

## MODIFY PETITION REQUIREMENTS

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

**House Joint Resolution P and House Bill 5571 as introduced**  
**Sponsor: Rep. Penelope Tsernoglou**

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

**House Bill 5572 as introduced**  
**Sponsor: Rep. Donovan McKinney**

**House Bill 5573 as introduced**  
**Sponsor: Rep. Jason Morgan**

**House Bill 5575 as introduced**  
**Sponsor: Rep. Jasper Martus**

**House Bill 5574 as introduced**  
**Sponsor: Rep. Joey Andrews**

**House Bill 5576 as introduced**  
**Sponsor: Rep. Jaime Churches**

**Committee: Elections**  
**Revised 6-4-24**

## SUMMARY:

House Joint Resolution P would amend the state constitution to modify the deadline for filing a petition to amend the state constitution and the deadline by which a determination must be made on whether the petition has collected a sufficient number of valid signatures.

House Bills 5571 to 5576 would amend the Michigan Election Law to allow the Board of State Canvassers (BSC) to use a statistical random sampling methodology when reviewing petition signatures for authenticity, modify the deadlines for when a petition must be filed, and make other changes concerning the petition review process.

House Bills 5571, 5572, 5573, and 5576 are tie-barred together, meaning that none of the bills can take effect unless all of them are enacted. House Bills 5571 and 5573 are additionally tie-barred to HB 5575. House Bill 5575 is tie-barred to HB 5571, HB 5573, and House Joint Resolution P. House Bill 5574 is tie-barred to HJR P.

**House Joint Resolution P** would amend the state constitution to modify the deadline for filing a petition for a constitutional amendment.

Article XII (Amendment and Revision) of the Michigan Constitution of 1963 allows constitutional amendments to be proposed through a petition filed by registered Michigan electors and sets forth the requirements for the petition process. Section 2 of Article XII currently requires petitions to be filed at least 120 days before the election at which the proposed amendment is to be voted on, and an official announcement<sup>1</sup> on whether the petition has collected enough valid signatures must be made at least 60 days before the election. Approved petitions must be placed on the ballot at the next general election that occurs at least 120 days after the petition was filed.

HJR P would require petitions to be filed at least 160, rather than 120, days before the election, and an official announcement after a review of the signatures would have to be made at least

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<sup>1</sup> The Michigan Election Law provides that the Board of State Canvassers is responsible for determining and announcing the validity and sufficiency of signatures on the petition.

65 days before the election. The amendment would have to be placed on the ballot at the next general election that takes place at least 160 days after the petition was filed.

If the joint resolution is adopted by a two-thirds majority of each house, the constitutional amendment would appear on the ballot at the next general election.

**House Bill 5571** would allow the Board of State Canvassers to use random sampling when reviewing a petition for a ballot proposal to verify that it is properly formatted and to require substantial, rather than strict, compliance with formatting requirements. The bill would also make other changes related to the petition review process, such as allowing the BSC to disqualify obviously fraudulent signatures under certain conditions and disqualify candidates who do not comply with an investigation into an alleged violation of the Michigan Election Law's prohibition against fraudulent signatures.

#### Substantial compliance

Currently, petitions must be in strict compliance with the Michigan Election Law's provided format. House Bill 5571 would instead provide that nominating petitions or the required headings for petitions proposing a constitutional amendment, initiation of legislation, or referendum would have to be in *substantially* the same form as provided under law.

#### Random sampling and signature review

Petition signatures are invalid under the Michigan Election Law if a circulator uses a false address or provides any false information on the certificate of a circulator, a petition is not in the proper form, or a signature was not signed in the circulator's presence. House Bill 5571 would allow the BSC to approve and use a statistical random sampling methodology to determine whether a petition for a ballot proposal complies with these requirements.

If the BSC determines after a canvass and hearing on a nominating petition that an individual has signed a petition with a name other than their own, made a false statement in a certificate on a petition, falsely signed a petition as a circulator, signed a false name as a circulator, or signed a petition with multiple names, the BSC can disqualify obviously fraudulent signatures on a petition form on which the violation occurred without checking the signatures against local registration records. (Other penalties also apply, depending on the violation and the extent to which an individual knew about it.)

House Bill 5571 would provide that the BSC would also not be required to check the signatures against the Qualified Voter File (QVF) before disqualifying them.

If an individual refuses to comply with a BSC subpoena in an investigation into an alleged violation of the offenses described above, or the failure to report such a violation, the BSC can currently suspend its review of the petition until the individual complies. House Bill 5571 would also allow the BSC to disqualify the candidate on the petition if the individual does not comply by the deadline to complete the canvass.

#### Petition circulation

To reflect a 2022 Michigan Supreme Court ruling that struck down portions of the Michigan Election Law pertaining to petition circulation, the bill would remove requirements that ballot proposal petitions be circulated on a congressional district form and that each paid circulator

must file a signed affidavit with the secretary of state (SOS) indicating that they are a paid circulator (see **Background**, below).

MCL 168.482 et seq.

**House Bill 5572** would allow the BSC to use random sampling when reviewing nominating petitions and would make other modifications to the nominating petition review process.

#### Random sampling and signature review

The BSC would be allowed to approve and use a statistical random sampling methodology to determine the validity and sufficiency of signatures and petition form requirements on nominating petitions. If a complaint questioning the validity of a signature is received within seven days after the random sample is made available to the public that otherwise meets the Michigan Election Law's requirements,<sup>2</sup> the BSC would be required to act on the complaint.

If the BSC determines that a signature on a nominating petition is obviously fraudulent, it could disqualify the signature without checking it against local records or the QVF, and it would have to refer disqualified signatures to the Department of Attorney General for further investigation.

If the BSC is unable to verify the authenticity of a signature on a petition, it would no longer be required to forward the petition to a city or township clerk but would retain the ability to require local clerks to cooperate in determining the validity of doubtful signatures by checking them against registration records in an expeditious and proper manner. House Bill 5572 would specify that those registration records include the QVF.

The bill would also remove a provision that currently allows the BSC to consider deficiencies found on the face of a nominating petition that do not require verification against voter registration data files before making a final determination.

#### Additional provisions

The Michigan Election Law requires the BSC to make an official declaration of the sufficiency or insufficiency of a nominating petition at least 60 days before the primary election at which candidates are to be nominated. However, if the BSC holds a hearing to investigate a complaint or otherwise investigate a petition, it currently must complete its review at least nine weeks before the primary election at which the affected candidates are to be nominated. House Bill 5572 would remove the nine-week deadline, although the 60-day deadline would still apply.

Finally, the bill would no longer require the notification that the SOS must provide to the BSC when a nominating petition is filed to be sent by first-class mail.

MCL 168.552

**House Bill 5573** would allow the BSC to use random sampling when reviewing petitions for a ballot proposal and certain nominating petitions. The bill would also modify the SOS's responsibilities for publicizing information about a ballot proposal.

#### Random sampling and signature review

After notification from the SOS that a petition has been filed for a constitutional amendment, initiated legislation, or a referendum, the BSC must determine if the petition has been signed

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<sup>2</sup> Complaints must specify the allegedly invalid signatures and the petition for which the complaint applies.

by a sufficient number of qualified and registered electors. House Bill 5573 would allow the BSC to approve and use statistical random sampling to determine the validity and sufficiency of signatures and petition form requirements for these petitions. The BSC would have to determine that a petition substantially, rather than strictly, complies with the Michigan Election Law's formatting requirements. After its review, the BSC would have to refer any obviously fraudulent signatures to the Department of Attorney General for further investigation.

The BSC could also approve and use random sampling when reviewing qualifying petitions (a nominating petition for a candidate to appear on a ballot without a party affiliation).

#### Additional provisions

Under the bill, the SOS would no longer be required to send copies of the 100-word statement of purpose for a ballot proposal to the daily and weekly newspapers published in Michigan with the request that they publish the proposed amendment or other question as widely as possible. Instead, the SOS would have to post an approved statement of purpose on the Department of State's website.

The bill would also remove references to the 15% limitation on the percentage of signatures that may be counted from one congressional district that was ruled to be unconstitutional by the Michigan Supreme Court (See **Background**, below).

MCL 168.476 et seq.

**House Bill 5574** would amend the deadline by which the SOS must certify a proposed constitutional amendment or other special question for the ballot and would modify the procedure by which local clerks are provided with the required related materials.

If a proposed constitutional amendment or other special question is approved to be placed on the ballot, the SOS must certify the 100-word statement of purpose and the form in which the amendment or question is to be printed on the ballot to each county clerk at least 60 days before the election. The SOS then must provide each county clerk with two copies of the text of the amendment or question and two copies of each statement of purpose for every voting precinct in the county, and county clerks must include the copies of the statement to the township and city clerks in that county when providing supplies for the election.

Instead, House Bill 5574 would require the SOS to complete its certification at least 65 days before the election,<sup>3</sup> and the SOS would have to provide the required documents directly to county, city, and township clerks. Clerks would each receive one copy of the text of the amendment or special question and one copy of each statement of purpose for each voting precinct in their respective jurisdictions, which the SOS would have to provide as soon as possible after the BSC certifies the proposal for the ballot.

Additionally, the bill would remove a requirement that the notification the SOS provides to the BSC immediately after receiving a petition for a constitutional amendment, initiated legislation, or referendum must be by first-class mail.

MCL 168.475 and 168.480

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<sup>3</sup> This change would match the deadline proposed by House Joint Resolution P.

**House Bill 5575** would extend the deadline to file an initiative petition with the SOS to 200 days before an election and would make complementary changes to the deadline to file a petition for a constitutional amendment to reflect a change that would be made to the state constitution by House Joint Resolution P. The bill would also remove an unenforceable requirement that no more than 15% of petition signatures for a ballot proposal can come from a single congressional district.

#### Petition filing deadlines

The bill would extend the deadline for initiative petitions to be filed with the SOS from 160 days to 200 days before the election at which the proposed law would appear on the ballot if the legislature rejects or does not enact it. Additionally, it would require petitions proposing a constitutional amendment to be filed with the SOS at least 160, rather than 120, days before the election at which the proposed amendment is to be voted on.<sup>4</sup> (The deadline for filing a petition for a referendum, which is 90 days after the final adjournment of the legislative session at which the applicable law was enacted, would not be changed.)

#### 15% limitation

Currently, the Michigan Election Law limits the percentage of signatures that may be counted from one congressional district to 15% of the total number of signatures on a petition for a ballot proposal. Submitted petition signatures must be sorted by congressional district, and the person filing the petition must provide the SOS with a good-faith estimate of the number of signatures from each district. Signatures from a district in excess of 15% are invalid and cannot be counted. However, the Michigan Supreme Court ruled that the 15% geographic requirement was unconstitutional.

House Bill 5575 would eliminate these requirements and instead require the person filing the petition to state in writing that they are submitting at least the minimum number of required signatures and they have made a good-faith effort to sort the petitions based on the number of signatures on each petition sheet.

MCL 168.471

**House Bill 5576** would allow the BSC to approve and use a statistical random sampling methodology to determine the validity and sufficiency of signatures and petition form requirements on petitions to form a new political party.

MCL 168.685

## **BACKGROUND:**

#### Ballot proposals: constitutional amendments, initiative petitions, and referenda

Under the Michigan Constitution of 1963, a proposed amendment to the constitution must be accompanied by the signatures of at least 10% of the number of votes cast for all candidates in the last gubernatorial election in order to go before the electorate. These signatures must be collected within 180 days, submitted to the SOS at least 120 days before the election, and verified as valid by the Board of State Canvassers.

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<sup>4</sup> House Joint Resolution P would make this change to the state constitution.

An initiative petition must be accompanied by the signatures of at least 8% of the number of votes cast in the last gubernatorial election, collected within 180 days and submitted 160 days before the election. The legislature must either enact or reject the law within 40 session days after receiving the petition. If the legislature enacts the initiative, it becomes law. If the legislature rejects or does not act on the initiative, it goes before the voters at the next upcoming general election.<sup>5</sup>

A petition for a referendum on a law enacted by the legislature must be accompanied by the signatures of at least 5% of the number of votes cast at the last gubernatorial election, submitted within 90 days of enactment.

(In the 2022 gubernatorial race, 4,461,972 votes were cast, meaning that a constitutional amendment initiative requires 446,198 signatures, an initiative petition requires 356,958 signatures, and a referendum petition requires 223,099 signatures.<sup>6</sup>)

Generally speaking, the BSC must make an official declaration of sufficiency for a petition for a ballot proposal at least two months before the election at which the proposal is to be placed on the ballot. (If the petition is for an initiated law, the BSC must make its decision at least 100 days before the election.)

#### Nominating petitions: partisan, nonpartisan, and qualifying petitions

The signature minimums and maximums for partisan, nonpartisan, and qualifying petitions is based on the population of the district in which the office is located.<sup>7</sup> Some candidates may file a \$100 fee instead of a nominating petition.

Petitions must be submitted before the fifteenth Tuesday before the August primary (for the 2024 election, this deadline is April 23), and the BSC must make an official declaration of sufficiency for a petition it receives at least 60 days before the primary election at which the candidate is to be up for nomination.

#### Recent court activity

In 2022, the Michigan Supreme Court struck down two changes made to the Michigan Election Law by 2018 PA 608.<sup>8</sup> In *League of Women Voters of Michigan v Secretary of State*, the court ruled that a 15% limitation on signatures on a petition for a ballot proposal that can come from a single congressional district and a pre-circulation affidavit requirement for paid signature gatherers violated the state constitution by disenfranchising certain voters based on where they live and by adding undue burdens to petition circulation.<sup>9</sup>

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<sup>5</sup> The legislature also has the option of proposing a different law on the same subject (an “alternative measure”), which, if approved by roll call vote, would appear on the ballot alongside the initiative petition. In this circumstance, if both measures are approved by the voters, the one with the most votes would become law.

<sup>6</sup> [https://www.michigan.gov/sos/-/media/Project/Websites/sos/25delrio/SOS\\_ED105\\_County\\_Pet\\_Form\\_77019\\_7.pdf#page=7](https://www.michigan.gov/sos/-/media/Project/Websites/sos/25delrio/SOS_ED105_County_Pet_Form_77019_7.pdf#page=7).

<sup>7</sup> See: [https://www.legislature.mi.gov/\(S\(avqqolgbexeqv23xjlbqx3e\)\)/documents/mcl/pdf/mcl-168-544f.pdf](https://www.legislature.mi.gov/(S(avqqolgbexeqv23xjlbqx3e))/documents/mcl/pdf/mcl-168-544f.pdf).

<sup>8</sup> For a summary of the 2018 changes, see: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6595-C445C2B1.pdf>.

<sup>9</sup> The full decision can be found here: <https://www.courts.michigan.gov/48fd9f/siteassets/case-documents/briefs/msc/2021-2022/163711/lwv-op.pdf>.

### Signature fraud

In 2022, the Bureau of Elections found evidence of widespread signature fraud on nominating petitions filed by ten different candidates.<sup>10</sup> As a result, the BSC deadlocked on the decision to certify five gubernatorial candidates for the Republican primary election due to concerns about forged signatures, and the candidates were disqualified from the ballot.<sup>11</sup>

### Random sampling

The Board of State Canvassers and the Bureau of Elections currently use a random sampling process for initiative petitions, referendum petitions, and petitions for a constitutional amendment; they have also begun to do so for certain nominating petitions.<sup>12</sup> While these procedures have been in place since 1980, the BSC does not have explicit statutory authority to use random sampling when canvassing petitions.

## **FISCAL IMPACT:**

The bills would substantially reduce the number of staff hours needed to evaluate petitions. The Department of State may realize cost savings if the number of hours saved is enough to reduce compensation for overtime wages or the overall number of staff employees. The potential total reduction of paid staff costs is not yet known.

The bills would allow the state Board of Canvassers to submit “obviously fraudulent signatures” to the Department of Attorney General (AG) for investigation. The number of signatures submitted for investigation as a result of the bill would likely not result in any additional costs to the AG. However, if existing AG staff is insufficient to adequately investigate and prosecute all signature fraud, additional state costs of approximately \$100,000 annually for any additional support staff FTE position and \$200,000 annually for any additional attorney FTE position may be required.

There would be no fiscal impact on 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.

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<sup>10</sup> <https://drive.google.com/file/d/1ORWj9ZPUBV9kjuLTgDj9GkV8a-qv3ED6/view>.

<sup>11</sup> <https://www.bridgemi.com/michigan-government/board-denies-craig-johnson-others-spots-michigan-ballot-lawsuits-next>.

<sup>12</sup> For an explanation of the BSC’s current random sampling procedures, see: <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Announcements/Sampling-procedure.pdf>.