



**House
Legislative
Analysis
Section**

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**REMOVE PROHIBITION ON STATE
POLICE IN POLITICS**

**House Bill 5547 as introduced
First Analysis (4-23-02)**

**Sponsor: Rep. Scott Hummel
Committee: Redistricting and Elections**

THE APPARENT PROBLEM:

Section 10 of Public Act 59 of 1935, which deals with the Michigan State Police, prohibits Department of State Police employees from taking part in political campaigns, and from soliciting support through votes or money for a candidate for office. In researching statutes concerning the state police, the Department of State Police became aware of this provision and is requesting that it be eliminated.

It is not clear whether state police troopers and civilian employees are currently subject to this law, since the legislature also enacted, in 1976, the "Political Freedom Act" (Public Act 169 of 1976), which states that employees of the state classified civil service and employees of political subdivisions may become a member of a political party committee, be a delegate to a political party convention, become a candidate for elected office, and engage in other political activities on behalf of a candidate or issue in connection with partisan or nonpartisan elections. In addition, a provision of the Michigan State Police Troopers Association contract states that troopers have the same rights as all other citizens to engage in the political process, run for office, or otherwise express their personal views, as long as these activities are conducted in off-duty hours, do not interfere with the performance of official duties, and do not use any equipment or facilities of the state police.

A 1984 attorney general opinion on a similar issue (whether prohibitions on political activity by insurance companies found in the Insurance Code were superceded by the enactment of the Michigan Campaign Finance Act) stated that where a specific statute or code conflicts with the more general statute, "the special statute or code must prevail". Given this, the more specific language of the 1935 state police statute would seem to prevail over the more general conflicting 1976 act.

The House Committee on Redistricting and Elections has asked the attorney general whether state police

employees are currently subject to the provisions of the 1935 statute, and, additionally, whether the state may enter into a collective bargaining agreement with a labor organization that contains provisions that conflict with state law.

In the meantime, legislation has been offered to repeal the provision of the 1935 law that prohibits political activity on the part of state police employees.

THE CONTENT OF THE BILL:

The bill would amend Public Act 59 of 1935 to repeal Section 10, which reads as follows:

The commissioner and all members of the department, officers and civilian employees, are hereby prohibited from taking part in any political campaign or soliciting support through votes or money for any candidate for nomination or for election or for appointment to any public office and violation of the provisions . . . shall be sufficient for the removal of the commissioner or officer or discharge of the employee . . . Provided, that nothing . . . shall be deemed to interfere with the right of any member of [the] department to vote for any candidate and upon any issue as his reason and conscience may dictate.

BACKGROUND INFORMATION:

Hatch Act restrictions. Under the federal Hatch Act, the political activities of certain federal executive branch activities are restricted. Generally speaking, the most restrictive policies apply to employees in certain categories, including administrative law judges, certain offices of the Department of Justice, law enforcement officers, certain intelligence agencies and offices, and IRS and customs service employees. These individuals *may not*: be candidates for public office in partisan elections, campaign for or against partisan candidates, circulate nominating

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petitions, collect contributions or sell fund raising tickets, distribute campaign materials, and so forth. They *may* register and vote, express opinions about candidates and issues, contribute money to political organizations, attend political rallies, sign nominating petitions, participate in nonpartisan elections, and campaign for or against referendum questions, constitutional amendments, and municipal ordinances.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no direct fiscal impact on the state or local governments. (4-18-02)

ARGUMENTS:

For:

The bill would repeal a provision of law that may very well be unconstitutional, and, if constitutional, certainly discriminatory and unnecessary. All other civil service employees are specifically provided “political freedom” under the 1976 statute; state police troopers and civilian employees are entitled to the same protection. Under the 1935 law, state police employees are prohibited from even making monetary contributions to candidates and posting lawn signs. Though the statute apparently has not been observed (in practice), it is clearly in conflict with Article 1, Section 3 of the state constitution, which states that “Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press”.

Response:

The House Committee on Redistricting and Elections has requested an opinion of the attorney general on the status of the law in question. Why not wait until that opinion has been received before acting on a repeal?

Reply:

The law should be repealed regardless. If the statute is unconstitutional, it is null and should be removed from the books. If it is constitutional, it still should be removed, as it discriminates against state police employees and infringes on their civil rights as citizens to participate in the political process.

Against:

The original intent of the 1935 statute is unclear. Some are concerned about repealing the statute without knowing the reason for its existence. As in the federal Hatch Act, it may be that the legislature

believed that there are certain governmental functions that are incompatible with political activity by employees, even if that activity occurs after hours. The law enforcement function of government surely must be held to the highest standards of ethics, to discourage even the appearance of conflict of interest or corruption.

POSITIONS:

The Department of State Police supports the bill. (4-22-02)

A representative of the Michigan State Police Troopers Association testified in support of the bill. (2-28-02)

Analyst: D. Martens

■ 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.