

**PETITION SIGNATURE VOID IF MADE
MORE THAN 180 DAYS BEFORE DEADLINE**

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Senate Bill 776 as passed by the Senate
Sponsor: Sen. Dave Robertson
House Committee: Elections
Senate Committee: Elections and Government Reform
Complete to 3-15-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 776 would amend the Michigan Election Law to provide that a signature on a petition to amend the Constitution or initiate legislation could not be counted if the signature were made more than 180 days before the petition was filed with the Secretary of State. Currently, a signature made more than 180 days before a petition is filed is rebuttably presumed to be stale and void. The bill would delete that language.

Current practice

Contrary to popular opinion, the current rule is not that a group has 180 days to collect signatures but, rather, that signatures gathered more than 180 days before the petition is filed must be "rehabilitated" by rebutting the presumption that they are void or stale, in order to be counted toward the total. In order to do this, the group initiating the petition must obtain an affidavit from the signer or the signer's local clerk, in one of Michigan's 83 counties, 277 cities, 1,240 townships and 256 villages, that the signer was a qualified voter when making the signature and within the 180 day window, as discussed further below.

Because this practice may require the rehabilitation of many of the 318,895 signatures currently required in order to be included on the ballot, based on the votes cast in the 2014 gubernatorial election, 180 days serves as an effective cap. This bill would eliminate the possibility of rehabilitation and designate 180 days as the absolute cap.

A brief history of the rebuttable presumption of stale signatures

In 1973, the legislature enacted 1973 PA 112, which provided that "It shall be rebuttably presumed that the signature on a petition which proposes an amendment to the constitution or is to initiate legislation, is stale and void if it was made more than 180 days before the petition was filed with the office of the secretary of state."

In 1974, Attorney General Frank Kelley issued an opinion concluding that the 180-day provision was unconstitutional and that, because the requisite number of signatures is set by the number of votes cast in the previous gubernatorial election,¹ "signatures on petitions are to be considered valid so long as they are gathered during a single four-year term bounded on both sides by a gubernatorial election."²

¹ Michigan Constitution of 1963, Article 12, Section 2

² Report of the Michigan Attorney General <http://www.ag.state.mi.us/opinion/datafiles/1960s/op04104.pdf>

In 1986, Consumers Power Company and the Detroit Edison Company sought a declarative judgment that MCL 168.472a was not, in fact, unconstitutional. The Ingham Circuit Court sustained the constitutionality of the statute, and it was affirmed by the Court of Appeals and the Michigan Supreme Court later that year.³

Also in 1986, the Board of Canvassers found that in order to rebut the presumption of invalidity, the petitioner or proponent of the initiative petition must "(1) prov[e] that the person who executed the signature was properly registered to vote at the time the signature was executed and (2) prov[e] with an affidavit or certificate of the signer or appropriate clerk that the signer was registered to vote in Michigan within the '180 day window period' and further, that the presumption posed under MCL 168.472a could not be rebutted through the use of a random sampling process."⁴

Potential updates

In 2015, the Michigan Secretary of State (SOS) began looking into updating the rebuttal process by using the statewide Qualified Voter File (QVF), which lists all individuals who are registered to vote in Michigan, including their names, current addresses, address histories, and other identifying information. The QVF did not exist until 1998, and would significantly streamline the validation process. Responses to the SOS solicitation for comments on that issue may be relevant to the current question, and can be found here: https://www.michigan.gov/documents/sos/Comments_re_180_day_policy_-_Part_2_510315_7.pdf

Instead, this bill would do away with the rebuttal process and declare the signature void if made more than 180 days before the petition is filed with the Secretary of State.

FISCAL IMPACT:

The bill would not have a fiscal impact on the state or local units of government.

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

³ Consumers Power Co v Attorney General, 426 Mich 1, 392 NW2d 513 (1986)

⁴ Solicitation for Comments from the Michigan Department of State

https://www.michigan.gov/documents/sos/Announcement_-_Comments_re_180_days_508443_7.pdf