

# Legislative Analysis



## PROHIBIT NAMES OF OFFICIALS ON CERTAIN BALLOT-RELATED MATERIALS

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

House Bill 4653 (Substitute H-1)

House Bill 4656 (Substitute H-2)

*(Enacted as Public Acts 156 and 280 of 2012)*

Sponsor: Rep. Anthony Forlini

Committee: Redistricting and Elections

### First Analysis (12-7-11)

**BRIEF SUMMARY:** The bills prohibit elected and appointed officials from attaching their names to absent voter ballot materials, and also prohibit their names from appearing on any materials that are temporarily posted, displayed, or distributed in a polling place on Election Day.

**FISCAL IMPACT:** There would be no fiscal impact on state and local election administration under the provisions of the bill. Any increase in penal fine revenues resulting from the bills would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

### THE APPARENT PROBLEM:

Local and county clerks serve as Michigan's election officials, ensuring a fair and accessible process for voters when they head to the polls on Election Day, whatever their political affiliation or party preference. However, local and county clerks are, themselves, elected officials who sometimes declare their party affiliation when they stand for public office.

Every four years when an incumbent clerk seeks re-election, the clerk is simultaneously serving as the election supervisor in the very community or county in which he or she resides while also standing for public office.

It is customary that, in the course of a clerk's duties to serve and inform electors, the clerk will have a lot of contact with potential voters, including at an election where the clerk's name will appear on the local ballot. For example, a clerk customarily sends all senior citizens their absent voter applications (to help them obtain an absent voter ballot) if they keep their names on the clerk's permanent absent voter list. If the senior citizen returns an application requesting an absent voter ballot, then the clerk's name will appear on the mailed absent ballot itself; on the envelope that encases it to ensure privacy; and also on the mailing envelope to return the voted ballot. In all, then, a voter can have four contacts from a local clerk--strictly in the course of conducting election business. This amount of contact enhances a clerk's identification in the community, providing exposure without cost; it also offers an advantage to the incumbent clerk.

Legislation has been introduced that would prohibit all local and appointed officials--including local and county clerks--from advancing their name identification--both on absent ballot materials, and on materials temporarily posted at polling places.

### ***THE CONTENT OF THE BILLS:***

The bills would prohibit elected and appointed officials from attaching their names to absent voter ballot materials, and also prohibit the name of an elected or appointed official from appearing on any materials that are temporarily posted, displayed, or distributed in a polling place on Election Day. A description of each bill follows.

House Bill 4653 (H-1) would amend the Michigan Election Law (MCL 168.744) to prohibit the names of state and local elected or appointed officials from appearing on any materials that are temporarily posted, displayed, or distributed in a polling place or polling room on Election Day. A person who violated this provision would be guilty of a misdemeanor, punishable by a fine of not more than \$100 for a first offense, and not more than \$250 for a second and subsequent offense.

House Bill 4656 (H-2) would also amend the Michigan Election Law (MCL 168.931a), in order to prohibit the name of an elected or appointed official from appearing on any ballot-related materials that are provided to an elector (voter).

Under the bill, the phrase "ballot-related material" includes any of the following: (a) any material provided to an elector with an absent voter ballot; (b) absent voter ballot instructions; (c) an envelope used to mail to an absent voter ballot or any other ballot material; and (d) an absent voter ballot return envelope.

Under the bill, any ballot-related material printed or prepared before the effective date of this proposed legislation that contained the name of a state or local elected or appointed official could be used, if the elected or appointed official whose name appeared on the ballot-related materials was not a candidate at the election in which those ballot-related materials were being used.

A person who violated this provision also would be guilty of a misdemeanor, punishable by a fine of not more than \$100 for a first offense, and not more than \$250 for a second and subsequent offense.

### ***ARGUMENTS:***

#### ***For:***

During committee testimony, an unsuccessful local clerk candidate in the Village of Franklin (located near the center of Michigan's Oakland County) described the significant name-identification advantage that an incumbent local election clerk enjoyed when she stood for re-election. That unfair advantage comes from the requirement that the local election clerk contact potential voters, both to inform them about the process of absentee voting, and also to mail them their absent voter ballots. Each of those contacts is funded

by the taxpayer because each falls within the normal range of duties an election clerk must provide.

Proponents of these bills argue that local elected and appointed officials should not enjoy an unfair, taxpayer-funded, incumbency advantage. They say that ballot-related mailings, and ballot-related materials at the polls on Election Day should not bear the names of local officials, because materials bearing the imprint of incumbents makes them known among the community's voters, a taxpayer funded advantage that their challengers do not share.

***Against:***

This is a good bill, but it should go even further to ensure that the local and county clerks who serve as election officials responsible for administering the election, do not unduly influence the election outcome. For example, (1) election clerks should be expressly prohibited from endorsing candidates, because election clerks must certify the results of elections, and they cannot do so free from bias if they have endorsed particular candidates; (2) deputy and assistant clerks should be expressly prohibited from serving as election inspectors, since their bosses to whom they owe their jobs (the local clerks, themselves) appear on the ballot; and (3) a 30-day communication black-out should be imposed for local officials so they cannot use a community's email account to communicate daily with potential voters electronically.

***POSITIONS:***

The Secretary of State supports the bills. (11-29-11)

The Michigan Association of Municipal Clerks and Council of Election Officials supports the bills as amended. (11-29-11)

The Michigan Association of County Clerks supports the bills, as amended. (11-29-11)

The Kent County Clerk supports the bills, as amended. (11-29-11)

Legislative Analyst: J. Hunault  
Fiscal Analyst: Ben Gielczyk  
Bob Schneider  
Erik Jonasson

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■ 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.