



POLITICAL ACTIVITY BY GOVERNMENT EMPLOYEES Fact Sheet

Lobbying and Other Political Activity by Government Employees in Michigan

The appropriate role for public health professionals in politics and policy-making is long debated. Some argue that public health professionals should avoid engaging in politics because politicization undermines the field, while others argue that politics are inextricable and therefore unavoidable in public health.¹ But even within the narrowest conception of public health practice, there are many ways in which politics and therefore advocacy are relevant to effectively assuring the public's health, ranging from seeking adequate funding for local health services to answering questions from community members about proposed ballot measures affecting health. Thus, beyond normative, ethical, and strategic questions about advocacy, public health departments and practitioners must consider the complex array of federal, state, and local laws that govern and limit public bodies' political activities and use of public resources. This fact sheet describes Michigan state laws and regulations that govern public bodies and employees with regard to several categories of activity: (1) lobbying of state government officials; (2) public employees' participation in political activities; and (3) use of public funds for political activities.

This fact sheet does not discuss federal law, but it is important to remember that federal restrictions on lobbying and other political activities are generally tied to federal funding. The terms and conditions of any grants or federal or state contracts may themselves prohibit use of funds for lobbying, or they may require compliance with federal regulations or cost principles that prohibit lobbying. Readers should be sure to consider all funding sources and applicable terms and conditions of any grant, whether federal, state, or other, to determine applicable laws. Readers should also review local laws since Michigan local governments may adopt ordinances or resolutions concerning lobbying as long as they are not more restrictive than the Lobby Act provisions.²

Lobbying State Officials

Lobbying in Michigan is primarily governed by the Lobby Act, Mich. Comp. Laws § 4.411 et seq., and by the Michigan Department of State's regulations for lobbyist registration and reporting, found at Mich. Admin. Code r. 4.411 et seq. Michigan's Lobby Act exclusively addresses lobbying of state government officials; it does not govern federal, local, or unpaid grassroots lobbying.³ In general, the law does not prohibit lobbying of state officials but instead requires lobbyists to register with the Secretary of State. As described below, the law excludes certain governmental officials from the definition of a lobbyist.



Definitions

The Lobby Act defines “lobbying” as “communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action.”⁴ A public official that is elected, nominated, or appointed to a position in the executive or legislative branch of state government and possesses policy-making capacity is “lobbyable.”⁵ “Influencing” involves “promoting, supporting, affecting, modifying, opposing or delaying [a legislative or administrative action] by any means, including the providing of or use of information, statistics, studies, or analysis.”⁶ However, lobbying does not encompass circumstances in which an expert provides technical information (i.e., empirically verifiable data) before an officially convened legislative committee or executive department hearing panel.⁷

A “lobbyist” is an individual, business, committee, or any other organization or group of persons, whose expenditures (i.e., payments for labor or similar⁸) for lobbying either: (a) exceed \$2,525.00 in value in any 12-month period; or (b) exceed \$650.00 in value, expended on a single public official, in any 12-month period.⁹ This definition also encompasses persons or organizations who enter into a contract with a lobbyist agent that exceeds these monetary thresholds, as well as any state agency or political subdivision that contracts for a lobbyist agent regardless of the amount spent.¹⁰ A “lobbyist agent” is a person (including an individual, firm, or other organization) who receives or enters into a contract for more than \$650.00 in any 12-month period as compensation or reimbursement for lobbying.¹¹ **Thus, a local government entity that meets the definition of a lobbyist either based on its expenditures or by contracting with a lobbyist agent, as well as each employee that qualifies as a lobbyist agent, is subject to the Lobby Act’s registration and reporting requirements.**¹² (Note that the Michigan Department of State annually updates the monetary thresholds used to define lobbyists and lobbyist agents; the monetary thresholds described here are effective for the year 2020.¹³)


There is an important exception to the definition of lobbyist described above, which is that “[a]ll elected or appointed officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office” are excluded from the definition of a lobbyist¹⁴; thus, they “may lobby without becoming lobbyist agents for the county and without having their salaries included within the amount reported by the county as lobbying expenditures.”¹⁵ This exclusion does not apply to other government employees—i.e., those who are not “elected or appointed public officials.”¹⁶ Elected or appointed public officials of a state or local government are defined as “officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority.”¹⁷ The distinction between appointed public officials exempted from the definition of lobbyist and public employees who are not exempted also depends on whether an individual works in an autonomous, non-clerical, policymaking capacity (indicating the person is exempt) or in a nonpolicy-making capacity involving little discretion (indicating the person is not exempt).¹⁸ When a person employed by an exempt public official assists the exempt official in his or her lobbying efforts but does not directly lobby or assist a non-exempt person to lobby, that employee’s time “is viewed as part of the official’s direct communication and does not have to be accounted for by the lobbyist.”¹⁹

Registration Requirements

The Lobby Act does not license or restrict lobbyists or lobbyist agents from communicating with government officials. Instead, it imposes registration requirements on any person who comes within the definition of lobbyist or lobbyist agent.²⁰ Once the monetary threshold has been met, the person “becomes” a lobbyist or lobbyist agent.

Within 15 days of becoming a lobbyist, a lobbyist must file a registration form with the Michigan Secretary of State.²¹ In contrast, a lobbyist agent must file a registration form within 3 days of becoming a lobbyist agent.²² The Secretary of State maintains a database of registered lobbyists and lobbyist agents.

In addition to registering, lobbyists and lobbyist agents must file bi-annual reports which describe their lobbying activities, account for any expenditures made, and account for any financial transactions between the lobbyist or lobbyist agent and



a public official, a member of the public official's immediate family, or a business with which a public official is individually associated.²³ Lobbyists and lobbyist agents are required to preserve the accounts, documents, and records that substantiate these reports for 5 years after the report's filing and the Secretary of State may request these records for inspection.²⁴ Both lobbyists and lobbyist agents must file a notice of termination with the Secretary of State within 30 days of ceasing lobbying.²⁵

The registration requirements apply regardless of whether a person is lobbying an official in the executive or legislative branch of state government. As noted above, the Lobby Act exclusively concerns lobbying of state government officials and does not govern federal, local, or grassroots lobbying.²⁶ For information about federal lobbying registration and disclosure requirements, view the federal Lobby Disclosure Act, as amended, at 2 U.S.C. § 1601 et seq., and associated guidance reviewed and updated annually by the Secretary of the U.S. Senate and the Clerk of the U.S. House of Representatives.

Prohibited Actions

Although the Michigan Lobby Act broadly permits lobbying, it also establishes certain restrictions. For example, a lobbyist agent's compensation cannot be contingent on the outcome of an administrative or legislative action.²⁷ In addition, a lobbyist or lobbyist agent is prohibited from giving a gift or loan (other than a financial institution offering a loan in the normal course of business) to a public official.²⁸ Additional restrictions limit and/or prohibit public officials (i.e., officials in the state legislative or executive branch) from receiving compensation or reimbursement for lobbying activities.²⁹


Political Activities by Public Employees

The Political Activities by Public Employees Act, Mich. Comp. Laws § 15.401 et seq., addresses Michigan public employees' participation in political activities such as joining political parties and running for office. Public employees are defined to include both state civil servants (defined in M.I. Const. art. 11, § 5) and non-elected employees of political subdivisions.³⁰ In general, public employees may participate in political activities as long as they are not actively engaged in those activities during work hours.³¹ Such employees may: join a political party committee; be a delegate to a political party convention; become a candidate for any local elective office³²; and engage in political activities on behalf of a candidate or an issue.³³ But an employee cannot serve as an elected official within the same unit of local government in which he or she is employed; as a result, if an employee is elected to an office in the same unit of local government, the employee must resign or take a leave of absence from his or her employment during the elected term.³⁴ Public officials and employees are prohibited from coercing others in exercising their political rights and from engaging in any political activities while at work.³⁵

While public employees are generally permitted to participate in political activities, state or county social services officials, employees, and board/commission members are barred from using their position for any political purpose and barred from participating in any form of political activity, except for what may be appropriate to exercising the individual's rights.³⁶ As a result, these individuals are barred from serving as a delegate to a county, state, or national political party convention.³⁷

Use of Public Funds to Influence Elections or Ballot Proposals

The Michigan Campaign Finance Act, Mich. Comp. Laws § 169.201 et seq., governs contributions and expenditures of funds to influence elections.³⁸ In general, section 57 of the law prohibits a public body or a person acting for a public body from using public resources (including funds, personnel, office space, computer equipment, etc.) to make contributions or expenditures or to provide volunteer personal services to influence the nomination or election of a candidate; for the qualification, passage, or defeat of a ballot question; or for the qualification of a new political party.³⁹ Included in this,



public bodies may not use public funds for “express advocacy,” i.e., “communications containing express words of advocacy of election or defeat, such as “vote for”, “elect”, “support”, “cast your ballot for”, “Smith for governor”, “vote against”, “defeat”, or “reject”.”⁴⁰

There are several exceptions to section 57’s general prohibition.⁴¹ First, the prohibition does not apply to “[t]he expression of views by an elected or appointed public official who has policy making responsibilities.” A second exception is for “production or dissemination of factual information concerning issues relevant to the function of the public body.” The prohibition also does not apply to elected or appointed officials or government employees when they are using their personal time and funds and are not acting on behalf of the public body. The remaining section 57 exceptions apply to newspapers or broadcasting stations that produce or disseminate debates, interviews, or other information in the course of their normal operations; use of publicly owned or leased facilities as long as the same opportunity is provided equally to any candidate or committee; and use of publicly owned or leased facilities used primarily as family dwellings, as long as they are not used for fundraising events.⁴² The legislature had indicated that section 57 and its exceptions are to be interpreted in a manner that “best effectuate[s] the policy of strict neutrality by a public body in an election.”⁴³

For more information about application of the Michigan Campaign Finance Act to public bodies, visit the Michigan Bureau of Elections FAQ on use of public facilities and funds.

Use of Public Funds for Lobbying

Michigan law does not prohibit use of public funds to directly lobby state officials, as long as the expenditures are properly reported as required by the Lobby Act.⁴⁴ However, expenditures of public funds are subject to the same state laws that generally govern proper use of public monies, meaning that any such expenditures can be made only for a public purpose that aligns with the agency or political subdivision’s statutory authority.⁴⁵

Note that the Michigan Attorney General has interpreted Michigan law to prohibit a state agency, commission, or board from using public funds to “urge citizens to lobby legislators in support or opposition to pending legislation” (i.e. engage in grassroots lobbying) unless expressly authorized by constitution or statute.⁴⁶

Frequently Asked Questions

These Frequently Asked Questions focus on the Michigan laws described above. It is important that readers consider federal law, local law, and contractual limitations as well, in addition to any other applicable state laws. Please be sure to consult with your attorney for assistance with your specific circumstances.

LOCAL HEALTH OFFICERS

Question: May a health officer urge a member of the Michigan legislature to support or oppose a bill?

Answer: Yes. State and local government employees are not prohibited from lobbying state legislators under the Michigan Lobby Act. Moreover, as a local appointed official whose term of office is prescribed by statute, a health officer is excluded from the definition of a lobbyist. Thus, the health officer may lobby without having his or her salary reported as a lobbying expenditure.⁴⁷

Question: May a health officer endorse a candidate for state office?

Answer: Probably yes. According to the Michigan Bureau of Elections FAQ on use of public facilities and funds: “An endorsement in and of itself has no value. However, the public official cannot use public resources to promote or advertise the endorsement of himself or any other candidate.”

LOCAL HEALTH DEPARTMENT EMPLOYEES

Question: May a health department employee urge a member of the Michigan legislature to support or oppose a bill?

Answer: Yes. State and local government employees are not prohibited from lobbying state legislators under the Michigan Lobby Act. However, the employee would likely need to register as a lobbyist agent (depending on compensation received for lobbying activities), and the county would need to register as a lobbyist and report its expenditures.⁴⁸ Note that travel expenses to visit a public official for the purpose of communicating with the public official are not “expenditures” under the Lobby Act.⁴⁹

LOCAL HEALTH DEPARTMENT FACILITIES

Question: Can a health department use its facilities to host a meet-and-greet with candidates for elected office or an informational meeting about a ballot proposal?

Answer: Probably yes. According to the Michigan Bureau of Elections: “Public facilities and resources can be used for public forums and public education on candidate elections and ballot questions provided the public resources are not used to influence the outcome of the election and views of all candidates and views of both supporters and opponents of a ballot question are treated equally.”

LOCAL BOARDS OF HEALTH

Question: May a local board of health pass a resolution in favor of or opposed to a ballot initiative?

Answer: Probably yes. According to the Michigan Bureau of Elections: “The mere act of voting on a resolution that encompasses matters at a meeting does not constitute a misuse of public resources within the meaning of [s]ection 57. A public body may record the resolution in the meeting minutes as required by the Open Meetings Act and may disseminate copies of those minutes in its regulator course of publication.”⁵⁰

Conclusion

In general, Michigan law does not prohibit public officials from lobbying nor from using public funds to lobby. However, most governmental entities and public employees that lobby state public officials must register and report lobbying activities; only “[e]lected or appointed public officials of state or local government” are not subject to the Lobby Act’s registration requirements.⁵¹ Michigan governmental agencies and employees must also be careful to comply with lobbying rules imposed via federal, state, or other grants or contracts and may not use public funds to attempt to influence elections.

SUPPORTERS



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- ¹ See, e.g., Daniel S. Goldberg, *Against the Very Idea of the Politicization of Public Health Policy*, 102 Amer. J. Pub. Health 44 (2012).
- ² Mich. Comp. Laws § 4.425.
- ³ See Mich. Dept. of State, Bureau of Elections, *Lobby Manual: Michigan Lobby Registration Act 5* (revised March 2017), available at https://www.michigan.gov/documents/sos/LobbyManual082911_377601_7.pdf [hereinafter *Michigan Lobby Manual*].
- ⁴ Mich. Comp. Laws § 4.415(2).
- ⁵ Mich. Comp. Laws § 4.415(2), (9), (10); Mich. Comp. Laws § 4.416(2); See also *Michigan Lobby Manual*, *supra* note 3, at 5-6. For a list of current lobbyable officials in Michigan, visit the Michigan Department of State website: About Michigan Lobbyable Public Official, Michigan Department of State, http://www.michigan.gov/sos/0,4670,7-127-1633_11945_46448-188034--,00.html (last visited Sept. 4, 2018).
- ⁶ Mich. Comp. Laws § 4.415(3).
- ⁷ Mich. Comp. Laws § 4.415(2).
- ⁸ Mich. Comp. Laws § 4.413(2) (defining “Expenditure” as “an advance, compensation for labor, honorarium, conveyance, deposit, distribution, transfer of funds, loan, payment, pledge, or subscription of money or anything of value including a contract, agreement, promise, or other obligation, whether or not legally enforceable, to make an expenditure. Expenditure does not include the payment of a membership fee otherwise reported pursuant to section 8(1)(d) or the cost of travel to visit and return from visiting a public official for the purpose of communicating with the public official”).
- ⁹ Mich. Comp. Laws § 4.415(4); Mich. Dept. of State, *The Michigan Lobby Registration Act: 2020 Reporting Thresholds, Fees and Penalties* (Oct. 2, 2019), available at https://www.michigan.gov/documents/sos/LobbyThresholds_508882_7.pdf [hereinafter *Michigan 2020 Reporting Thresholds*].
- ¹⁰ Mich. Comp. Laws § 4.415(4).
- ¹¹ Mich. Comp. Laws § 4.415(5); *Michigan 2020 Reporting Thresholds*, *supra* note 9.
- ¹² See Secretary of State Letter to Schindler, Sept. 3, 1981 (describing applicability of the law to counties and county employees); See also *Michigan Lobby Manual*, page 7 (describing “Units of Government as Lobbyists” and “Government Employees as Lobbyist Agents”).
- ¹³ *Michigan 2020 Reporting Thresholds*, *supra* note 9.
- ¹⁴ Mich. Comp. Laws § 4.415(7)(b).
- ¹⁵ Secretary of State Letter to Schindler, Sept. 3, 1981.
- ¹⁶ Mich. Comp. Laws § 4.415(7)(b).
- ¹⁷ Mich. Admin. Code r. 4.411(1)(c).
- ¹⁸ Compare Secretary of State Letter to Schmidt, Jan. 13, 1984 (concluding that a city manager is exempt from lobbying registration and reporting requirements) to Secretary of State Letter to LaLumia, Apr. 19, 1984 (concluding that a community mental health director does not serve in an autonomous, policymaking capacity and therefore does not qualify for the public official exemption). For more information on determining which government employees are exempt from the act and which are not, see *Michigan Lobby Manual*, *supra* note 3, at 8-9 (“Persons Exempted from Registration Requirements”).
- ¹⁹ See Secretary of State Letter to Stewart, June 22, 1984.
- ²⁰ See Mich. Comp. Laws § 4.415.
- ²¹ Mich. Comp. Laws § 4.417(1).
- ²² Mich. Comp. Laws § 4.417(2).
- ²³ Mich. Comp. Laws § 4.418(1).
- ²⁴ Mich. Comp. Laws § 4.419(1).
- ²⁵ Mich. Comp. Laws § 4.417(4).
- ²⁶ See *Michigan Lobby Manual*, *supra* note 3, at 5.
- ²⁷ Mich. Comp. Laws § 4.421(1).
- ²⁸ Mich. Comp. Laws § 4.421(2). See also Mich. Comp. Laws § 4.414(1) (defining “Gift”); Mich. Admin. Code r. 4.471-473; *Michigan Lobby Manual*, *supra* note 3, at 8-10.
- ²⁹ The Lobby Act also provides that a public official (i.e., an official in the state legislative or executive branch), excluding an individual elected or appointed to a board or commission but not legally prohibited from obtaining other employment, may only receive compensation or reimbursement for expenses for lobbying from the state. Mich. Comp. Laws § 4.421(4). A public official, including a state senator or representative, is otherwise prohibited from receiving any compensation or reimbursement for activities that would normally be considered lobbying. Mich. Dept. of State Interpretive Statement issued to Gary M. Owen (Feb. 7, 1984), available at https://www.michigan.gov/documents/sos/1984Feb7Owen_450200_7.pdf. Furthermore, a state senator or representative who has resigned from office may not make expenditures or receive compensation for lobbying during the remainder of the term from which they resigned. Mich. Comp. Laws § 4.416a. Finally, the Michigan Attorney General has opined that although not prohibited by the Lobby Act, other constitutional and statutory provisions may restrict members of state boards and commissions from engaging in certain lobbying activities. See Mich. Att’y Gen. Op. (May 4, 1989) (not numbered), available at https://www.michigan.gov/documents/sos/1989May4MillerAG_450515_7.pdf.
- ³⁰ Mich. Comp. Laws § 15.401.
- ³¹ Mich. Comp. Laws §§ 15.402-404.

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- ³² If a public employee becomes a candidate for an elective office, the person may be required to request and be granted a leave of absence for up to sixty days prior to the election. See Mich. Comp. Laws §§ 15.402(c) and 403(c).
- ³³ Mich. Comp. Laws §§ 15.402-403.
- ³⁴ Mich. Comp. Laws § 15.403(2); See also 3 Mich. Att'y Gen. Op. 644 (June 8, 1987), available at <http://www.ag.state.mi.us/opinion/datafiles/1980s/op06443.htm>.
- ³⁵ Mich. Comp. Laws §§ 15.404-405.
- ³⁶ Mich. Comp. Laws § 400.90.
- ³⁷ Mich. Att'y Gen. Op. 5693 (Apr. 24, 1980), available at <http://www.ag.state.mi.us/opinion/datafiles/1980s/op05693.htm>.
- ³⁸ Campaign finance regulations are located at Mich. Admin. Code r. 169.1 et seq.
- ³⁹ Mich. Comp. Laws § 169.257(1).
- ⁴⁰ Mich. Comp. Laws § 169.206(2)(j); See also *Taylor v. Johnson*, 2016 WL 447539, No. 16-10256 at *1 (E.D. Mich. Feb. 5, 2016).
- ⁴¹ Section 57 also includes a provision that prohibits a public body from using public funds or resources for a communication that references a local ballot question within 60 days of the election. However, the United States District Court for the Eastern District of Michigan has enjoined enforcement of the provision due to a finding that the provision is likely unconstitutional. *Taylor v. Johnson*, 2016 WL 447539, No. 16-10256 at *1 (E.D. Mich. Feb. 5, 2016). See also Michigan Bureau of Elections, Committee Manuals - Appendix I: Use of Public Facilities, Funds, Etc. Prohibited, <https://mertsplus.com/mertsuserguide/index.php?n=MANUALS.AppendixI> (last visited Sept. 4, 2019).
- ⁴² Mich. Comp. Laws § 169.257(1).
- ⁴³ 2012 PA 31, Enacting section 1.
- ⁴⁴ See Secretary of State Letter to Schindler, Sept. 3, 1981.
- ⁴⁵ See *Hays v. Kalamazoo*, 316 Mich. 443, 457 (Mich. 1947).
- ⁴⁶ 9 Mich. Att'y Gen. Op. 670 (Feb. 11, 1992), available at <http://www.ag.state.mi.us/opinion/datafiles/1990s/op06709.htm>.
- ⁴⁷ Secretary of State Letter to Schindler, Sept. 3, 1981.
- ⁴⁸ See Secretary of State Letter to Schindler, Sept. 3, 1981.
- ⁴⁹ Mich. Comp. Laws § 4.413(2).
- ⁵⁰ See also Mich. Dept. of State Interpretive Statement issued to Lee Bourgin (Oct. 24, 2014), available at https://www.michigan.gov/documents/sos/Bourgin_IS_472351_7.pdf.
- ⁵¹ Mich. Comp. Laws § 4.415(7)(b).