

Legislative Analysis



ELECTION-RELATED FORGERY; SIGNING A PETITION WITH MULTIPLE NAMES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5992 (H-3) as reported from committee
Sponsor: Rep. Steve Marino

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

House Bill 6107 as reported from committee
Sponsor: Rep. Kimberly LaSata

House Bill 6108 as reported from committee
Sponsor: Rep. Jim Lilly

Committee: Elections and Ethics
Complete to 9-24-18

SUMMARY:

House Bill 5992 would add a section to the Michigan Election Law to provide that, except as otherwise provided in the Law, a person who knowingly does either of the following for any purpose under the Election Law would be guilty of forgery:

- Makes, files, or otherwise publishes a false document with the intent to defraud.
- Makes, files, or otherwise publishes a document that contains false signatures with the intent to defraud.

Proposed MCL 168.933a

House Bill 6107 would amend four sections of the Michigan Election Law to prohibit individuals from certain actions regarding the signing of nominating petitions, qualifying petitions, petitions to form a new political party, and recall petitions. It would also add a section prohibiting those same actions regarding petitions. (The five document types will be referred to collectively as *petitions* in this summary.)

Under the bill, any of the actions below would be a misdemeanor, punishable by a fine of up to \$500 or imprisonment for up to 93 days, or both:

- Signing a petition with a name other than one's own.
- Making a false statement in a certificate on a petition.
- If not a circulator, signing a petition as a circulator.
- Signing as a circulator a name other than one's own.

The bill would also make the action of signing a petition with multiple names a felony.

If the Board of State Canvassers determined that a person knowingly and intentionally signed a nominating petition with multiple names, it could disqualify signatures and/or candidates who committed, aided, abetted, or knowingly allowed the violation. Certain individuals knowing of the violation and failing to report it would also be guilty of a misdemeanor punishable by a fine of up to \$500 or imprisonment for up to 93 days, or both.

MCL 168.544c et al., and proposed MCL 168.482a

House Bill 6108 would incorporate the signing of any of the five types of petitions with multiple names into the sentencing guidelines chapter in the Code of Criminal Procedure. Under the bill, signing multiple names on a petition, nominating petition, qualifying petition, petition to form a new political party, or recall petition would be a Class E felony offense against the public trust punishable by a statutory maximum of 5 years.

MCL 777.11d

House Bill 6108 is tie-barred to House Bill 6107, meaning that it could not take effect unless HB 6107 were also enacted.

DISCUSSION:

According to committee testimony, the bills were initiated in response to a recent Michigan Supreme Court case—*People v Pinkney*¹—in which the court held that the current Election Law forgery offense is an inoperative penalty provision that does not create a substantive offense of election law forgery. In other words, the court held that, while the Law currently includes a penalty for forgery, it does not define the offense itself.

Accordingly, the bill sponsors worked with the Secretary of State's office to define the offense in HB 5992, and to address other, related perceived holes in the Election Law, in HBs 6107 and 6108.

FISCAL IMPACT:

House Bill 5992 would have an indeterminate fiscal impact on the state and on local units of government that would depend on the number of individuals convicted of forgery under its provisions. According to Section 937 of the Michigan Election Law, any person found guilty of forgery will be punished by a fine of up to \$1,000 or by imprisonment for up to 5 years, or both, in the discretion of the court. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 6107 would have an indeterminate fiscal impact on the state and on local units of government. The number of persons that might be convicted under provisions of the bill is unknown. New felony convictions would result in increased costs related to state prisons and state probation/parole supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation

¹ *People v Pinkney*, 501 Mich 259 (2018); https://www.heraldtribune.com/news/local/state-supreme-court-tosses-pinkney-forgery-conviction/article_ac5f676e-4fca-5bce-b0af-381a45d0e253.html

supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 6108 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

A representative of the Secretary of State's office testified in support of the bills. (6-7-18)

Representatives of the Criminal Division of the Michigan Attorney General's office testified in support of HB 5992. (5-17-18)

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Robin Risko

■ 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.