

PLAIN LANGUAGE

Improving ballot proposals — with an offer to help

BY KRISTIN DUFFY

After this article was written and shared with contacts at the Michigan Association of Municipal Attorneys, the author and I were kindly invited to speak at their Municipal Law Program and Annual Meeting. We were pleased by the reception, so perhaps we can work together for the kinds of changes that the article suggests. More on the subject in next month's column. —JK

In a democracy, people should understand what they are voting for or against. Otherwise, what's the point? This understanding is so important that it's statutorily required when ballot questions are submitted to Michigan voters.

Any proposal — statewide or local — on a Michigan ballot must:

- be worded so that a "yes" vote is in favor of the proposal and a "no" vote is against it;
- explain the subject matter, but need not be legally precise;
- use words that have common everyday meanings to the general public; and
- avoid creating prejudice for or against the proposal.¹

In addition, summaries for statewide ballot proposals — initiated by petitions or as directed by the legislature — are limited to 100 words, not including captions.² This restriction is potentially a boon to plain language because the writer has to choose their words carefully to explain a question as required by law. Statewide ballot questions also benefit from centralized approval by the Board of State Canvassers.³ The director of elections, a nonmember secretary of the Board of State Canvassers, is responsible for preparing the ballot-proposal statements, which must be certified by the secretary of state no later than 60 days before the election.⁴

As an example of the typical format and style of statewide questions, here is a proposal from the 2022 ballot:

A proposal to amend the state constitution to require annual public financial disclosure reports by legislators and other state officers and change state legislator term limit[s] to 12 total years in legislature.

This proposed constitutional amendment would:

- Require members of legislature, governor, lieutenant governor, secretary of state, and attorney general [to] file annual public financial disclosure reports after 2023, including assets, liabilities, income sources, future employment agreements, gifts, travel reimbursements, and positions held in organizations except religious, social, and political organizations.
- Require legislature [to] implement but not limit or restrict reporting requirements.
- Replace current term limits for state representatives and state senators with a 12-year total limit in any combination between house and senate, except a person elected to senate in 2022 may be elected the number of times allowed when that person became a candidate.

In its entirety, this proposal is 135 words. Minus the captions, it's only 98 words, so it complies with the statewide-ballot word limitation. The caption itself is a succinct summary of the proposal, identifying the purpose right away so that voters knew what to expect as they continued reading.

As for the general requirements that apply to all ballot proposals — statewide and local — the 2022 proposal is worded so that a "yes" vote is in favor of it; explains — with the aid of bullet points and without bewildering legalese or unnecessary statutory references — what the amendment would do, who would be affected, and how; uses

words with common everyday meanings; and presents the information objectively. It meets all the requirements for a statewide ballot question.

Ballot proposals for local questions are a different story. With some exceptions (city-charter amendments, for instance⁵), there is no word limitation to concentrate the information, and the wording is approved locally.⁶ Michigan has more than 1,600 county and local clerks.⁷ This means that there could be more than 1,600 different interpretations of what counts as a satisfactory explanation using words with everyday meanings. So consistency and clarity can be challenging for local questions.

And the challenge is heightened with local *millage* proposals because there are additional statutory requirements. A proposal must include:

- the millage rate to be authorized;
- the estimated amount of revenue that will be collected in the first year that the millage is authorized and levied;
- the duration of the millage in years;
- a clear purpose statement for the millage; and
- a clear statement of whether the proposed millage is a renewal of a previously authorized millage or the authorization of a new additional millage.⁸

Here is a millage proposal from Ingham County's November 2024 ballot:

Shall the previously voter approved millage established at 3.007 mills (that being \$3.007 per thousand dollars of taxable value) and reduced to 2.9895 mills (that being \$2.9895 per thousand dollars of taxable value) by the millage rollbacks required under the Headlee Amendment to the Michigan Constitution be renewed and authorized to be levied by the Capital Area Transportation Authority (CATA), for continued public transportation service, as provided for by Public Act 55 of 1963, as amended, on real and personal property located within the City of Lansing, City of East Lansing, Meridian Township, Lansing Township, and Delhi Township for the years 2026 through 2030 inclusive, which is a period of five years? (The current levy was approved by the voters in 2020 and is authorized through 2025.) Based on currently available taxable value data, if approved and levied, this millage is estimated to generate approximately \$24,139,928.06 in 2026.

In accordance with State law, portion(s) of the millage may also be captured by the Downtown Development Authorities, Brownfield Redevelopment Authorities, and other such Tax Increment Financing Districts as established by the City of Lansing, City of East Lansing, Charter Township of Meridian, Delhi Charter Township, and Lansing Charter Township.

Let's see how the proposal stacks up to the specific statutory requirements for a millage proposal.

The proposed millage rate and duration of the charge are stated, as well as the precise amount of revenue that it is expected to raise (although it needed to be only an estimate). And tucked near the end of the first paragraph, there is a clear (but parenthetical) statement that the proposal is for a previously authorized millage. So far, so good.

But is the purpose statement clearly written? No. Or at least, it could be clearer. The proposal weighs in at a whopping 198 words. And the first sentence is 112 words. The subject — *millage* — appears early on, but then 40 words intervene before the verbs — *be renewed and authorized* — show up. Then the reader has to slog on before reaching the key phrase, *for continued public transportation service*, that rounds out the purpose. And mixed into all this are references to the Headlee Amendment and Public Act 55 of 1963. These references — which most readers will know little or nothing about — are not required. They are confusing distractions.

It's possible to write this millage proposal so that it is both understandable to the average voter *and* in compliance with statutory requirements:

It is proposed that the current tax of 2.9895 mills for public-transportation services be renewed. Voters approved this tax in 2020. The Capital Area Transportation Authority (CATA) is levying this tax to provide transportation services in the cities of Lansing and East Lansing and in Meridian, Lansing, and Delhi Townships. Each year, this would cost you about \$150 for each \$50,000 of your taxable real and personal property. The charge would apply each year from 2026 through 2030. About \$24,140,000 would be raised in the first year. In addition to CATA, some of this millage may be used by the Downtown Development Authorities, Brownfield Redevelopment Authorities, and other Tax Increment Financing Districts. Should this proposed tax renewal be approved?

This version cuts the proposal down to 120 words. The first two sentences (16 words and 6 words) take care of three millage-proposal requirements: they set out the purpose (a proposal for a millage that will provide public-transportation services); clearly state that it is a renewal of a current tax; and note that the rate is 2.9895 mills. The next sentence (29 words) explains who is levying the tax, what services will be provided, and where. The following 62 words go on to explain how much the voter can expect to pay each year and how many years the tax would be applied, estimate how much revenue it would raise in total, and name other government units that may benefit from the millage. That more than satisfies the last two millage-proposal requirements: duration and estimated revenue. The remaining seven words wrap things up by asking for a "yes" or "no" vote on the proposed tax renewal.

The general statutory requirements for all ballot questions are also met in the rewritten proposal. Voters can tell that their "yes" vote is

for the proposal and that their “no” vote is against it. The subject is clearly explained in language that the average reader can understand. It uses words that have everyday common meanings, without distracting statutory references. And the language is objective, so it does not create prejudice one way or the other. Simply put, the rewritten proposal uses plain language and leaves out unnecessary information. It stands to reason that this would give the reader a better understanding of the issue they’re voting on and ensure that their vote aligns with their opinion on the matter. That’s especially true for voters who read the ballot for the first time in the voting booth. You have to wonder whether lots of voters have skimmed the traditional language, shaken their heads, and not voted on a poorly written proposal.

Statewide questions are (gauging from the 2022 proposal) presented to voters in an understandable way. But local questions might not be. So here’s a call to action for Michigan attorneys: if local government units happen to contact you for help with writing millage or bond proposals, remember that these proposals don’t need to be complex. In fact, they *shouldn’t* be complex. When it comes to ballot proposals, our mission should be to support democracy by giving voters what they need to make informed choices at the polls. We can do that with focused, plain language.

And here’s an offer: the Kimble Center for Legal Drafting at Cooley Law School stands ready to help. We are willing to review — at no charge — a limited number of draft proposals, including statewide proposals, and offer suggestions. We can review only so many, but perhaps over time we could build a shared bank of examples that would help election officials everywhere in Michigan. Please keep us in mind when the next election cycle rolls around.

Kristin Duffy is an associate attorney at Grossman Horne & Cannizzaro in Vicksburg, MI. Her practice is focused on estate planning and probate. She received a bachelor’s degree from Hope College, received a master’s degree from SUNY Oneonta, and graduated *summa cum laude* from Cooley Law School in May 2024. Kristin is in her second year as Graduate Fellow at the Kimble Center for Legal Drafting.

ENDNOTES

1. MCL 168.643a.
2. MCL 168.482.
3. MCL 168.22e.
4. MCL 168.32.
5. MCL 117.21.
6. MCL 168.646a.
7. Michigan Secretary of State, *Election Officials Manual, Chapter 1: The Structure of Michigan’s Election System* (July 2024). See also Chapter 9: *Election Ballots*.
8. MCL 211.24f.

An independently owned family-run insurance agency with over 20 years of experience, specializing in providing tailored insurance solutions that supports your practice and your team.

WE SAVE YOU MONEY

INSURANCE FOR LAWYERS FROM LAWYERS



Lawyer's Liability



Home & Auto



Employee Benefits



Health & Life

GET QUOTED

 ROSENFELD
INSURANCE AGENCY

Ray Horenstein J.D., CEO: 248. 330. 7979

