

ELECTED COUNTY EXECUTIVE VACANCY

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House Bill 4068 as introduced

Sponsor: Rep. Jeff Mayes

Committee: Intergovernmental, Urban, and Regional Affairs

First Analysis (3-28-07)

BRIEF SUMMARY: The bill would revise the procedure for filling a vacancy in the office of county executive, in the event of a death or resignation, bringing it into conformance with the Michigan Election Law.

FISCAL IMPACT: The bill would have no major impact on State or local revenues.

THE APPARENT PROBLEM:

Three counties in Michigan are administered by elected county executives: Wayne, Oakland, and Bay. Two of those counties, Oakland and Bay, are organized under the Optional Unified Form of County Government Act, known as Public Act 139 of 1973. (In contrast, Wayne County, a charter county, is organized under a different law.)

Elected county executives run in partisan general elections (that is, November elections in even-numbered years), and serve four-year terms concurrent with the terms of other countywide elected officials such as the register of deeds, county clerk, county treasurer, sheriff, drain commissioner, and prosecuting attorney. When there is a vacancy in any of those offices, the position is filled by the county board of commissioners, who appoint a person to hold the office for the remainder of the unexpired term, if the next general election is less than 182 days away. If the next general election is more than 182 days away, the appointed replacement only serves until a new county officer is elected at that general election. These elections are governed by the Michigan Election Law (MCL 168.209), which was amended in 1990 to allow for these appointments in this manner.

Unlike other countywide elected officials, the election and appointment of elected county executives is not governed by the Michigan Election Law. Instead, Public Act 139 allows one of two approaches for the county board of commissioners to fill vacancies: if there is a deputy county executive, then that deputy can be appointed to fill the vacancy for the duration of the unexpired term (the approach used in Oakland County), or the county board of commissioners can appoint a replacement who serves only until the next November general election (regardless of how soon it is to be held after the vacancy occurs), at which time an executive is elected to serve out the remainder of the unexpired term (the approach used in Bay County).

Legislation has been proposed which would make uniform the manner in which a county board of commissioners fills a vacancy for any four-year countywide elected official, bringing Public Act 139 (MCL 45.559) into conformity with the Michigan Election Law

(MCL 168.209). Under the change proposed, if a Bay County executive resigned or died while in office, and that vacancy was filled inside of 182 days before a general November election, then the commissioners would appoint a replacement to hold the office for the remainder of the unexpired term. If the general election was scheduled more than 182 days after the vacancy, the appointee would serve until a successor was elected at that general election, and then that successor would serve out the rest of the term.

THE CONTENT OF THE BILL:

The bill would amend Public Act 139 of 1973, which describes the powers of county executives, in order to revise the procedure for filling a vacancy in the office of county executive, in the event of a death or resignation.

Currently under the law, a county executive is elected to office on a partisan basis for a four-year term in the same election as, and concurrent with, the terms of the county prosecuting attorney, county clerk, county register of deeds, county treasurer, county sheriff, elected county auditors, and county drain commissioner. House Bill 4068 would retain these provisions.

Current law specifies that if the office of elected county executive becomes vacant due to resignation or death, the board of county commissioners fills the vacancy by appointing a replacement who serves until the next general election. At that general election, a new county executive is elected, and serves a term equal to the balance of the term of the county executive who resigned or died. (A "general election" is the election held in November of even-numbered years.)

House Bill 4068 would modify these provisions, allowing the appointee to fill the vacancy for the remainder of the unexpired term. However, if a general election is to be held more than 182 days (that is, more than about six months) after the vacancy occurred, and it is not the general election at which a successor in office would be elected if there were no vacancy, then the appointee would hold the office only until a successor was elected and qualified at that next general election, with the elected successor holding office for the remainder of the unexpired term.

MCL 45.559

ARGUMENTS:

For:

Currently under Michigan's Election Law, if a vacancy in a countywide office is filled inside of 182 days before a general November election, then the new officeholder holds the office for the remainder of the unexpired term. The result is that counties can save money, since they do not have to hold additional and costly special elections after a vacancy is filled by the elected county commissioners. There is, however, one four-year countywide office that is *not* covered by this protocol: elected county executive. If there is a vacancy in the county executive position inside of 182 days before a general

November election, then the newly appointed county executive must run in a special mid-term election. This bill would provide for a uniform approach to filling vacancies when countywide officials leave their positions. If the new protocol were ever utilized, a Bay County spokesman estimates it would save the county between \$40,000 and \$50,000 in reduced election costs.

POSITIONS:

The Bay County Board of Commissioners supports the bill. (3-28-07)

The Michigan Association of Counties supports the bill. (3-28-07)

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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.