



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5085 (Substitute H-1 as passed by the House)
House Bill 5086 (Substitute H-2 as passed by the House)
Sponsor: Representative Mike Shirkey (H.B. 5085)
Representative Paul Opsommer
House Committee: Redistricting and Elections
Senate Committee: Local Government and Elections

Date Completed: 1-25-12

CONTENT

House Bill 5085 (H-1) would amend Public 390 of 1978, which regulates the payment of wages and fringe benefits, to prohibit a public body from deducting any amount from employees' wages for contributions to a fund set up under the Michigan Campaign Finance Act for political purposes.

House Bill 5086 (H-2) would amend the Michigan Campaign Finance Act to do the following:

- Prohibit a public body from using public resources to establish or administer a payroll deduction plan that would collect or deliver contributions to a committee.**
- Allow a person to bring a civil action against a public body that violated this prohibition, if the Secretary of State dismissed a complaint alleging a violation.**
- State a policy requiring public bodies to maintain strict neutrality in elections.**

The bills are described in detail below.

House Bill 5085 (H-1)

Under Public Act 390 of 1978, except as required or permitted by law or a collective bargaining agreement, an employer is prohibited from deducting from employee wages any amount, including an employee contribution to a separate segregated fund established under Section 55 of the Michigan Campaign Finance Act, without the full, free, and written consent of the employee.

The bill also would prohibit an employer that is a public body, as defined in the Campaign Finance Act, from deducting any amount from an employee's wages for a contribution to a separate segregated fund established under Section 55 of that Act or to any committee established under the Federal Election Campaign Act.

(Section 55 of the Michigan Campaign Finance Act allows corporations, labor organizations, and other entities to make an expenditure for the establishment and administration of, and solicitation of contributions to, a separate segregated fund to be used for political purposes. The fund must be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees.

The Act defines "public body" as the following:

- A State agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of State government.
- The Legislature or an agency, board, commission, or council in the legislative branch.
- A county, city, township, village, intercounty, intercity, 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.
- Any other body that is created by, or is primarily funded by or through, State or local authority, and that exercises governmental or proprietary authority or performs a governmental or proprietary function.)

House Bill 5086 (H-2)

Payroll Deduction Prohibition

Section 57 of the Michigan Campaign Finance Act 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, postage, property, vehicles, supplies, equipment, or other public resources to make a contribution or expenditure or provide volunteer personal services.

The bill states that this prohibition would include using or authorizing the use of public resources to establish or administer a payroll deduction plan to directly or indirectly collect or deliver a contribution to a committee. Advance payment or reimbursement to a public body would not cure a use of public resources otherwise prohibited by these provisions.

(The Act defines "committee" as a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if the contributions received or expenditures made total \$500 or more in a calendar year. An individual, other than a candidate, does not constitute a committee.)

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

The Act's definitions of "contribution" and "expenditure" refer to a payment, donation, etc. made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot proposal. The bill provides that "contribution" would not include a contribution to a Federal candidate or a Federal committee except for the purposes of Section 57.

The bill also would amend 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, subject to the following exception.

Currently, the term "expenditure" does not include an expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee. Under the bill, instead, the term would not include an expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund if that expenditure were made by the person who established the fund as authorized under Section 55. The bill would delete reference to an independent committee.

(A person who knowingly violates Section 57 is guilty of a misdemeanor. If the violator is an individual, the offense is punishable by a fine of up to \$1,000, imprisonment for up to one year, or both. 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.)

Civil Action for Payroll Plan Violation

The Act allows a person to file with the Secretary of State (SOS) a complaint alleging a violation of the Act. The SOS must investigate the allegations and may take certain actions if he or she believes that a violation has occurred.

The bill would amend Section 57 to provide that, if the SOS dismissed a complaint alleging that a public body or person acting for a public body used or authorized the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to a committee, as the bill would prohibit, the complainant could bring a civil action against the public body or person acting for it to seek declaratory, injunctive, mandamus, or other equitable relief and to recover losses that a public body suffered from the violation. Any other person who resided, or had a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred also could bring such an action.

If the complainant or other person prevailed in the action, the court would have to award the complainant or other person necessary expenses, costs, and reasonable attorney fees. Any amount awarded or equitable relief granted could be awarded or granted against the public body or an individual acting for the public body, or both, that violated Section 57, as the court determined.

Currently, there is no private right of action under the Act, and the remedies provided in the Act are the exclusive means for enforcing it. The bill would make exceptions to these provisions, as described above.

Public Policy of Neutrality

The bill contains the following statement: "It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or a person acting on behalf of a public body shall not attempt to influence the outcome of an election held in the state. If there is a perceived ambiguity in the interpretation of section 57, that section shall be construed to best effectuate the policy of strict neutrality by a public body in an election."

MCL 408.477 (H.B. 5085)
169.204 et al. (H.B. 5086)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5085 (H-1)

The bill would have an unknown but likely negligible fiscal impact on public bodies. The bill would have no fiscal impact on the Department of State.

House Bill 5086 (H-2)

The bill would have an indeterminate, but likely negligible, fiscal impact on State and local government. By adding to the actions that constitute a misdemeanor under Section 57, the bill could have an impact on local incarceration costs, but the impact would likely be negligible. Any additional penal fine revenue would benefit public libraries.

Because the bill would allow civil actions against public bodies, there are potential indeterminate costs that could be incurred by any public body, State or local, in the event that an action was brought against it. These costs could include legal costs for the public body itself as well as damages, costs, and attorney fees for the complainant if the complainant prevailed in court.

Fiscal Analyst: Joe Carrasco
Dan O'Connor
David Zin

S1112\5085sa.

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.