

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

RECEIVED

MAY 29 1988

House Bill 4090 (Substitute S-8 as reported)**Sponsor: Representative Maxine Berman****House Committee: Elections****Senate Committee: Government Operations****Date Completed: 3-1-88*****RATIONALE***

The Michigan Election Law contains no procedure for independent candidates, those without party affiliation, to get their names on the ballot. The courts have admonished the State about this defect since 1976, when a U.S. District Court found the State's election laws "constitutionally deficient" in *(Eugene) McCarthy v Austin* because they did not provide independent candidates access to the ballot. Since then, courts have been putting independent candidates for State, national, and local offices on the ballot on a case-by-case basis, and ordering the State to pay candidates' court costs and attorneys' fees. In 1986, the Secretary of State's office instructed county clerks to certify independent candidates for partisan offices if they submitted an affidavit of identity and an affidavit showing support from at least one registered voter. The instructions from the elections division to the clerks said that the policy recognized that "until the state legislature enacts an independent candidate law, the courts will grant independent candidates easy and direct access to the ballot and require the unit of government that denied them access ... to pay the attorney fees involved". (The State had already paid \$35,000 in such attorney fees.) One result of the policy was a 24-person contest for two State Supreme Court judgeships, which generated much unfavorable comment from the press and general public.

The courts have also attacked Michigan's ballot access provisions for certain "minor" parties (known, somewhat misleadingly, as "new" parties). In 1982 the Michigan Supreme Court struck down parts of Public Act 94 of 1976, which had instituted a two-step method by which "new" parties could appear on the November general election ballot: in addition to collecting petition signatures, a new party had to get three-tenths of 1% of the total number of votes cast in the primary. The court said the law imposed unreasonable and unnecessary restrictions on new parties and denied them equal treatment. As a result, only the petition requirement remains, and some people doubt that it is by itself sufficient demonstration of community support to guard against frivolous candidacies.

In regard to both independent candidates and new parties, it has been suggested that the Legislature needs to put in place ballot access requirements that balance the right of citizens to vote for the candidates of their choice against the need to protect the process from frivolous candidacies and overcrowded ballots.

CONTENT

The bill would amend the Michigan Election Law to:

- Establish petition requirements for independent candidates seeking a place on the ballot. For a statewide

office, the requirements would include the filing of a qualifying petition containing signatures equal to at least 1% of the votes cast for all candidates for governor in the last gubernatorial election. For nonstatewide office, a candidate would have to file a qualifying petition containing signatures of at least 2% of the votes cast for all candidates for governor in the district in the most recent gubernatorial election.

- Increase the number of petition signatures required for a new party to get on the ballot. A new party would have to obtain signatures equal to at least 1% of the votes cast for all candidates for governor, instead of 1% of the votes cast for the successful candidate for secretary of state, in the last election for that office.
- Allow the countywide circulation of petitions by new parties and by independent candidates running for State or Federal office.
- Require major political parties to hold their State conventions at least 66, instead of 55, days before the general November election.
- Revise the procedures regarding the nomination and election of delegates to county conventions.

Independent Candidates

To qualify for the ballot, an independent candidate for statewide office would have to file a qualifying petition containing signatures equal in number to at least 1% of the votes cast statewide for all candidates for governor in the most recent gubernatorial election. (At present, this would mean about 24,000 signatures.) Petitions of statewide candidates also would need at least 100 signatures from voters in each of nine congressional districts, and no more than 35% of the signatures could be from any one congressional district.

Candidates for nonstatewide office would have to file a qualifying petition containing signatures equal in number to at least 2% of the votes cast for all candidates for governor in the district in the most recent gubernatorial election. Under any circumstances, at least 15 signatures would have to be submitted.

The deadline for filing a petition for the general November election would be 4 p.m. of the 110th day before the general election. For other elections, the deadline would be that established by statute or charter for filing a partisan petition or certificate of nomination for the office, or 90 days before the election, whichever was later. An independent candidate would have until 4 p.m. of the third day after the filing deadline to withdraw. Independent candidates for governor or president would have to file the names of their running mate at least 66 days prior to the election.

H.B. 4090 (3-1-88)

Petitions for State and Federal offices could be circulated on a countywide basis. All signatures on a qualifying petition would have to be obtained within 180 days immediately preceding the date of filing. County and municipal clerks would have to provide petition forms for their jurisdiction upon request, but only the county clerk would be required to supply forms for countywide circulation.

Existing provisions for the form and circulation of nominating petitions, petition certification and investigation, recordkeeping, candidate affidavits, and filing fees generally would apply to petitions filed by independent candidates.

During the same calendar year, a person could not be both an independent candidate and a political party candidate nor both an independent candidate and a write-in candidate.

New Parties/Minor Parties

The bill would increase the number of petition signatures a new party needs to get on the ballot from 1% of the votes received by the successful candidate for secretary of state at the last election, to 1% of the votes cast for all candidates for governor at the last election. (At present, this would mean an increase from 16,312 to 23,966 signatures.) The bill would prohibit a person from knowingly signing a petition to organize more than one new political party, signing a petition to organize a new party more than once, or signing a name other than his or her own.

New party petitions, which must at present be circulated on a municipal basis, could be circulated on a countywide basis. The filing deadline for new parties would be moved from three months before the primary election (early May) to 4 p.m. of the 110th day before the general election (third week in July).

The bill would make the date of the August primary the deadline by which minor parties must hold caucuses or conventions to select their candidates. (The caucus deadline is now 71 days before the primary, while the State convention deadline is 64 days before the primary.)

County Convention Delegates

The bill would require that a candidate for county convention delegate file an affidavit with the county clerk by 4 p.m. on the 17th day before the time designated for a primary election in the county. The affidavit would have to contain the candidate's name, date of birth, place of residence, and the political party for which he or she wished to be elected as a delegate. The bill would eliminate a provision in the Election Law that requires a candidate to file a petition with the signatures of at least 15 electors within the candidate's precinct.

A person elected as a delegate, or elected to file a delegate vacancy, would not be considered qualified to participate in a convention if, at the time of the convention, the person did not reside in the precinct in which he or she was elected. A delegate would not be considered disqualified, however, if he or she no longer resided in the precinct as a result of a division or rearrangement of the precinct as provided under the Election Law.

If a written complaint were received by the county clerk regarding a delegate's qualification to hold office based upon age, residency, death, or any other reason, the clerk would be required to check with the township or city clerk

of the township or city in which the delegate resided. The township or city clerk would have 48 hours to report back to the county clerk as to the complaint.

If the report showed that the delegate was not qualified to hold office, the county clerk would be required to certify to the chairperson of the county committee of the political party the name of the delegate. The county clerk would also be required to certify to the chairperson of a county committee the names of delegates who resigned, the delegates elected by a political party as delegates to the county convention, and all persons nominated as candidates of a party for county or State legislative office who were delegates at large at the State convention.

The bill would require the chairperson of a county committee to forward to the county board of election commissioners a certificate, showing the number of delegates to the county convention to which each precinct is entitled, by April 1 in even numbered years. Currently, the Election Law requires that the certificate be forwarded at least 90 days before the August primary (sometime around May 1). The bill provides that a precinct could have no more than 10 delegates.

Repeals

The bill would repeal a section that requires a new political party to receive three-tenths of 1% of the total number of votes cast at a primary election before it can have its name, party vignette, and candidates listed on the general election ballot (MCL 168.560b). This would subject new parties to the general provisions of the Election Law, which provide that if the principal candidate of a political party receives under 1% of the total vote of the successful candidate for the office of secretary of state, the party is prohibited from having the name of any candidate or a column for the party printed on the ballots at the next general election. A disqualified party can qualify again for the ballot by fulfilling the requirements for new parties.

The bill also would repeal a section that specifies that incumbents' names are to be listed first on a ballot (MCL 168.703b).

Effective Date

The bill would set an effective date of November 9, 1988, for: the section that would require major political parties to hold their State conventions at least 66, instead of 55, days before the general November election (Section 591); the section that would require new political party candidates to gather signatures equaling at least 1% of the number of votes cast for governor, instead of for secretary of state (Section 685); and, the section that would make the date of the August primary the deadline by which minor parties must hold caucuses or conventions to select their candidates (Section 686a). (The bill's effective date for these provisions would thus mean that they would not apply until the 1990 general election.)

(NOTE: A "major party" is one that had at least one candidate who polled 5% or more of the total vote cast for all candidates for secretary of state at the last election, and therefore selects its candidates by the direct primary method. A "minor party" is one that fails to meet this requirement, and therefore selects its candidates at caucuses or conventions. A "new party" is a minor party whose principal candidate failed to receive a vote equal to at least 1% of the votes cast for the successful candidate for secretary of state at the last election, and therefore must meet petition requirements in order to appear on the ballot.)

Statement of Severability

The bill contains a statement declaring that if any portion of the bill or its application to any person or circumstances were found invalid by a court, the invalidity would not affect the remaining portions of the bill that could be given effect without the invalid portion, "...and to this end this amendatory act is declared to be severable".

MCL 168.163 et al.

FISCAL IMPACT

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

SENATE COMMITTEE ACTION

The Senate Government Operations Committee adopted a substitute (S-8) to the bill as passed by the House. The substitute adds a number of sections to revise existing procedures regarding the nomination and election of delegates to county conventions. (See "County Convention Delegates" in the CONTENT portion of this analysis.)

Substitute S-8 contains language that would effectively delay until the 1990 election the applicability of the following requirements:

- That major political parties hold their State conventions at least 66, instead of 55, days before the general November election.
- That new political party candidates gather signatures equaling at least 1% of the number of votes cast for governor, instead of for secretary of state.
- That the date of the August primary be the deadline by which minor parties would have to hold caucuses or conventions to select candidates.

As passed by the House, independent candidates' filing deadline for the general November election would have been the ninth Tuesday before the primary (early June). Substitute S-8 would establish the deadline as 110 days before the election (the third week in July).

Substitute S-8 contains a statement of severability in the event that a portion of the bill were declared invalid by a court.

ARGUMENTS

Supporting Argument

The bill would provide a reasonable, balanced solution, consistent with the demands of the courts, to the problem of guaranteeing the political rights of citizens without cluttering election ballots with frivolous candidates. Michigan now lacks a statutory method of dealing with independent candidates and it is imperative that the Legislature provide one; otherwise, anyone who wants to be on the ballot will be. The creation of an orderly process would reduce the need to make last-minute changes to ballots, which has created printing problems and worked to deprive some absentee voters (overseas residents, including people in the military) of the right to vote. The bill's requirements are not onerous: they simply would require an independent candidate to show a modicum of community support before being placed on the general election ballot. A candidate for statewide office would need about 24,000 signatures; a candidate for congress 2,000 to 3,000; a candidate for State Senate, 1,200 to 1,600; and a candidate for the State House of Representatives about 400 to 550. Unlike candidates from the major parties, independents would go directly to the general election ballot and would not face primary contests. Given this, it would be sensible for the State to

impose requirements that helped to ensure that the candidates facing voters at the general election were viable candidates. The bill also would guard against "sore loser" independents, candidates who lose a primary as a partisan candidate and then become independents overnight.

Supporting Argument

The bill would treat new parties equally with independent candidates, by raising the number of petition signatures a party needs to qualify a slate of candidates for the general election ballot. Political parties are supposed to be coalitions of people who share common ideas and a measure of organization, and it makes no sense for them to face an easier road to the general election ballot than candidates without party affiliation. The current signature requirement is merely wreckage from the Supreme Court's demolition of a 1976 election law and was never designated by the Legislature as the only criterion for minor political parties to gain access to the general election ballot. The proposed new signature requirement is not unreasonable. In fact, the bill would make it easier for third parties to collect signatures, by extending the filing deadline (and thus providing more warm weather), by removing the requirement that petitions be signed by party members, and, significantly, by allowing the countywide circulation of petitions rather than requiring that petitions be circulated on a municipal basis.

Opposing Argument

What justification is there for raising the signature requirement for minor parties? No evidence has been presented that minor parties are cluttering the ballot or confusing the voters. There has been no demonstration that the candidates of minor parties are frivolous; in fact, most of the active minor parties in Michigan have long histories and represent serious ideas, even if those ideas are not shared by a large portion of the population. The Legislature needs to pass a bill dealing with independent candidates, but there is no compelling need to make changes to the ballot access requirements imposed on minor parties. To do so merely would invite lawsuits that the State would lose. The time and money that minor party activists must spend on collecting signatures are resources taken away from campaigning and spreading the party's message. Minor parties play an important role in political life by generating new or different ideas, some of which later gain wider acceptance or, at least, force the mainstream parties to inquire more deeply into their own beliefs and policies. By imposing an increase in signature requirements, this bill would work to restrict the dissemination of ideas.

Opposing Argument

Citizen participation in elections is depressingly low, and what is needed is more ballot access, not less. Since cluttered ballots have not been a problem even with direct access to the ballot for independents, why not experiment with a much lower signature requirement? Perhaps an influx of new candidates would increase voter interest and voter participation, which have been woefully low in recent elections. There is some evidence in fact that voter interest was stimulated by the crowded State Supreme Court race, since the percentage of voters who ignored the Supreme Court contest after voting for governor went down. The Legislature should be leaning in the direction of more democracy, more candidates, more choices for voters, not restricting the political process.

Response: While it is clearly desirable to have relatively simply access to the ballot to stimulate voter activity, this

desire must be weighed against the possible negative consequences. In effect, currently, Michigan has the most liberal ballot access in the nation because it has no law. There is a clear danger that without some type of regulation the State could find itself someday conducting an election with a bedsheet ballot, filled with candidates unrecognizable to most voters. Such an occurrence would not in any way best serve the interests of the voters or the principals of the democracy.

Opposing Argument

The bill would still leave inequities in the Election Law because it would not allow for a level playing field for all. Independent candidates would be required to collect signatures in a number equal to 1% of the total vote in a district for the office of governor. Meanwhile, the signature requirements for major party candidates for the State Senate and House of Representatives would remain at 1% of the total vote in a district cast for secretary of state, a lesser burden. Requiring a greater level of signatures for independent candidates would have the effect of discouraging independents, or directing them into the major party process.

Legislative Analyst: G. Towne
Fiscal Analyst: B. Bowerman

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.