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## ELECTION LAW CHANGES

**House Bill 5054 as enrolled  
Public Act 216 of 1999  
Sponsor: Rep. Mickey Mortimer**

**House Bill 5055 as enrolled  
Public Act 217 of 1999  
Sponsor: Rep. Marc Shulman**

**House Bill 5060 as enrolled  
Public Act 218 of 1999  
Sponsor: Rep. Michael Green**

**House Bill 5061 as enrolled  
Public Act 219 of 1999  
Sponsor: Rep. Mickey Mortimer**

**House Bill 5064 as enrolled  
Public Act 220 of 1999  
Sponsor: Rep. Michael Bishop**

**First Analysis (1-20-00)**

**House Committee: Constitutional Law and  
Ethics  
Senate Committee: Government  
Operations**

### ***THE APPARENT PROBLEM:***

A series of amendments to the Michigan Election Law have been proposed with the stated intention of improving the efficiency and safeguarding the integrity of the state's election system. A number of them address recent problems with the circulating and approving of petitions, both candidate petitions and petitions for ballot questions. For example, new standards have been proposed for determining the validity of petition signatures and to provide stiffer penalties for petition fraud. The legislation was introduced in conjunction with another package of bills amending the campaign finance system.

### ***THE CONTENT OF THE BILLS:***

Each of the bills would amend the Michigan Election Law (MCL 168.2 et al.).

House Bill 5054 would do the following.

- The bill would change current requirements that various lists of candidates names be forwarded to the secretary of state within "24 hours" after the conclusion of a state convention or of a county caucus to, instead, "not more than [one] business day" after.
- The deadline for withdrawing various nominations would be moved from 4 p.m. (Eastern standard time) of "the third day" after the close of a state convention to, instead, 4 p.m. of "the fourth business day" following the conclusion of the convention.
- The deadline for filing an affidavit with the secretary of state in cases where candidates for judicial office are nominated at political party conventions would be changed from "within 48 hours" after the close of the

House Bills 5054, 5055, 5060, 5061 and 5064 (1-20-00)

convention to, instead, “not more than [one] business day” after the conclusion of the convention.

- Each county, township, city, or village would be required to provide its clerk with a permanent postal mailing address and each county would have to provide its clerk with an electronic mailing address within 30 days after the bill was enacted, and each clerk would have to notify the secretary of state in writing of those addresses. In addition, the bill would require the clerk to notify the secretary of state not less than three business days after a change in either of these addresses.

- Under the bill, the legislative body of a city, village, or township would be prohibited from establishing, moving, or abolishing a polling place less than 60 days before an election unless it were necessary because the polling place had been damaged, destroyed, or rendered inaccessible or unusable as a polling place.

- The bill would exempt members of the armed services outside of the United States or their spouses who are qualified electors but not registered to vote from the requirement that an affidavit be filed when applying for an absent voter ballot or for registration. Currently, certain people -- civilian employees or members of the armed services outside of the United States or United States citizens residing in the District of Columbia or temporarily residing outside of the territorial limits of the United States -- who are qualified electors but not registered voters may apply for absentee ballots. They must include with their application for an absentee voter ballot or registration, an affidavit stating either (1) their qualifications as an elector at the time they left the United States or began residing in the District of Columbia and affirming that they haven't relinquished their citizenship or established residence for voting anywhere else; or (2) that they are the spouse or dependent of someone in the listed categories, that they meet the qualifications as an elector other than residency in Michigan, and that they haven't established a residence for voting in another place.

- The bill would specify when a petition for a recount must be filed in a special election for Congress, state senator, or state representative when the district in question was located wholly within one county. It would have to be filed not later than 48 hours after the certificate of determination was filed with the secretary of the board of state canvassers.

- Section 530 of the election law, which requires the secretary of state to convene an advisory committee by January 15 of each odd numbered year to review Michigan's voter registration system, would be

repealed. However, the secretary of state would be required to submit, by June 15 of each odd-numbered year, a report on the qualified voter file to each member of the committees in the House and Senate with primary responsibility for election matters. The report would have to include information on the efficiency and effectiveness of the voter file as a registration system and any recommendations for election law amendments to increase its efficiency and effectiveness.

- The bill would add a provision to allow the cancellation of elections by governing bodies of two cities and a village that are to be consolidated as a new city in 2000 if the new city is scheduled to elect officers on March 7, 2000 and the resolutions to cancel elections were adopted before January 14, 2000. If an election was canceled, terms of office that would otherwise have expired would be extended until the effective date of the consolidation.

House Bill 5055 would require a candidate to file an affidavit stating or certifying that as of that date all statements, reports, late filing fees, and fines required of the candidate or of any candidate committee organized to support the candidate's election under the Michigan Campaign Finance Act had been filed or paid. This would have to be done 1) when filing a nominating petition, filing fee, or affidavit of candidacy, or within one business day of being nominated by a political party convention or caucus; and 2) before assuming office by an elected candidate who had been issued a certificate of election. In the second case, the requirement would not apply to a candidate whose candidate committee did not receive or expend more than \$1,000 during the election cycle. The affidavit would include a statement that the candidate acknowledged that making a false statement was perjury punishable by a fine of up to \$1,000 or imprisonment for up to five years, or both. Failure to file the affidavit by an elected candidate would be a misdemeanor punishable by a fine of up to \$500 or imprisonment up to 93 days, or both.

House Bill 5060 contains the following provisions.

It would provide a chart that would determine the number of signatures of qualified and registered electors necessary for petitions based on the population of the district according to the most recent federal census. (This would replace the current requirements, which are based on a percentage of the number of votes cast by the party in question for secretary of state in the most recent election at which the secretary of state was

electd or a percentage of the total number of votes cast in that election for secretary of state.)

POPULATION	PARTISAN PETITION		NONPARTISAN PETITION		QUALIFYING PETITION	
	MIN	MAX	MIN	MAX	MIN	MAX
0 - 9,999	3	10	6	20	9	30
10,000 - 24,999	20	50	40	100	60	150
25,000 - 49,999	50	100	100	200	150	300
50,000 - 74,999	100	200	200	400	300	600
75,000 - 99,999	200	400	400	800	600	1,200
100,000 - 199,999	300	500	600	1,000	900	1,500
200,000 - 499,999	500	1,000	1,000	2,000	1,500	3,000
500,000 - 999,999	1,000	2,000	2,000	4,000	3,000	6,000
1,000,000 - 1,999,999	2,000	4,000	4,000	8,000	6,000	12,000
2,000,000 - 4,999,999	4,000	8,000	6,200	12,000	12,000	24,000
OVER 5 MILLION (STATEWIDE)	15,000	30,000	30,000	60,000	30,000	60,000

- The deadline for nominating petitions for judicial offices would be moved to 4 p.m. on the 14th Tuesday preceding the primary election rather than the 12th Tuesday. Incumbent judges can become candidates for re-election by filing affidavits of candidacy instead of petitions. The affidavit would be due 134 days prior to the primary rather than 120 days. Candidates who want to withdraw would have to provide a written notice of withdrawal no later than three days after the last day for filing nomination petitions or affidavits of candidacy (rather than not later than 4 p.m. on the third day after those deadlines).

- In the case of an incumbent judge who was appointed to fill a vacancy and entered upon the duties of office less than 137 days before the date of the primary election, but before the 14th Tuesday preceding the primary election, he or she could file the affidavit of candidacy not more than three days after entering upon the duties of office.

- The law requires nominating petitions for judicial office to clearly indicate whether the candidate is running for an existing judgeship for which the

incumbent is seeking election; an existing judgeship for which the incumbent is not seeking election; or a new judgeship. The bill would specify that in a primary and general election for two or more judgeships where more than one of those categories could be selected, a candidate would have to apply to the bureau of elections for a written statement of office designation to correspond to the judgeship sought. The office designation would be included in the heading of all nominating petitions. Petitions containing an improper office designation would be invalid.

- The secretary of state would be required to issue “an office designation of incumbent position” (an incumbency designation) for any judgeship for which the incumbent judge was eligible to seek re-election. If an incumbent judge did not file an affidavit of candidacy by the deadline, the secretary of state would notify all candidates for that office that a non-incumbent position existed. All nominating petitions circulated for the non-incumbent position subsequent to the deadline would bear an office designation of non-incumbent position. All signatures collected prior

to the affidavit of candidacy filing deadline could be filed with the non-incumbent nominating petitions.

- The election law contains requirements that an electronic voting system must meet. The bill would add the requirement that the system be able to allow for accumulation of vote totals from the precincts in a jurisdiction. The accumulation software would have to be certified by the secretary of state as meeting specifications prescribed by that office.

House Bill 5061 would amend the requirements for initiative and referendum petitions. More specifically, the bill contains the following provisions.

- Petitions to initiate legislation under Section 9 of Article II of the state constitution would have to be filed with the secretary of state at least 160 days before the election at which the proposed law was to be voted on. (Petitions to amend the state constitution must be filed at least 120 days before the election at which the proposed constitutional amendment is to be voted on and reportedly the current practice is to apply the 120-day standard to initiatives.) Referendum petitions under Section 9 would have to be filed not more than 90 days following the adjournment of the legislative session at which the law that was the subject of the referendum was enacted.

- Signatures on a petition to propose an amendment to the state constitution or a petition to initiate legislation collected prior to a November general election at which a governor was elected could not be filed after the date of that November general election.

- The board of state canvassers would have to assign a three- or four-digit number (instead of, as currently, a letter) for each question to be submitted on a statewide basis. The first two digits would be the last two digits of the year of the election, while the next digit(s) would indicate the chronological order in which the question was authorized to appear on the ballot.

- A question would be considered to be authorized to appear on the ballot as follows:

(1) A general revision of the state constitution proposed under Article XII, Section 3 of the constitution (the constitutional requirement that every 16th year the question of a general revision of the state constitution be submitted to the voters) would be considered to be the first question authorized to appear on the ballot for those elections at which a general revision of the constitution would appear on the ballot;

(2) An amendment to the constitution proposed under Article XII, Section 2 of the constitution (the constitutional provision for amendment by petition and vote of the electors), and legislation initiated, or a referendum invoked, under Article II, Section 9 of the constitution (the constitutional powers of initiative and referendum, under which the people have the power to propose law, and to enact and reject laws and the power to approve or reject laws enacted by the legislature) would be considered to be filed to appear on the ballot when the petition was filed with the secretary of state.

(3) An amendment to the constitution proposed under Article XII, Section 1 of the constitution (amendment by legislative proposal and vote of electors) would be considered to be authorized to appear on the ballot when the joint resolution proposing the amendment was filed with the secretary of state; and

(4) A referendum under Article IV, Section 34 of the constitution (bills passed by the legislature and approved by the governor that provide they will not become law unless approved by a majority of the electors voting on them) would be considered authorized to appear on the ballot when the legislation was filed with the secretary of state.

- The secretary of state would be prohibited from accepting further filings of a petition to supplement the original filing after the day on which the original petitions had been filed.

- The bill would specify that the qualified voter file (the statewide registration system) could be used to determine the validity of ballot proposal petition signatures and recall petition signatures by verifying the registration of signers. If the file indicated that, on the date the person signed the petition, the person was not registered to vote, there would be a rebuttable presumption that the signature was invalid. If the file indicated that on the day the person signed the petition, he or she was not registered to vote in the city or township designated on the petition, there would be a rebuttable presumption the signature was invalid.

- At least two business days before the board of state canvassers met to make a final determination on challenges to and sufficiency of a petition, the bureau of elections would have to make public its staff report concerning disposition of challenges filed against the petition. Beginning with the receipt of any document from local election officials, the board of state canvassers would have to make that document available to candidates and challengers on a daily basis.

- The state constitution requires that the power of referendum “must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted.” The constitution also says, “No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.” The bill would specify that a referendum would “properly have been invoked” once the board of state canvassers made its official declaration of the sufficiency of the referendum petition. The board would have to complete the canvass of a referendum petition within 60 days after the petition was filed with the secretary of state, except that one 15-day extension could be granted by the secretary of state if necessary to complete the canvass. (The bill would specify that a law that was the subject of a referendum continued to be effective until the referendum was properly invoked.)

- Currently, it is a misdemeanor for a person to sign a petition with a name other than his or her own; to make a false statement in a certificate on a petition; to sign a petition as a circulator if not a circulator; and to sign a name as a circulator other than his or her own. The bill would specify that such a misdemeanor would be punishable by a fine of not more than \$500 or imprisonment for not more than 93 days, or both.

- Further, if after a canvass and a hearing on a petition, the board of state canvassers determined that an individual knowingly and intentionally committed the violations listed above, the board could disqualify any obviously fraudulent signatures on a petition form without checking the signatures against local registration records and/or could disqualify from the ballot a candidate who committed, aided or abetted, or knowingly allowed the violation on a petition to nominate that candidate.

- If an individual committed the violations listed above and the affected petition sheet was filed, certain specified persons who knew of the violation and failed to report it to the secretary of state or other filing official, the attorney general, a law enforcement officer, or the county prosecutor would be guilty of a misdemeanor punishable by a fine of not more than \$500 or imprisonment for not more than one year, or both. The persons affected would be the petition circulator; the candidate, if the petition was a nominating petition; or the organization or other person sponsoring the petition drive, if the petition was for a ballot question or recall.

- If after a canvass and a hearing, the board of state canvassers determined that an individual had committed such a violation, the board could impose a fine of not more than \$500 on the sponsoring organization; charge the organization or other person sponsoring the petition drive for the costs of canvassing any petition form on which the violation occurred; disqualify an organization or other person from collecting signatures on a petition for up to four years; disqualify any obviously fraudulent signatures on a petition without checking the signatures against local registration records; and disqualify from the ballot a candidate who committed, aided or abetted, or knowingly allowed a violation on a petition to nominate that candidate.

- If an individual refused to comply with a subpoena of the state board of canvassers in an investigation of an alleged violation, the board could hold the canvass of the petitions in abeyance until the individual complied.

House Bill 5064 would allow the secretary of state to promulgate rules under the Administrative Procedures Act establishing uniform standards for state and local nominating, recall, and ballot question petition signatures. The standards could include, but wouldn't be limited to, standards for determining the validity of registration, the genuineness of the signature, or the property designation of the place of registration of a circulator or individual signing a petition.

The bill also would specify that the qualified voter file (the statewide registration system) could be used to determine the validity of nominating petition and recall petition signatures by verifying the registration of signers. If the file indicated that, on the date the person signed the petition, the person was not registered to vote, there would be a rebuttable presumption that the signature was invalid. If the file indicated that on the day the person signed the petition, he or she was not registered to vote in the city or township designated on the petition, there would be a rebuttable presumption the signature was invalid.

Further, the bill would specify that at least two business days before the board of state canvassers met to make a final determination on challenges to and sufficiency of a nominating petition, the board and the county clerk would have to make public its staff reports concerning disposition of challenges filed against the petition. The board and county clerk also would have to make any documents received from local election officials available to candidates and challengers on a daily basis.

**FISCAL IMPLICATIONS:**

The Senate Fiscal Agency has said that House Bills 5060 and 5064 would have no fiscal impact on state or local government; House Bills 5055 and 5061 would have indeterminate effects on state and local governments, depending on whether newly established fines were collected for violations or whether imprisonment was imposed, which would add costs; and House Bill 5054 and 5061 could add administrative expenses to the state from recounts and petition challenges. (Floor analyses of the bills dated 12-6-99 and 12-7-99)

**ARGUMENTS:****For:**

The bills would make a number of beneficial changes in Michigan election laws to improve its operations and protect its integrity, including the following.

-- Proponents say the package would close loopholes for ballot petition circulators and increase the penalties for petition drive signature fraud.

-- The bills would put into statute clear, reasonable deadlines for filing initiative petitions rather than relying on guidelines from state election officials. It should be noted that a law proposed by initiative petition goes to the legislature, which then has 40 days to act. If it is not enacted by the legislature, it goes on the ballot. The 160-day deadline takes this into account. (It adds 40 days to the 120-day deadline for constitutional amendment petitions.) Besides, if an initiative cannot go on the ballot at the upcoming election, it will be on the ballot for the one after.

-- The proposed legislation would require the secretary of state to develop a set of rules establishing uniform standards for determining the validity of signatures on petitions. Also, it would speed up the signature checking process by allowing the use of the statewide qualified voter file to compare signatures against. (There would be a rebuttable presumption that a signature was valid or invalid based on information in the QVF. Local records could be used to rebut the presumption.)

-- It would give number designations rather than letter designations to ballot questions, which would be more neutral approach. There would be no more "D is dumb" or "P is for parks" campaigns and no more jockeying for letter designations.

-- It would eliminate supplemental filings of signatures for ballot proposals. Supplemental filings make it hard for state elections officials to canvass signatures since they're constantly dealing with a moving target. It also makes it difficult for the opposition to challenge signatures.

-- New requirements establishing the number of signatures needed on petitions would be put in place based on population and not on the votes cast for secretary of state. This puts the two parties on an equal footing (since currently the number of signatures is based on the number of votes cast for a party's candidate for secretary of state, which might differ considerably). This is said to have been recommended by a committee of election clerks.

-- The package also would eliminate an outdated advisory committee on voter registration (which predates the new voter registration system that has been put in place since the enactment of the federal Motor/Voter law).

**Against:**

A number of concerns have been expressed about these bills, including the following.

-- House Bill 5061 will make it more difficult to exercise the rights of initiative and referendum. Moving up the deadline for filing petitions to 160 days before the election will give groups sponsoring legislation less time to gather signatures, which will particularly affect volunteer or grass roots groups without the means to use an army of paid circulators. Further, the bill would make it more difficult to stop a law from going into effect prior to holding a referendum on it. The law says that if a referendum "properly has been invoked" the law being put to a vote is suspended until after the election. That expression has been understood to refer to the filing of petition signatures with the secretary of state. The bill would say that a referendum properly had been invoked when the board of state canvassers made its official declaration of the sufficiency of the petitions. The board would have 60 days, with a 15-day extension permitted, to canvass the signatures. This would mean some controversial laws could take effect for a brief period of time and then be rejected by the voters. That would not be a healthy situation. Critics say this would particularly be a problem with laws passed at the very end of a legislative session, since the constitution requires the power of referendum to be "invoked" within 90 days following the final adjournment of the legislative session at which the law was enacted. That

would leave petition-gatherers about a month to gather signatures in the middle of winter.

-- Why eliminate the advisory committee, which the secretary of state is currently required to convene by January 15 of each odd-numbered year to review the voter registration system? This would appear to be a useful source of input and a valuable forum. The committee is supposed to be made up of political party representatives, local election officials, and voter registration organizations. It also must take public testimony and prepare a report for the legislature and governor.

-- Critics say that if the often criticized statewide qualified voter file is in good enough shape to be used in validating and invalidating signatures on petitions, perhaps this is the time to use it for no-reason absentee ballot voting or voting by mail. Those would be significant beneficial reforms to the election system.

-- No justification has been offered for the new signature requirements on petitions. How have these numbers been selected? Who is complaining about the current longstanding system?

Analyst: C. Couch

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.