AGENDA STATEMENT
OMB AS03 Rev. 11/04

Item Title: To adopt a resolution calling for the immediate repeal of §57(3) of the Michigan Campaign Finance Act.

Submitted By: Office of the City Management

Contact Person/Telephone: Mark Vanderpool, City Manager, 586/446-2301

Administration (initial as applicable)  Attachments

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☐ Check box if this agenda item requires billing/revenue collection (fees, etc.) by Treasury Office

Executive Summary

Background – On January 6, 2016, Michigan Governor Rick Snyder signed into law PA 269 of 2015. This legislation added §57(3) to the Michigan Campaign Finance Act. §57(3) provides as follows:

Except for an election official in the performance of his or her duties under the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, a public body, or a person acting for a public body, shall not, during the period 60 days before an election in which a local ballot question appears on a ballot, use public funds or resources for a communication by means of radio, television, mass mailing, or prerecorded telephone message if that communication references a local ballot question and is targeted to the relevant electorate where the local ballot question appears on the ballot.

§57(3) was part of many last minute amendments made to Senate Bill 571 on December 17, 2015 as Michigan Legislators were scrambling to finish their session before a Christmas break. Unfortunately, these amendments transformed what had been a twelve page senate bill with bi-partisan support into a sixty-three page document that the Legislators now admit was not fully vetted or debated. Importantly, governing bodies of local government and school districts who are directly impacted by §57(3) were never granted an opportunity to have input into this new section of the Campaign Finance Act.

As Michigan Legislators began to realize the impact of §57(3), some lobbied Governor Snyder to veto the bill that was sent to him for signature due to the deficiencies associated with §57(3).

These deficiencies include, but are not limited to the following:
A. §57(3) imposes a virtual gag order that prohibits a county, municipality, and school district and their respective officials from disseminating factual information that would inform the electorate on a local ballot question for the sixty day period prior to an election.

B. This prohibition deprives local government of an ability to fulfill its duty to keep residents fully-informed on an election question that directly affects them.

C. The text of §57 of the Campaign Finance Act already prohibited the improper use of public funds by local governments to advocate for or against a ballot question. §57(3) creates an absurd result where conduct deemed permissible under the Campaign Finance Act if performed outside of sixty days before a local election becomes illegal within sixty days of the election. Free speech should never be restrained in the manner that it is under §57(3), regardless of artificial time periods.

D. The Michigan Legislature’s new ban on communication is limited to local ballot questions. This selective application creates disparate treatment between local versus statewide ballot questions.

E. It is simply poor governance to allow §57(3) to remain the law in this state when the Governor and Michigan Legislators who enacted it acknowledge it was not fully vetted, debated, or understood and has unintended consequences for local governments who are subjected to its reach.

F. There are material legal and constitutional defects associated with §57(3). The fact that a law subjecting elected officials to criminal penalties for exercising their right to free speech was enacted is troubling.

Unfortunately, Governor Snyder signed the amending legislation while at the same time asking for a legislative fix. With, this in mind a broad based coalition has been established to seek repeal of §57(3), consisting of the following entities.

- Michigan Municipal League,
- Michigan Association of Counties,
- Michigan Townships Association,
- Michigan Infrastructure & Transportation Association,
- Michigan Association of School Administrators,
- Michigan Association of School Boards,
- Michigan Association of Intermediate School Administrators
- Southeastern Michigan Council of Governments, and,
- Macomb Area Communities for Regional Opportunities.

**Recommendation** – In support of the coalition’s effort, City Administration is recommending that the City Council adopt the attached resolution calling for the immediate repeal of §57(3). The City should add its voice to the multitude of local governments who oppose §57(3) of the Campaign Finance Act.

**Suggested Action:**

MOVED BY: 

SECONDED BY:

Resolved, to adopt the resolution calling for the immediate repeal of §57(3) of the Michigan Campaign Finance Act.
Resolution

Sterling Heights City Council

A resolution of the Sterling Heights City Council calling for the immediate repeal of §57(3) of the Michigan Campaign Finance Act.

On January 6, 2016, Michigan Governor Rick Snyder signed Public Act 269 into law. In doing so, Governor Snyder gave immediate legal effect to §57(3), a new section being added to the Michigan Campaign Finance Act.

The addition of §57(3) came as a late night, last minute amendment to Senate Bill 571 that ballooned the proposed legislation from 12 pages to 63 pages and deprived many Michigan legislators of an opportunity to fully comprehend the constitutionality and adverse impact of the amendment. Importantly, the Michigan legislators did not receive critical input from those most adversely impacted by §57(3), being Michigan’s counties, cities, townships, villages, and school districts.

§57(3) prohibits a public body, or a person acting on its behalf, from using public funds or resources for the purpose of communicating any information to the electorate regarding a local ballot question on a ballot within sixty days of an election.

§57(3) imposes a broad gag order on county and local governments and school districts and their respective officials that prohibits the dissemination of factual information intended to inform the electorate on a local ballot proposal.

Municipal governments and their elected officials have a duty to inform the electorate in their respective jurisdictions regarding ballot questions placed before them for a vote. Existing laws, including the former version of §57, already prohibit the improper use of public funds to advocate for or against a ballot question. §57(3) creates an absurd result where permissible conduct under the Michigan Campaign Finance Act performed outside of sixty days before a local election becomes illegal within sixty days of the election.

Because the new ban on communication is limited to local ballot questions, it creates disparate treatment between local versus statewide ballot questions. In addition, there are material legal and constitutional deficiencies associated with §57(3).

It is simply poor governance to allow §57(3) to remain the law in this state when the Governor and Michigan Legislators who enacted it acknowledge that it was poorly considered and has unintended consequences for local governments who are subjected to its reach.
NOW, THEREFORE,

BE IT RESOLVED, that the City Council of the City of Sterling Heights, County of Macomb, and State of Michigan, does hereby call for the immediate repeal of § 57(3) of the Michigan Campaign Finance Act.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to deliver a copy of this resolution to Governor Rick Snyder and the members of the Michigan Legislature representing the electorate of the City of Sterling Heights.

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Sterling Heights, County of Macomb, Michigan, at a regular meeting held on January 19th, 2016.

____________________________________
Mark Carufel, City Clerk