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BILL ANALYSIS



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House Bill 4220 (Substitute S-1 as reported)
Sponsor: Representative John Espinoza
House Committee: Education
Senate Committee: Education

Date Completed: 1-16-08

RATIONALE

Some school districts in Michigan, particularly small districts in rural areas, rely on volunteers to coach athletic teams or conduct other extracurricular activities. In some cases when qualified volunteers have not been available, members of the school board have offered to serve in order to ensure that those programs continued. In Sanilac County, for example, one school board member reportedly served as a volunteer in the district's athletic program for an extended period until it came to the attention of the board that State law does not allow a person to hold both positions at once. Specifically, Public Act 566 of 1978 prohibits a public officer or public employee from holding two incompatible offices simultaneously. The Act defines "incompatible offices" as public offices that result in the subordination or supervision of one of those offices by another, or that result in a breach of duty of public office. Because of those provisions, a school board member who wishes to serve as a volunteer must step down from the board in order to do so. Likewise, a volunteer coach who is elected to the school board must choose between the two positions.

In some communities, there is a shortage of people willing and qualified to serve in these positions. To resolve this issue, it has been suggested that a school board member should be allowed to serve as a volunteer when no other person is available to fill the position.

CONTENT

The bill would amend Public Act 566 of 1978 (which deals with the official

duties of public officers and public employees) to permit a school board member to serve as a volunteer coach or supervisor of an extracurricular activity, under certain conditions.

The Act prohibits a public officer or public employee from holding two or more incompatible offices at the same time, with some exceptions.

Under the bill, that provision would not prohibit a member of a school board from being appointed to or serving as a volunteer coach or supervisor of a student extracurricular activity if all of the following conditions were present:

- The school board member received no compensation for that service.
- During the period he or she served as a volunteer, the member abstained from voting on issues before the school board concerning that program.
- There would be no qualified applicant available to fill the position if the school board member were excluded.
- The appointing authority had received the results of a criminal history check and criminal background check from the Department of State Police or the FBI on the member.

MCL 15.183

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

High school sports teams are important not only to the students participating, but also to the communities that they represent. As schools face increasingly tight budgets, volunteer coaches and other community members can help to save a program that otherwise would be discontinued. In some cases, though, qualified volunteers are not available. In that situation, if a school board member is qualified and is willing to act as a volunteer, he or she should be permitted to do so.

Some districts have complained that a volunteer coach who chooses to run for the school board must decide between a seat on the board and the volunteer coaching position. Under current law, he or she must resign as coach in order to be seated on the board, effectively eliminating the program if no replacement can be found. Those who are active in communities often serve more than one function, and allowing school board members to serve as volunteers would be preferable to eliminating popular extracurricular programs.

The bill would prevent any conflicts of interest, by requiring a school board member to abstain from voting on any matters relating to the program he or she was involved in. In addition, each volunteer would have to undergo criminal background checks, similar to the checks required for other individuals working with schoolchildren.

Also, the provisions in the bill would be voluntary. If a local school board objected to the practice, it would be free to adopt rules prohibiting members from serving as volunteers.

Response: As written, the bill does not clearly state that a district would have the ability to prohibit such volunteer service, and some districts could interpret the provisions as being mandatory. The bill should expressly permit a district to prohibit volunteer service by board members.

Opposing Argument

Allowing a school board member to serve as a volunteer would create inherent conflicts of interest, because the school board has authority over principals and other school officials who would be supervising the board member in his or her role as a volunteer. If the volunteer performed poorly or behaved

inappropriately, those officials could be reluctant or unable to discipline him or her because of his or her status as a school board member. In some regions, school athletic programs play a prominent role in the district and in the community, and there could be tensions between the athletic department and the school board. In that case, the school board member would have divided loyalties, serving both the board and the athletic director. The current restrictions on serving in two incompatible offices were established to prevent public officials from being put in such difficult situations, and those restrictions should remain in place.

Also, the association of a school board member with one particular program could create favoritism or the perception of favoritism. School boards must make difficult budgetary decisions, and although the volunteer would have to abstain from voting on any issues related to the program he or she participated in, the school board still could be disposed to look more favorably on a program associated with one of the board members, perhaps giving the program more funding, better equipment, or other favorable treatment.

Response: Ultimately, a school board is accountable to the public, and community pressure should ensure that the board acts fairly and refrains from preferential treatment. As professionals, school board members take pride in dealing with similar situations in an even-handed manner.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Kathryn Summers-Coty

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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.