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SFA**BILL ANALYSIS**

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Senate Bill 567 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Robert Geake
Committee: Government Operations

Date Completed: 10-23-97

RATIONALE

The Michigan Election Law prohibits an election inspector or any other person in a polling room or in a compartment connected to a polling room or within 100 feet from any entrance to the building in which a polling place is located, from persuading or endeavoring to persuade a person to vote for or against any particular candidate or party ticket, or for or against any ballot question that is being voted on at the election. A person also may not place or distribute stickers, other than stickers provided by the election officials pursuant to law, in the polling room or in a compartment connected to the polling room or within 100 feet from any entrance to the building in which the polling place is located. In addition, on election day, a person may not post, display, or distribute in a polling place, in any hallway used by voters to enter or exit a polling place, or within 100 feet of an entrance to a building in which a polling place is located, any material that directly or indirectly refers to an election, a candidate, or a ballot question. Despite these prohibitions, some violations reportedly occurred in precincts around the State during the 1996 election. It has been suggested that signs notifying voters and election workers of these restrictions should be posted at polling places.

CONTENT

The bill would amend the Michigan Election Law to require the Secretary of State to print, and require election officials to post at polling places, signs that stated that campaigning at a polling place is a violation of the Election Law. A sign would have to specify the types of campaign activities prohibited and the location where these activities may not be performed. In addition, the sign would have to state that a person who engaged in the specific prohibited conduct or defaced or removed a sign would be guilty of a misdemeanor. The bill also would

require an election inspector, and allow a designated challenger, to remove prohibited material.

Under the bill, the Secretary of State would have to print or cause to be printed a sign prescribed by the bill and would have to provide a minimum of 20 signs to election officials. The sign would have to be 11 inches by 17 inches in size and include the following information:

- A notice that included the following statement: "Campaigning at any polling place is a violation of the Michigan Election Law, pursuant to MCL 168.744."
- A statement that indicated that campaigning is prohibited in all of the following places: in the polling room, in a compartment connected to the polling room, within 100 feet from an entrance to the building in which the polling place is located, and in a hallway used by voters to enter or exit a polling place.
- A statement that indicated that all of the following campaign activities are prohibited in the polling place and areas described above: persuading a person to vote for or against any particular candidate, party ticket, or ballot question; placing or distributing stickers, other than stickers provided by the election officials; soliciting donations, gifts, contributions, purchase of tickets, or similar demands; requesting or obtaining signatures on petitions; and, posting, displaying, or distributing any material that refers to an election, a candidate, or a ballot question, other than material required by law to be posted, displayed, or distributed in a polling place on election day. The bill specifies that provisions prohibiting the placement or distribution of stickers would not prohibit a

voter from possessing or placing on the ballot stickers bearing the names of candidates that were used to vote for a write-in candidate.

- A statement that indicated that a person who engaged in prohibited conduct, or who defaced or removed a sign would be guilty of a misdemeanor.

In addition to his or her other duties under the Act, an election official would have to post or cause to be posted an adequate number of the signs provided pursuant to the bill in each precinct on the day an election was held in that precinct. An election official would have to ensure that the signs would be posted continuously while the polls were open. A sign would have to be posted in each of the following locations, as applicable to that precinct: inside the polling room, immediately outside the polling room where voters enter the polling room, in a hallway used by voters to enter or exit a polling place; and, at every entrance to the building in which the polling place was located that would be used by voters to gain access to the polling place.

The election inspector who had been appointed chairperson by a board of election commissioners or an election inspector designated by the chairperson would have to inspect the polling place and areas described in the bill and would have to remove prohibited campaign materials. The chairperson or his or her designee would have to conduct an inspection of the polling place and surroundings just before the polls were open on election day and periodically throughout the day.

A designated challenger in the precinct who had the authority to initiate a challenge under the law could remove prohibited campaign materials from the locations described in the bill on election day. A challenger who removed prohibited campaign material from the locations immediately would have to take the removed items to the chairperson of the election inspectors. A challenger would not be authorized under this provision to remove prohibited campaign materials from another person's body or from another person's personal property. A challenger could report the presence of unauthorized campaign materials found on the body or personal property of another person to an election inspector. (Under the Law, a political party or an incorporated organization or organized committee of citizens interested in the adoption or defeat of a ballot question, or interested in preserving the purity of elections, may designate a

challenger. As a rule, a candidate for nomination or election may not serve as a challenger. MCL 168.730)

A person who defaced or removed a sign that was posted as required in the bill would be guilty of a misdemeanor. The bill specifies that this provision would not apply to an election official who was removing the signs after the polls closed on election day.

The court would be required to order each person convicted of a misdemeanor under the bill or under the Law's provisions prohibiting the persuasion of voters, distribution of stickers, and solicitation of donations or stickers (MCL 168.744) to pay an assessment of \$100 directly to the clerk of the municipality or the secretary of the school board for the jurisdiction in which the violation occurred. The court would have to order a defendant to pay only one assessment per criminal case. A clerk or secretary who received an assessment would have to use the funds only for enforcing State election laws in that jurisdiction.

Proposed MCL 168.744a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Despite prohibitions in the State Election Law that restrict campaigning at polling places, poll challengers and election officials report that a number of irregular and, in some cases, illegal voting practices occurred across the State in the 1996 election. One candidate in Saginaw reportedly visited precincts where election workers announced the candidate's arrival, made introductions, and allowed him to shake hands with people at the polling place. In a precinct in Westland, a big-screen television broadcasted commercial programs, including political advertisements, while voters cast their ballots. In other instances, campaign volunteers were within the 100-foot restricted area handing out leaflets to voters, while campaign buttons and T-shirts were available at other polls. Although the Election Law prescribes the types of campaign activities that may not take place at the polls, some elections workers are improperly instructed in and many voters are unaware of the Law's prohibitions. The bill would

require the Secretary of State to print for posting at polling places signs that stated that campaigning is prohibited, specified the types of activities that are prohibited, and stated that a person who engaged in this activity would be guilty of a misdemeanor. In addition, an election inspector would be required to inspect the polling place and remove prohibited campaign materials. While most elections operate efficiently and honestly, abuses of the Election Law still occur. By requiring the posting of signs that state the Election Law's prohibition against certain campaign activities, the bill would ensure that election workers and voters were informed of the prohibited campaign activities.

Opposing Argument

Under the bill, a designated challenger in a precinct who had authority to initiate a challenge could remove prohibited campaign materials from the polling areas specified in the bill and then turn them over to the local election inspector. While improper materials should be removed, the authority to remove them should be given only to local election officials and not to partisan challengers who often come from outside of the local precinct.

Response: Many local election officials are burdened with ensuring that elections are conducted efficiently and, thus, do not have the time to remove prohibited materials. Furthermore, some election officials, especially in heavily partisan precincts, reportedly have refused to remove such materials.

Opposing Argument

The bill would require the Secretary of State to provide election officials with a minimum of 20 signs per precinct. Thus, the State would have to provide these signs for every precinct across the State and for every election. The cost to the State, in the aggregate, could be significant. Furthermore, it is questionable whether the signs would make much difference in how elections are conducted, if local election officials and their workers are not properly instructed in the Law's provisions.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would result in additional costs to the Department of State. There are approximately 5,800 precincts in Michigan. Initial production costs for signs would range from \$10,000 to \$12,000. Annual costs would depend on the number of signs that were damaged or discarded. Amounts generated from fines and assessments would

depend on the number of violations.

Fiscal Analyst: B. Bowerman

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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.