



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

**CLEAN CAMPAIGN PROGRAM, FAIR
CAMPAIGN PRACTICES COMMISSION**

**House Bill 5668 as passed by the House
Second Analysis (8-7-96)**

**Sponsor: Rep. Sandra Hill
Committee: House Oversight and Ethics**

THE APPARENT PROBLEM:

Despite much public criticism of "negative" campaign practices, such practices continue unabated, much to the dismay of many citizens. Discussion of the reasons why negative campaigns persist despite obvious public disapproval usually give rise to the claim that negative campaigns "work," that is, that negative campaigns get candidates elected despite publicly expressed disapproval of them. But in fact, negative campaigns can be seen as part of a larger social phenomenon in which people seem to enjoy media talk shows hosted by people whose popularity appears to be based on the hosts' often virulent and highly personal attacks on public figures and even on talk show participants. However, whether or not negative campaigning is as successful as its proponents claim, not everyone believes that negative campaign tactics are desirable. Legislation has been introduced that would address this issue.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Campaign Finance Act to create a "clean campaign oversight board" and a "Michigan fair campaign practices commission" in the Department of State. The "clean campaign oversight board" would develop and implement a "clean campaign pledge" program, and the Michigan fair campaign practices commission would develop and implement a voluntary rating system for political advertisements. The bill also would impose civil penalties for violations of certain advertising affidavit requirements and for candidates or committees who published, disseminated, or distributed inaccurate and deliberately misleading political advertisements.

Clean campaign oversight board. The bill would create a five-member "clean campaign oversight board" in the Department of State. The governor would appoint the board members on or before the twentieth day of January of odd-numbered years. One member would represent a nonpartisan organization that advocated voter participation, and would chair the board; one member would represent print or broadcast media professionals in

Michigan; one member would have been formerly elected to a nonpartisan local elective office; the two remaining members would be individuals from, respectively, the Republican and Democratic parties. If anyone appointed by the governor declined to serve, the governor would appoint another individual who met the criteria established for that position. The Republican and Democratic appointees would be appointed from a list of three nominees submitted by the legislative leaders of each political party on or before the tenth day of January in odd-numbered years; if the legislative leaders failed to submit the names of nominees within the prescribed period of time, the governor would appoint an individual who met the criteria established for that position. Board members would serve four-year terms and until their successors were appointed and qualified. Board members wouldn't be compensated for their service as board members but could be reimbursed for expenses incurred in administering their board duties, if funds were available.

Upon the board's request, the Bureau of Elections would be required to provide clerical assistance to the board. The board would meet at least three times a year, with special board meetings held at the call of the chair or a majority of board members. Board business would be conducted at public meetings held in compliance with the Open Meetings Act; the board would establish guidelines as prescribed in the Administrative Procedures Act. A majority of the board would constitute a quorum, but a smaller number could transact routine business and receive reports from the staff. A majority of the membership would have to concur in any board recommendations. Writings prepared, owned, used, in the possession of, or retained by the board in the performance of official functions would be available to the public under the Freedom of Information Act.

The board chair, or a member designated by the chair, could examine books and records of persons, partnerships, or corporations involved in matters properly before the board.

House Bill 5668 (8-7-96)

The board would be required to do all of the following:

1. Develop and implement a voluntary clean campaign pledge program for political advertisements (defined in the bill as "a radio, television, or print advertisement that relate[d] to an election, a candidate, or a ballot question").
2. Develop a clean campaign pledge seal or symbol that candidates who filed the pledge with the board and paid the required fee could use in their political advertisements.
3. Develop and implement, in conjunction with Bureau of Elections, a public awareness campaign to educate candidates and the general public about the clean campaign pledge program.
4. Receive and keep on file for two election cycles each clean campaign pledge filed with the board.
5. Receive and hear complaints, from candidates or candidate committees, arising out of the publication, distribution, or dissemination of political advertisements in which the clean campaign pledge seal or symbol was used.
6. If a candidate were found to have violated the pledge, prepare and publish in a newspaper of general circulation a notice that indicated that the candidate had violated the pledge and that identified the political advertisement(s) that violated the pledge.
7. Receive fees under the bill and expend them solely to defray the costs of preparing and publishing the notices of candidates who violated the pledge.
8. Receive and expend other funds, both public and private, in performing the board's powers and duties.

The "clean campaign pledge." Candidates could voluntarily sign the "clean campaign pledge" prescribed in the bill. Candidates who filed the pledge with the clean campaign pledge board and paid a filing fee of \$10 to the board would be entitled to use the clean campaign pledge seal or symbol in their political advertisements; candidates who did not file the pledge and pay the fee would not be allowed to use the clean campaign pledge seal or symbol in their political advertisements.

Candidates who signed the pledge would agree to follow the principles prescribed in the pledge.

The text of the clean campaign pledge would be as follows:

- 1. I pledge to campaign openly and honestly, and to promote the ideas and issues I stand on.*
- 2. I pledge that my campaign will seek to respect the integrity of my opponents, while describing legitimate policy differences between us.*
- 3. I pledge that any criticism of my opponents shall be limited to legitimate issues concerning their public records or their stands on issues.*
- 4. I pledge that my opponents' personal and family lives will not be the subject of my political advertisements.*
- 5. I pledge that I will not knowingly disseminate a political advertisement that contains libelous or slanderous material.*
- 6. I pledge that my political advertisements shall be accurate, and will not willfully distort the records of my opponents.*
- 7. I pledge that those who are associated with my campaign will adhere to these same standards, and that I will not allow continued association with a person or organization that violates these standards.*

[" _____ "]
signature date

Violations. If the board determined that a candidate had violated the principles prescribed in the pledge or had used the clean campaign pledge seal or symbol without authorization (that is, without filing the pledge and paying the fee), that candidate would be prohibited from using the clean campaign pledge seal or symbol for the balance of the campaign. Such candidates also wouldn't be eligible -- nor would the board allow the candidate -- to file a clean campaign pledge or pay the fee during the immediately succeeding election cycle for that candidate.

Advertising affidavits. Committees that paid for radio, television, or print advertisements that referred, directly or indirectly, to a candidate or ballot question would be required to prepare and file an affidavit saying that the information in the advertisement was "true and correct" to the best knowledge of the person signing the affidavit (the candidate, in the case of candidate committees; the

chairperson of a political party committee; and the treasurer or person responsible for record keeping or report preparation or filing, in the case of independent committees, political committees, and ballot question committees). The affidavit would have to be filed at the same time and in the same manner as the committee's campaign statements, and a copy of the affidavit would have to be delivered to the radio station, television station, or publisher when the committee placed its order for the advertisement.

Affidavit signers who failed to file or deliver the affidavit as required by the bill would be subject to a civil fine of up to \$1,000. Someone who knowingly signed a false affidavit would be guilty of a misdemeanor punishable by a fine of up to \$1,000, or imprisonment for up to 93 days, or both.

Media consultants who knowingly produced a false advertisement for a committee or who violated existing provisions in the campaign finance act regulating advertisements would be subject to civil fines of up to \$1,000, and each broadcast or publication of an advertisement that was false or was otherwise a violation of the act would carry a civil fine of up to \$1,000.

In addition, the bill would specify that it wouldn't prohibit a lawsuit to recover damages for conduct proscribed under this section of the bill or under any other applicable law.

Michigan fair campaign practices commission. The bill would add new sections to the Michigan Campaign Finance Act that would be called the "Michigan Fair Campaign Practices Commission Act." A seven-member Michigan Fair Campaign Practices Commission would be created in the Department of State to develop and implement a voluntary rating system for political advertisements. The Secretary of State's office and the Bureau of Elections (in the Department of State) would provide assistance to the commission in administering the bill's provisions.

Six of the seven members of the commission would be appointed by the governor, three each from lists of five candidates submitted by the two political parties in the legislature. These six members would then appoint a seventh member by a majority vote. No more than four members of the commission at any time could be members of one political party, and commission members couldn't be candidates for any partisan elective office, serve on a candidate committee established on behalf of candidates for partisan elective office, or be an officer of the state central committee (or of the executive committee of the state central committee) of a political party.

More specifically, the gubernatorially-appointed members would be appointed from lists of candidates who were members of the two political parties as follows: Not later than January 31, 1997, the Speaker of the House of Representatives and the Senate leader of the same political party would jointly submit to the governor a list of five people who were members of that political party. At the same time, the minority House leader and the Senate leader of the same party would submit a similar list to the governor, who would have 30 days to appoint one person from each list for, initially, a term of one, two, and three years, respectively. The six gubernatorially-appointed members then would have 30 days to appoint the seventh commission member.

A commission member would serve a four-year term ("and until his or her successor [wa]s appointed and qualified"), and could be reimbursed for expenses incurred in performing duties as a commission member. Vacancies -- by death, resignation, or three unexcused absences from commission meetings in a calendar year -- would be filled similarly to the initial appointments (though the appropriate political party leaders of the House and Senate would submit a list of three, not five, people for gubernatorial appointment).

The commission would annually elect from its membership a chairperson and alternate chairperson, who would be from different political parties. The chairpersonship would alternate between the Democratic Party and the Republican Party. The chairperson (or his or her designee) could, upon majority vote of the commission, administer oaths, subpoena witnesses, and examine the books and records of anyone involved in a matter properly before the commission.

The commission would conduct its business at public meetings under the Open Meetings Act, and would meet at least three times a year. Special meetings would be held at the call of the chair or majority of the commission members. The commission would have to establish procedural guidelines under the Administrative Procedures Act. A majority of the commission would constitute a quorum, but a smaller number could transact routine business and receive staff reports; a majority of the membership would have to concur in any of the commission's recommendations. Commission records would be available to the public under the Freedom of Information Act. The commission would employ technical, professional, and clerical employees it considered necessary, and could employ an attorney (licensed in Michigan) to serve as its attorney in regard to all legal matters before the commission (including representing the commission at any appeals from a final determination by the commission).

The commission would do all of the following:

(1) Develop and implement a voluntary rating system for political advertisements that focused on their accuracy (considering whether the information contained in the ad was used "in a manner that deliberately attempt[ed] to mislead the intended audience") and whether they met certain requirements set forth under the bill (see "prohibited actions," below);

(2) Assign an "approved" or "disapproved" rating to political ads submitted to the commission by candidates or committees;

(3) Receive and hear complaints from candidates or committees about unrated political ads, and prepare and distribute reports of complaints and hearings ("in a timely fashion, but not later than 30 days after receipt of the complaint"); reports would be distributed to the appropriate committees and the public before the election, if applicable; and

(5) Promulgate rules for the administration of the act.

Prohibited actions. Under the bill, candidates and committees would be prohibited from publishing, distributing, or disseminating political ads endorsing or opposing candidates that did any of the following:

(1) Used the title of an office not currently held by a candidate in a way that implied that the candidate did currently hold that office, or used the term "re-elect" when the candidate had never been elected (at a primary, general, or special election) to the office for which he or she was a candidate;

(2) Made false statements concerning any of the following:

** the training completed or attempted by a candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a candidate; or the period of time during which a candidate attended any school, college, university, or other educational institution;

** the professional, occupational, or vocational licenses held by a candidate, or concerning any position the candidate held for which he or she received a salary or wages;

** the voting record (the recorded "yes" or "no" vote on a bill, ordinance, resolution, motion, amendment, or confirmation) of a candidate or public official;

(3) Made false statements that a candidate or public official:

** had been indicted or convicted of a theft offense, extortion, or other crime involving financial corruption or moral turpitude;

** had been indicted for any crime or had been the subject of a declaratory ruling by the secretary of state without disclosing the outcome of any legal proceedings resulting from the indictment or declaratory ruling;

** had a record of treatment or confinement for mental or emotional disease or disorder; or

** had been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services.

(4) Falsely identified the source of a statement, issued statements under the name of another person without authorization, or falsely stated the endorsement of or opposition to a candidate by a person or publication;

(5) Contained a false statement, either knowing the statement to be false or "active" [acting] with reckless disregard of whether it was true or false, concerning a candidate that was designed to promote the election, nomination, or defeat of the candidate.

Candidates and committees also would be prohibited from publishing, distributing, or disseminating political ads endorsing or opposing ballot questions that did any of the following:

(1) Falsely identified the source of a statement, issued statements under the name of another person without authorization, or falsely stated the endorsement of or opposition to a ballot question by a person or publication; or

(2) Contained a false statement, either knowing the statement to be false or acting with reckless disregard of whether it was true or false, that was designed to promote the adoption or defeat of any ballot question.

Civil penalties. Candidates or committees who published, disseminated, or distributed political ads that either (a) were inaccurate and deliberately attempted to mislead the intended audience, or (b) violated the bill's prohibitions, would be subject to a civil fine, assessed by the commission, of up to \$5,000.

Effective date. The bill would take effect on January 1, 1997.

MCL 169.202 et al.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:***For:***

While it may not be possible to legally prohibit negative campaign tactics, it is possible to offer incentives to positive campaigning. If people are offered the opportunity to publicly endorse "clean" campaigning in their own campaigns, a powerful message could be sent both to the public and to those conducting negative campaigns. Conceivably, the bill could even begin to restore some of the public confidence in the political system that seems to have eroded over the years. If people are so disgusted by negative campaigning that they refuse to even participate in the electoral process, then the very foundations of representative democracy are weakened. And at a time when it appears that fewer voters are willing to vote "straight" party tickets, even as the number of people who identify themselves as "independents" increases, incentives to greater participation in the electoral process could increase the percentage of people voting in elections. In addition, besides perhaps discouraging people from voting in elections, negative campaigning also can discourage people from running for office out of the fear that if they do, they and their families will be unnecessarily subjected to personal attacks. Introducing a formal "clean campaign" procedure could encourage more people to participate in the electoral process as candidates.

For:

The campaign climate would be further improved by provisions that would create a fair campaign practices commission to develop and implement a voluntary rating system for political ads and to hear complaints about unrated political ads, ruling on their accuracy and whether the ads conformed to some basic "truth in advertising" requirements set forth in the bill.

POSITIONS:

The League of Women Voters of Michigan supports the bill. (8-7-96)

Michigan Citizen Action supports the bill. (8-7-96)

Analyst: S. Ekstrom

■ 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.