



H.B. 633

124th General Assembly
(As Introduced)

Rep. Flannery

BILL SUMMARY

- Prohibits public officials who are candidates for office from distributing materials containing both the candidate's name and the word "vote" within 100 feet of a polling place.

CONTENT AND OPERATION

Existing law

Existing law requires two or more small flags to be placed 100 feet from a polling place on the thoroughfares or walkways leading to the polling place; the flags mark the distance within which persons generally are prohibited from loitering, congregating, or engaging in any kind of election campaigning. If small flags cannot be reasonably placed 100 feet from the polling place, the presiding election judge must place those flags as near to 100 feet from the entrance to the polling place as is physically possible. (Sec. 3501.30—not in the bill.)

Changes proposed by the bill

The bill does not affect the provision of existing law requiring the placement of flags to identify the polling place area within which loitering, congregating, and campaigning is prohibited. But, it creates a new prohibition and associated penalty relative to certain *candidates* distributing materials in proximity to a polling place. No public official who is also a candidate for any office in the state is permitted to distribute any materials containing both (1) the candidate's name and (2) the word "vote" within 100 feet of a polling place (sec. 3599.381(B)).¹ (See **COMMENT**.)

¹ As used in the bill, "public official" means any elected or appointed officer, employee, or agent of the state, any state institution of higher education, any political subdivision, or any board, commission, bureau, or other public body established by law (sec. 3599.381(A)(2)).

Anyone violating this prohibition is guilty of a misdemeanor of the first degree (sec. 3599.381(C)). Such a misdemeanor is punishable by imprisonment of not more than six months, a fine of not more than \$1,000, or both (sec. 2929.21—not in the bill).

COMMENT

This bill contains a potential constitutional problem; if enacted and then subjected to a court challenge, a court might view it as violating the Equal Protection Clause of the 14th Amendment. The bill prohibits public officials who are candidates from distributing certain materials within 100 feet of a polling place. Since only candidates who are also public officials are subject to the prohibition, a court could view this as an equal protection problem. Other candidates for the same office would not be subject to the prohibition and, thus, could distribute the material within the proscribed 100 feet of a polling place, as long as they did not violate another prohibition, such as the one against campaigning within the placed flags. By not subjecting, then, all candidates for the same office to the same requirements, a court could determine that this provision violates the Equal Protection Clause of the 14th Amendment.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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