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ALLOW NON-METAL BALLOT BOXES, POLLING PLACE FLAG CHANGES

House Bill 5139 (Substitute H-2) First Analysis (4-26-00)

Sponsor: Rep. Janet Kukuk
Committee: Constitutional Law and Ethics

THE APPARENT PROBLEM:

Currently, although the Election Law does not define “ballot box,” the Department of State’s administrative rules define “transfer cases” to require that they be made of metal. Ballot boxes do not have to be made of metal, but do have to have a second cover made of metal or wood. Reportedly, some election clerks have already bought secure ballot boxes made of non-metal, tamper-proof materials, and apparently one county clerk noticed that some election volunteers were having trouble transporting the heavy metal election boxes.

Legislation has been introduced that would allow ballot containers made of materials other than metal to be used beginning with the August elections of this year.

THE CONTENT OF THE BILL:

The bill would amend the Election Law to allow for the use of non-metal ballot containers, and would update requirements for the display of American flags at polling places.

Ballot container. More specifically, the bill would add a definition of “ballot container” to the act. “Ballot container” would mean “a container made of metal, plastic, fiberglass, or other material that provide[d] resistance to tampering used for transporting and storing voted ballots and that [was] capable of being sealed with a metal seal.” A “ballot container” would include “a ballot box, a transfer case, or other container used to secure ballots, including optical scan ballots and electronic voting systems and data,” and could be used wherever ballot boxes or transfer cases currently are used. Manufacturers or distributors of ballot containers would be required to submit a nonmetal ballot container to the secretary of state for approval before it was sold to any county, city, township, village, or school district for use at an election.

American flags at polling places. Currently, the Election Law requires that American flags be displayed at polling places. These flags are required to be made of “first class bunting,” and can only be used during elections at polling places. The rest of the year the polling place flags must be properly stored and cared for by the clerks.

The bill would require only that a United States flag be displayed at each polling place, and would delete the requirement that the flag be made of “first class bunting.”

Effective date. If enacted, the bill would take effect June 8, 2000.

MCL 168.14j et al.

BACKGROUND INFORMATION:

Ballot boxes are used to store voted ballots and must be inspected and approved by county boards of canvassers, which examine ballot boxes used in any election under the act and determine whether or not the ballot boxes meet the act’s requirements. Ballot boxes, for example, must be able to be sealed (“easily and securely”) with self-sealing metal seals provided to county clerks by the secretary of state. City and township boards of commissioners must furnish their cities and townships with certain election equipment, including ballot boxes that have locks and keys; openings in the lids to admit single, folded ballots; and a second cover or a metal or wooden device for closing the slot so that it can’t be opened without unlocking the ballot box and breaking the seal.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local units of government. (4-25-00)

House Bill 5139 (4-26-00)

ARGUMENTS:**For:**

Reportedly, although “ballot box” is not defined in the Election Law, historically, ballot boxes have been made of metal, apparently because metal provided the best “tamper proof” material. However, with the advances in materials technology, materials other than metal can provide acceptable levels of security for ballots, and the bill would recognize these technological advances by allowing ballot containers to be made of materials other than metal that provide resistance to tampering. The bill would allow election officials to use containers made from a number of different materials to store and transport ballots, many of which would be lighter and easier to handle than the traditional metal ballot boxes.

Rather than requiring individual election clerks to check with the Bureau of Elections in the Department of State to find out which ballot containers would be acceptable, the bill would require ballot container manufacturers or distributors to submit nonmetal ballot containers to the secretary of state for approval before selling them for use at any election. Reportedly, the secretary of state will keep a list of acceptable ballot containers, and elections clerks will be able to telephone the Department of State for a list of approved ballot containers, or at least to find out whether a ballot container had been approved. Since, reportedly, some election clerks already have bought nonmetal ballot containers, the bill, if enacted, would take effect on June 8, 2000, so these clerks could use the already-purchased election containers (if approved by the secretary of state) for any elections after that date.

Finally, although the definition of “ballot container” would include “ballot box,” the bill would continue to refer to “ballot boxes” (and to “transfer cases”) in addition to adding references to “ballot containers,” thereby preserving reference to the traditional use of metal ballot boxes.

For:

The bill would update provisions regarding the display and composition of the American flags that are required to be displayed at polling places during elections. Since many polling places already have American flags on display, even when elections are taking place, the bill would eliminate the current requirement that a flag be brought to a polling place for each election (and stored, unused, the rest of the year). Also, the bill would eliminate the requirement that the flags used at polling places be made of “class ‘A’ bunting”. When the law was enacted, class “A” bunting

apparently was the best material available. However, since that time, cheaper and longer-lasting materials, such as nylon, have been invented, and the bill would recognize this and allow such cheaper and longer-lasting materials to be used in the flags displayed at polling places during elections.

Against:

If the current Election Law does not require that ballot boxes be made out of metal (which it does not), why is the bill needed?

Response:

Although the act itself doesn’t require that either ballot boxes or transfer cases, which are another kind of ballot container, be made out of metal, the Department of State’s administrative rules do specify, in their definition of “transfer case,” that transfer cases be made of metal. The bill, by adding an inclusive definition of “ballot container” that includes both ballot boxes and transfer cases, would be a clean way of addressing this issue.

POSITIONS:

The Department of State supports the bill. (4-25-00)

The Council of Election Officials (municipal, township, and county clerks) supports the bill. (4-25-00)

The Michigan Association of County Clerks supports the bill. (4-25-00)

The Michigan Township Association supports the bill. (4-25-00)

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.