 days (and could extend that stay indefinitely).

The bill describes in detail the manner in which the court could award monetary proceeds resulting from an action, depending upon the parties' effort, and specifying different percentages for the respective parties—whether individual complainant or attorney general—depending upon the original source of the disclosed information (e.g. civil, criminal, or administrative hearings in a state or federal agency; legislative reports; hearings; audits; investigating news media).

The bill would prohibit a person who was convicted of criminal conduct arising from the use of public resources to establish a payroll deduction plan (that collected contributions), from initiating or remaining a party to an action. Further, the bill specifies that a convicted person would not be entitled to share in the monetary proceeds resulting from the action or any settlement.

House Bill 5086 would prohibit a person other than the attorney general from bringing an action, if it is based on allegations or transactions that are the subject of a civil suit or an administrative hearing to which the state is already a party. Any such action brought would have to be dismissed by the court.

The bill specifies that neither the state nor the attorney general would be liable for any expenses, costs, or attorney fees that a person incurred in bringing an action. Instead, any monetary awards would be payable solely from the proceeds of the action or settlement. In addition, under the bill the attorney general would be able to recover all costs the state incurred in the litigation, including the cost of investigation, and attorney fees.

Under House Bill 5086, an employer would be prohibited from discharging, demoting, suspending, threatening, harassing, or in any other manner, discriminating against an employee in the terms and conditions of employment, because the employee engaged in lawful acts, including initiating, assisting in, or participating in an action under this section, or because the employee cooperated with or assisted in an investigation under this section. An employer who violated this section would be liable to the employee for all of the following: (a) reinstatement to the employee's position without loss of seniority; (b) two times the amount of lost back pay; (c) interest on the back pay; (d) compensation for any special damages; and (e) any other relief necessary to make the employee whole.

Finally, House Bill 5086 would revise the definition of "expenditure" to include the cost of establishing and administering a *payroll deduction plan* to collect and deliver a contribution to a committee (unless that expenditure was made by the person who established the separate segregated fund, as authorized under Section 55 of the act).

The bill would define "payroll deduction plan" to mean any system in which an employer deducts any amount of money from the wages, earnings, or compensation of an employee.

FISCAL IMPACT:

House Bills 5085 and 5086 would have an indeterminate, but likely negligible, fiscal impact on public bodies as they are defined under the Michigan Campaign Finance Act. It is unclear how many public bodies actually allow for a payroll deduction for a contribution to a political action committee considering the current statutory language under MCL 169.257. Moreover, if the public body does allow for a payroll deduction to a political action committee, it is possible that the public body is currently reimbursed for any costs associated with the payroll deduction. Despite the limited data, the process for payroll deductions is largely automated, so there is very little work public bodies conduct on a regular basis with regard to payroll deductions. There may be some upfront minimal administrative costs to process the changes required under the bill, but any ongoing savings would be minimal.

Local courts may face indeterminate but likely negligible costs due to an increased caseload from action taken under these bills. If the local courts request intervention from the Attorney General, these courts would face costs related to compiling all complaints and evidence for review. As the Attorney General may request that any cases filed under this proposal be processed in Ingham County Circuit Court, this court would likely be subject to the majority of costs after the Attorney General's intervention. The number of violations that would be prosecuted under this new cause of action is unknown, but would likely be minimal.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.