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SFA

BILL ANALYSIS

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Senate Bill 759 (as introduced 10-18-01)
Sponsor: Senator Bev Hammerstrom
Committee: Government Operations

Date Completed: 11-6-01

CONTENT

The bill would amend the Michigan Campaign Finance Act to prohibit a public body from using public resources to assist or oppose a candidate or a ballot question; and prohibit a nonprofit corporation that received money from a public body from using the money to influence the outcome of an election.

The bill contains the following statement:

It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or a person acting on behalf of a public body shall not attempt to influence the outcome of an election held in this state. If there is a perceived ambiguity in the interpretation this section, this section shall be construed to best effectuate the policy of strict neutrality by a public body in an election.

Under the Act, a "public body" is any body that is created or is primarily funded by State or local authority and exercises or performs governmental functions, and includes State departments and agencies, the Legislature and legislative agencies, and local units of government, school districts, and municipal corporations.

The bill provides that a public body or a person acting for a public body could not use or allow the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources in assistance of or opposition to the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. The bill would eliminate a current provision that prohibits a public body or individual acting for a public body from using the same items (other than computer hardware or software) to make a contribution, expenditure or provide volunteer personal services.

The Act contains several exceptions to the current prohibition. The bill would retain the exceptions but modify them in the following ways:

-- The bill states that it would not prohibit the verbal expression of views, including views on a candidate or a ballot question, by an elected or appointed public official who had policy-making responsibilities; however, this provision would apply only to a public official expressing views, and would not allow or compel other employees of a public body to use work time or other public resources to hear those views. Currently, the Act allows the expression of views by an elected or appointed public official who has policy making responsibilities.

- The bill would not prohibit the production or dissemination of information that did not expressly advocate the nomination, election, or defeat of a candidate or the qualification, passage, or defeat of a ballot question. A public body could not expressly advocate by passage of a resolution, or another means of communication, the nomination, election, or defeat of a candidate or expressly advocate support or opposition to the qualification, passage, or defeat of a ballot question. Currently, the Act allows the production or dissemination of factual information concerning issues relevant to the function of a public body.
- The bill would not prohibit a communication that described or broadcasted a meeting subject to the Open Meetings Act, or that attempted to inform the public by publishing or broadcasting a debate, forum, profile, statement, or interview if each candidate or view on a ballot question were afforded equal access. A public body could limit access to those candidates whose names would appear on the ballot.

The bill provides that a nonprofit corporation that received money from a public body or a person acting on behalf of a public body as membership fees, dues, or for another reason, other than the compensation for specific goods or services, could not use the money or investment income derived from it to influence the outcome of an election held in Michigan.

A nonprofit corporation could use money obtained from a public body for the performance of a specific service or sale of goods, or investment income derived from that money, to influence the outcome of a ballot question if both of the following were true:

- The charge for the specific service or goods was uniform for all public bodies and not based on the size of a public body, the number of employees working for it, its annual income, or similar criteria. For a seminar or other program, the charge would be uniform for all public bodies if each individual attending the seminar or program on behalf of a public body were charged an identical sum to participate.
- The nonprofit corporation did not advertise or promote the service or goods as a means for it to receive money from a public body that could be used to influence the outcome of a ballot question.

A public body or a person acting on behalf of a public body could not purchase a service or goods from a nonprofit corporation if the reason for the purchase, in whole or in part, were to provide money to the nonprofit corporation to influence the outcome of a ballot question.

A nonprofit corporation would have to place in a segregated account money received from a public body or a person acting on behalf of a public body that was not permitted under the bill to be used to influence the outcome of a ballot question. That money could not be commingled with money that was permitted to be used to influence the outcome of a ballot question. A nonprofit corporation that commingled in a single account money that was permitted to be used, and money that was not permitted to be used, to influence the outcome of a ballot question would be prohibited from using any portion of that money to influence the outcome of a ballot question.

Under the Act, a person who knowingly violates the current prohibition is guilty of a misdemeanor punishable as follows:

- If the person is an individual, by a fine of up to \$1,000 or imprisonment for up to one year, or both.
- If the person is not an individual, by a fine of up to \$20,000 or the amount of the improper contribution or expenditure.

The bill would retain these penalties except that, in either case, the maximum fine would be the amount stated or twice the value of the improper contribution or expenditure, whichever was greater. Further, a person who violated the bill would be subject to a fine by the Secretary of State, in an amount up to \$20,000 in addition to the cost of an illegal contribution or expenditure.

A person residing within the geographical boundaries of a public body who alleged a violation of the bill could bring a civil action for declaratory judgment or injunctive relief against the public body or a person acting on behalf of the public body. The action would have to be brought in the circuit court for the county where the public body had its principal place of business. The person alleging a violation would not need to prove that the violation was knowing in order to prevail. A person who commenced a civil action, if prevailing in whole or in part, would be awarded all or an appropriate portion of reasonable attorney fees and costs. An action would have to be expedited and assigned for hearing, trial, or argument at the earliest possible date.

MCL 169.257 et al.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have an indeterminate impact regarding enforcement costs and fine revenue related to the Michigan Campaign Finance Act. In FY 2000-01, \$189,454.79 was collected in fines for violations of this Act.

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.