

**House Bill 4522 (Substitute H-1)
First Analysis (5-8-03)**

**Sponsor: Rep. Sal Rocca
Committee: Local Government and
Urban Policy**

THE APPARENT PROBLEM:

Currently under Michigan election law, candidates who run for political office file a post-election campaign finance statement 30 days after the election. (The post-election statement is not required if a candidate's committee spent less than \$1,000 during the campaign, and a reporting waiver has been granted.) The Secretary of State "Elections in Michigan" website at www.michigan.gov/sos specifies that "the candidate committee of a candidate whose name appears on a ballot for an election must file a pre-election campaign statement *and* a post-election campaign statement for each election in which the candidate seeks nomination or election."

In addition to the post-election campaign finance statement which all candidates must file, most (but not all) winners of elections must also file a post-election sworn statement (sometimes called an affidavit) to attest that all of their committee reports have been properly filed. Then, after the post-election sworn statement is filed, the successful candidate can receive his or her properly certified certificate of election.

However, not all candidates currently file their post-election sworn statements, because of a lack of clarity in the election laws. When Public Act 217 of 1999 was enacted, amendments failed to specify where certain successful candidates for local offices were supposed to file their post-election sworn statements. The oversight or 'loophole' has caused confusion for local election officials.

Customarily, elections are certified by either a county board of canvassers or the state board of canvassers, working together with the guidance of a county clerk or the secretary of state, respectively. In these circumstances, the law specifies that the successful candidate must file a post-election sworn statement with either the county clerk or the secretary of state, depending upon which of these officials would certify the candidate's win by issuing his or her certificate of election.

In an apparent inconsistency under the election law, some successful candidates for local office—those who win elections to city and township posts—do not appear to be required to file the post-election sworn statement. The law specifies that "if a city or township has more than five precincts, then the board of city or township canvassers shall canvass votes for city or township officers and ballot questions." Consequently, most cities and townships of any size do not rely upon the county or state election officials to canvass their elections. Neither do they depend upon the county clerk or the secretary of state to certify their candidates' wins by issuing the successful candidates their certificates of election. However, although larger towns, cities, and townships canvass their own elections through their local board of canvassers, the law does not explicitly authorize the local city or township clerks to issue successful candidates their certificates of election. As a result, the successful candidates who run for offices within these jurisdictions appear under the law not to be required to file post-election sworn statements, and there have been reports that some have not done so.

In order to ensure that all successful candidates file post-election sworn statements, and to avoid confusion about where the statement should be filed, legislation has been proposed that would standardize the site for filing the statement, locating the site where the successful candidate files his campaign finance reports. (See *BACKGROUND INFORMATION* below.)

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law to require that a candidate file his or her post-election sworn statement with the same official with whom the candidate's committee campaign statements were filed, as specified under the Michigan Campaign Finance Act.

Under the current law, the sworn statement (called an affidavit) must 1) be filed on a form prescribed by the secretary of state; 2) be filed before the elected candidate assumes office; 3) attest that all statements, reports, late filing fees, and fines have been paid by the candidate and also the candidate committee; 4) acknowledge, with the candidate's signature, that a false statement in the affidavit is punishable by a fine of not more than \$1,000, or imprisonment for not more than 5 years, or both; and 5) also acknowledge that a false statement is perjury. The law also specifies that failure to file the affidavit is a misdemeanor punishable by a fine of not more than \$500 or imprisonment for up to 93 days, or both. Under the bill, all of these provisions would be retained, and all would apply to the post-election statement.

MCL 168.826, 168.845, 168.933, and 168.848

BACKGROUND INFORMATION:

The Campaign Finance Act specifies with whom candidates and candidate committees must file their reports at MCL 169.236. The act requires:

- Candidates for state elective office or judicial office to file with the secretary of state, and requires the secretary of state to send a copy to the clerk of the county of residence for the candidate;
- Statewide ballot question committees to file with the secretary of state, and the clerk of the most populous county in the state;
- Ballot question committees to be voted upon in more than one county (but not statewide), to file with the clerk of the county in which the greatest number of registered voters eligible to votes resides;
- Ballot question committees within a single county to file with the clerk of that county;
- A candidate elected to office in more than one county (but not statewide) to file the statement with the clerk of the county in which the greatest number of registered voters eligible to vote resides;
- A candidate elected to office within one county, to file only with the clerk of that county; and,
- A candidate not covered by the directions noted above, to file with the secretary of state.

FISCAL IMPLICATIONS:

Fiscal information is not available at present.

ARGUMENTS:

For:

All successful candidates should file a post-election sworn statement before being issued their properly certified certificate of election. That way, election officials and electors can know that their newly elected public servants publicly attest that all required statements, reports, late filing fees, and fines have been paid by the recent candidate and his or her candidate committee. In order to avoid confusion, the same election officials who receive a candidate's campaign finance reports should also receive the candidate's post-election sworn statement that confirms the accuracy and timeliness of those reports.

POSITIONS:

There are no positions at present.

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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.