September 11, 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 September 11, 2024:

Electronic Voting Systems, R 168.771 to 168.793 (MOAHR #2024-19 ST).

The amendments to the Electronic Voting Systems rules provide important updates to the terminology used throughout the rules to bring them in line with technological and procedural changes that have occurred since the rules were promulgated in 1979. For example, regarding outdated technology, the current rules refer to ballot styles containing “chads” and “combination ballot card and write-in ballots” with perforated attachments as well as “computers” and numerous obsolete components of the computers that were previously used to tabulate votes but do not reflect current electronic voting systems. Regarding outdated procedures, the current rules do not contemplate early voting. Another example is R 168.782, which describes the duties of election inspectors after the polls close, and currently instructs inspectors to remove “excess” ballots when the number of ballots counted is more than the number of voters according to the poll lists. This does not reflect current law or procedure and excess ballots are never removed by election inspectors.

These are just some examples of the outdated technology and procedure that are referenced in the current rules. Amending the rules to accurately reflect modern technology and procedure before the November election will avoid confusion and bolster public confidence in Michigan’s voting systems.

The Michigan Department of State accepted written public comment for a period of 45 days and held a public hearing on the proposed rules on August 16, 2024. The Department received 5 public comments, none of which were in support of the rules. The Department carefully considered all of the public comments, and ultimately made one change to the rules in response. Most of the public comments did not address the substance of the proposed rules. Other comments reflected issues that are already addressed by the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, or that are outside the scope of the proposed rules*.*

Given the need to align the Electronic Voting Systems rules with current law and practice before the November 2024 election, the Michigan Department of State 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

Jonathan Brater, Director of Elections

Adam Fracassi, Deputy Director of Elections/Regulatory Division Director