July 31, 2024

Joint Committee on Administrative Rules

Boji Tower, 3rd Floor

124 W. Allegan St.

P.O. Box 30036

Lansing, MI 48909-7536

Sent via email to: JCAR@legislature.mi.gov

Re: Session day waiver request

Dear Chairperson Wojno, Alternate Chairperson Haadsma, and committee members:

As the regulatory affairs officer for the Michigan Department of State, I respectfully request that the Joint Committee on Administrative Rules waive the remaining session days under the authority provided in the Administrative Procedures Act of 1969, MCL 24.245a(1)(d), for the review of the following amended rules, which were submitted to the Committee on July 24, 2024:

Conduct of Election Recounts, R 168.901 to 168.930 (MOAHR #2024-18 ST).

The amendments to the Conduct of Election Recounts rules (“recount rules”) provide important updates to the terminology used throughout the rules to bring the rules in line with technological and procedural changes that have occurred since the rules were promulgated in 1979. For example, the current rules do not contemplate early voting, and include outdated references to “voting machines” and their components. One example of an outdated procedure in the rules that the amendments will address is rescinding current R 168.921, which provides for removal and destruction of “excess” ballots—the statutory provision on which this rule was based was repealed by 2018 PA 120, and ballots are never removed and destroyed during a recount. The existence of this rule is misleading, and updating the rules to accurately reflect current law and procedures will bolster public confidence in recounts and avoid confusion.

The Board of State Canvassers[[1]](#footnote-2) held a public hearing on the proposed rules on June 17, 2024. The notice of public hearing was posted on the Department of Licensing and Regulatory Affairs’ website, the Board of State Canvassers’ website, and was published in The Detroit Free Press, The Detroit News, The Holland Sentinel, and The Marquette Mining Journal. No members of the public attended the hearing to speak in person.

The Board also accepted written public comments for 48 days (notice of public hearing was first posted online on April 30, 2024, and written public comments were accepted until 5 p.m. on June 17, 2024). The Board received written public comments from one elections director and incorporated those suggestions into its proposed recount rules amendments.

Given the need to align the recount rules with current law and practice before the November 2024 election and the summer session schedule, the Board of State Canvassers respectfully asks that the committee waive the balance of the session days in the review period.

Thank you for your consideration of this request.

Sincerely,

Doug Novak

Regulatory Affairs Officer

Michigan Department of State

Novakd@Michigan.gov

cc: Timothy Reeves and Rachel Hughart, Legal Counsel, JCAR

Katie Wienczewski, Michigan Office of Administrative Hearings and Rules

Administrative Rules Division, MOAHR-Rules@Michigan.gov

Board of State Canvassers Chair Mary Ellen Gurewitz

Board of State Canvassers Vice-Chair Richard Houskamp

Board of State Canvassers Member Jeannette Bradshaw

Board of State Canvassers Member Anthony Daunt

Jonathan Brater, Director of Elections

Adam Fracassi, Regulatory Manager Bureau of Elections

1. The Board of State Canvassers is staffed by the Bureau of Elections, which is part of the Michigan Department of State. [↑](#footnote-ref-2)