

Legislative Analysis



MODIFY PETITION REQUIREMENTS

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

House Bill 5571 (proposed substitute H-4)
Sponsor: Rep. Penelope Tsernoglou

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

House Bill 5572 as reported from committee
Sponsor: Rep. Donovan McKinney

House Bill 5573 (proposed substitute H-4)
Sponsor: Rep. Jason Morgan

House Bill 5575 (H-3) as reported
Sponsor: Rep. Jasper R. Martus

House Bill 5574 (H-3) as reported
Sponsor: Rep. Joey Andrews

House Bill 5576 (H-2) as reported
Sponsor: Rep. Jaime Churches

Committee: Elections
Complete to 6-26-24

SUMMARY:

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 filing and review process.

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 modify those formatting requirements and 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 and petition form

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 *substantially* the same form as provided under law, and the bill would provide the required elements for those petition forms as described below. The secretary of state (SOS) would have to create a BSC-approved petition form to be used by petitioners, and the Board of Elections (BOE) would have to issue and publish a digitally editable template of the form.

Generally, text on a petition form would have to be printed in at least 8-point type. The summary of purpose and the required warning that an individual who signs the petition multiple times, signs the petition with a false name or date, or signs the petition without being registered to vote in Michigan is in violation of the Michigan Election Law would have to be in at least 12-point type. House Bill 5571 would still require a petition form to provide check boxes and

statements to indicate whether the circulator is a paid petition circulator or a volunteer, but the check boxes and statements would no longer have to be printed at the top of the page in 12-point type. The bill would also remove a requirement that petition headings must be printed in 14-point type. Petitions could include union symbols, barcodes or QR codes, websites, or any other similar sponsor-provided information in a designated area.

For a petition for a proposed constitutional amendment, all of the following would have to be printed below the summary of purpose:

- An indication of the sections of the state constitution that would be amended, repealed, or added.
- The website for the petition sponsor, if applicable, that includes the summary of purpose, the full text of the proposed amendment, and the full text of any existing constitutional provisions that would be altered or abrogated by the proposal.
- The following statement: “See reverse side of this petition for the full text of the proposed constitutional amendment and any existing provisions of the state constitution that would be altered or abrogated by the proposed constitutional amendment.”

For a petition for a proposed initiated law, all of the following would have to be printed below the summary of purpose:

- The full legal name included in the proposed initiated law.
- The full legal name enacted by the legislature, if any, for an existing law that would be amended or repealed by the proposal.
- If applicable, the public act number and year of the existing law that would be amended or repealed by the proposal.
- If applicable, the range of Michigan Compiled Law sections that would be amended or repealed by the proposal.
- A website address that includes the summary of purpose and the full text of the proposed legislation.

For a petition for a referendum, both of the following would have to be printed below the summary of purpose:

- The public act number and year of the public act subject to referendum.
- A website address that includes the summary of purpose and the full text of the law subject to referendum.

For all constitutional amendments, initiated laws, and referenda, the full text of the proposal would have to be printed on the reverse side of the petition form, and if the text is too long to be printed on the reverse side of the form, it would have to be continued on a fold-over extension on the same petition form.

A table for signatures would have to be printed on the petition form that includes spaces for a signee’s signature, printed name, street address or rural route, city or township, zip code, and county, and the date of the signatures. A missing or incomplete element of an address would not be sufficient cause to invalidate a signature if the information provided is sufficient to match the petition signer with an elector in the Qualified Voter File (QVF).

The petition form would have to include the following statement:

PETITION CIRCULATOR CERTIFICATION

As the petition circulator of this petition, I certify that when I circulated this petition I was 18 years of age or older and a United States citizen; that each signature of the petition was signed in my presence; that I have no knowledge of an individual signing this petition more than once; and that to my knowledge and belief, each signature on the petition is the genuine signature of the individual signing the petition. I acknowledge that knowingly making a false statement in this certification is a misdemeanor.

_____ If the circulator is not a resident of this state, the circulator must make a cross or check mark on the line provided. The circulator agrees to accept the jurisdiction of the state in any proceeding regarding this petition, and that process served on the secretary of state or an agent of the secretary of state has the same effect as if personally served on the circulator.¹

Adjacent to the petition circulator certification, the petition form would have to include the following:

(Printed Name and Signature of Petition Circulator) (Date)

(Complete Residence Address of Petition Circulator)
(Do not enter post office box)

(City or Township, State, and Zip Code of Petition Circulator)

The petition form would have to include any required identification statement in accordance with the Michigan Campaign Finance Act and any related administrative rules.

Summary of purpose

The Michigan Election Law requires a petition for a ballot proposal to include a 100-word summary of the purpose of the proposal, and the state constitution requires a true and impartial statement of purpose, limited to 100 words, to appear on the ballot with the proposal. Currently, section 482b of the Michigan Election Law allows a petition circulator to submit a summary of purpose to the BSC for approval before circulating the petition and requires the BSC to approve or deny any such summary within 30 days. The summary must be prepared by the director of elections and must be limited to not more than 100 words, consist of a true and impartial statement of the purpose of the proposed amendment or question, be worded to as to apprise petition signers of the proposal's subject matter, and be clearly written using words that have a common everyday meaning. If the BSC approves a summary of purpose before

¹ House Bill 5771 would provide that if the SOS or their designated agent is served with legal process, the SOS would have to promptly notify the petition circulator by personal service or certified mail at the circulator's indicated residence.

circulation, the petition circulator must print the text of the summary in 12-point type on the petition, and the BSC cannot consider challenges to the sufficiency of the petition on the basis of the summary being misleading or deceptive.

House Bill 5571 would repeal section 482b and replace it with a new section, section 474. Section 474 would allow a petition circulator to submit the petition form and summary of purpose for a constitutional amendment, initiated law, or referendum to the BSC for approval before circulating the petition. The bill would retain the current requirements for a summary of purpose,² and the BSC would have to make a determination on whether to accept or reject the petition form and summary within 30 days of the petitioner's final submission. If the BSC approves a summary of purpose and petition form before the petition is circulated, it could not consider a challenge to a petition on the basis of the summary of purpose or the petition form.

Altered and abrogated constitutional provisions

With respect to a petition proposing a constitutional amendment, House Bill 5571 would provide that the text of a proposed amendment, not any characterization or interpretation of the amendment's meaning or purpose, would control in determining whether an existing provision would be altered or abrogated.

Under the bill, an existing provision of the constitution would be considered *altered* by the proposal only if the proposed amendment would add to, delete from, or change the actual text of the provision's existing wording.

An existing provision of the constitution would be considered *abrogated* by the proposal only if the existing provision would be rendered wholly inoperative by the proposed amendment—that is, if the proposed amendment would make the provision a nullity or it would be impossible for the proposed amendment to be harmonized with the existing provision when considered together. An existing provision would not be considered wholly inoperative if it is not incompatible with and can be reasonably construed in a manner consistent with the proposed amendment.

An existing provision would not be considered altered or abrogated if the proposed amendment would or might affect the existing provision and both the proposed amendment and existing provision can be harmoniously construed, or if the proposed amendment would or might affect the existing provision in a manner that requires both the proposed amendment and existing provision to be interpreted together.

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 and would provide that an invalid signature cannot be counted. The invalidity of one or more signatures on a petition sheet would not affect the validity of the remainder of the signatures on the sheet, and if an individual signs a petition more than once, only one signature could be counted.

² House Bill 5571 would specify that the 100-word maximum is exclusive of numerals.

Signatures would also be invalid and uncountable if a circulator omits their name, address, signature, or signing date on the petition circulator certification. However, a missing or incomplete element of a circulator's address would not be sufficient cause to invalidate a signature as long as the information provided is sufficient to locate the circulator, if necessary.

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.) Several of these violations are currently misdemeanors under the Michigan Election Law, punishable by a fine of up to \$500 or imprisonment of up to 93 days, or both, but signing a petition under section 482 with multiple names is a felony.

Under HB 5571, it would remain a misdemeanor to make a false statement in a certification or falsely sign a petition as a circulator, and signing a petition with a false name or signing a name as a circulator other than one's own would be a felony. House Bill 5571 would also provide that the BSC would also not be required to check the signatures against the Qualified Voter File 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).

Additional provisions

The bill would also remove a provision prohibiting a petition sponsor from circulating a petition for signatures before the petition is filed with the SOS and a provision stating that a printed name in the prescribed space on a nominating petition does not constitute the signature of a circulator or an individual signing the petition.

Finally, the bill would repeal sections 482c and 482d of the Michigan Election Law, which together prohibit a petition circulator from knowingly making a false statement concerning their status as a paid or volunteer circulator gatherer.³

MCL 168.482 et seq. (amended) and MCL 168.482b et seq. (repealed)

³ House Bill 5571 would retain current prohibitions on making a false statement in a petition circulator certificate, and the provisions of section 482d, which defines a paid circulator gatherer, would be included elsewhere in the bill.

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,⁴ 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 petition review and challenge process and 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 by a sufficient number of qualified and registered electors. House Bill 5573 would provide that the Bureau of Elections would have to review submitted signatures in the order that the

⁴ Complaints must specify the allegedly invalid signatures and the petition for which the complaint applies.

petitions were received. The BOE would have to make original petition sheets and copies available to the petitioners and any challengers upon request and could charge a reasonable fee to ensure the security of the original sheets or to produce or transmit the copies.

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. The BSC would have to post its process and procedures for reviewing petitions for statewide ballot proposals, including each specific step of the canvassing process, on its website. When canvassing a petition, the BSC would have to post a notice on its website after completing each step and publish the completion percentage of the canvass of randomly sampled signatures.

With respect to the BSC's canvass and review of petition signatures, there is currently a rebuttable presumption that a signature is invalid if the QVF indicates that the individual signing the petition was not registered to vote in the city or township indicated on the petition. House Bill 5573 would remove this provision and instead provide that there would be a rebuttable presumption that a signature is invalid if a signature comparison indicates that the signature is not genuine.⁵

After its review, the BSC or BOE would have to refer any obviously fraudulent signatures to the Department of Attorney General.

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).

Challenges

The bill would require the BSC to adopt and publish standards of what would be necessary to rebut a finding that a petition signature is not genuine or is not the signature of a registered elector. The BSC could not issue a determination on the sufficiency of a petition without considering the documents received concerning the staff determination.

Final determination

Currently, the BSC is required to complete its determination of whether a petition has received a sufficient number of signatures at least two months before the election at which the proposal is to be submitted. At least two business days before the BSC meets to make its final determination on the challenges to and sufficiency of a petition, the BOE must publish its staff report concerning disposition of challenges filed against the petition. Under House Bill 5573, the BSC would have to make its determination at least 60 days before the applicable election, and the BOE would have to publish its staff report at least five days before the BSC's meeting.

The BSC would have to determine that a petition is sufficient if it meets both of the following requirements:

- The petition substantially complies with any applicable formatting requirements, as proposed by House Bill 5571.

⁵ Under the Michigan Election Law, an elector's signature is considered to be invalid only if it differs in significant and obvious respects from the elector's signature on file. Exact matches are not required to determine that a signature agrees sufficiently with the signature on file, and slight dissimilarities are to be resolved in favor of the elector.

- The petition sheets submitted include the valid signatures of a sufficient number of registered voters in accordance with the constitution.

Court review

Currently, a person aggrieved by a BSC determination can generally have the determination reviewed by mandamus (a court order issued to a public official to fulfill their duties) or other appropriate remedy by the Supreme Court. If the person is aggrieved by a determination regarding the sufficiency or insufficiency of an initiative petition, they must file a legal challenge to the determination with the Supreme Court within seven business days or by 60 days before the applicable election, whichever occurs first, and the challenge must be advanced on the docket to provide for the earliest possible disposition.

Instead, House Bill 5573 would provide that a person submitting a petition, a ballot question committee, or a person who submitted documents regarding the validity of a petition signature who is aggrieved by a determination or by the BSC's failure to perform its duties could seek judicial relief in the Court of Appeals within seven days after action or inaction by the BSC. The Supreme Court could expedite or consider such a matter, as provided in the Michigan Court Rules. The bill would state the legislature's intent that review of a BSC determination or the failure to perform its duties is to be of the highest priority and resolved expeditiously in order to facilitate the timely administration of elections.

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).

The Michigan Election Law provides that referendum petitions must be filed with the SOS within 90 days after the final adjournment of the legislature. The BSC generally must complete its canvass of the petition within 60 days after it is filed with the SOS, although the SOS can grant a 15-day extension. HB 5573 would provide that referendum petitions must be filed within 90 days after the final adjournment of the legislative session at which the law subject to the referendum was enacted and would eliminate the 15-day extension, requiring the BSC to make its determination within 60 days.

Finally, House Bill 5573 would specify that a signature dated more than 180 days before the petition is filed with the SOS, which the Michigan Election Law currently provides cannot be counted, is also invalid.

MCL 168.472a et seq.

House Bill 5574 would modify the procedure by which local clerks are provided with the required materials for a statewide ballot question and would modify the process for designating those proposals for the ballot.

Petition submission

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, 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. The bill would also require the SOS to immediately notify the BSC upon the final submission of a petition as to its format.

Once a petition and signatures are filed, the SOS could not accept further filings of signatures to supplement the original filing.⁶

Ballot question designation

Under the Michigan Election Law, the BSC must assign each statewide ballot question a numerical designation that indicates the year of the election and the order that the question was filed. A general revision of the constitution must be considered the first question, when applicable, and other questions must be designated in chronological order based on the date the applicable petition, joint resolution, or legislation is filed with the SOS. The BSC must make the designation at least 60 days before the election, but if a ballot question is to appear at a general election, the BSC cannot make the designation before the preceding primary election.

House Bill 5574 would no longer prohibit the BSC from assigning a designation for a general election ballot question before the preceding primary. The bill would also require the numerical designation for a ballot question to include the full year of the election at which the question will go before the voters, rather than the final two digits of that year, and questions designated for the ballot at a primary or special election would have to include a “-P” or “-S,” as applicable, at the end of the designation.

Additionally, the bill would provide that a proposed constitution or amendment adopted by a constitutional convention would be considered filed to appear on the ballot once the convention has adjourned.

Additional provisions

The bill would no longer require the SOS’s notice to interested entities of whether a petition has been determined to be sufficient to be transmitted by registered or certified mail.

⁶ Currently, the SOS cannot accept further filings of the petition itself.

The SOS is currently required to post an update on a petition's status on the Department of State website at least once every day after the petition has been filed. House Bill 5574 would provide that the update must be posted on the first business day of the month.⁷

The bill would also remove a reference to section 482b of the Michigan Election Law, which would be repealed by House Bill 5571.

Finally, House Bill 5574 would repeal section 709 of the Michigan Election Law, which requires the SOS to provide county clerks with at least two copies of the statement of purpose for each ballot question for each precinct to be delivered to city and township clerks and election inspectors.

MCL 168.475 et seq. (amended) and MCL 168.709 (repealed)

House Bill 5575 would remove an unenforceable requirement that no more than 15% of petition signatures for a ballot proposal can come from a single congressional district and would repeal an unenforceable section of the Michigan Election Law that requires initiative petitions to be filed at least ten days before the start of a legislative session.

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.

The bill would also repeal section 472 of the Michigan Election Law, which requires initiative petitions to be filed with the SOS at least ten days before the beginning of a legislative session. However, the Michigan Supreme Court ruled in *Wolverine Golf Club v Secretary of State* that this requirement was unconstitutional.

MCL 168.471 (amended) and MCL 168.472 (repealed)

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. The bill would also modify the penalties for signature fraud on those petitions, as described below.

With respect to a petition to form a new political party, individuals are prohibited from signing a petition with a name other than their own, making a false statement in a petition circulator certificate, falsely signing the petition as a circulator, and signing a name as a circulator other

⁷ The bill would provide that the SOS could update the posting on a more frequent basis.

than their own. These violations are currently misdemeanors under the Michigan Election Law, punishable by a fine of up to \$500 or up to 93 days' imprisonment, or both, and signing a petition with multiple names is a felony.

Under HB 5576, it would remain a misdemeanor to make a false statement in a certificate or falsely sign as a circulator, and signing a petition with a false name or signing as a circulator with a false name would be a felony.

MCL 168.685

House Bills 5571, 5572, 5573, and 5576 are tie-barred together. House Bills 5571 and 5573 are additionally tie-barred to HB 5575. House Bill 5575 is tie-barred to HB 5571 and HB 5573. A bill cannot take effect unless every bill to which it is tie-barred is also enacted.

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.

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.⁸

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.⁹)

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.)

⁸ 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.

⁹ https://www.michigan.gov/sos/-/media/Project/Websites/sos/25delrio/SOS_ED105_County_Pet_Form_77019_7.pdf#page=7.

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.¹⁰ 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 608.¹¹ 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.¹²

Signature fraud

In 2022, the Bureau of Elections found evidence of widespread signature fraud on nominating petitions filed by ten different candidates.¹³ 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.¹⁴

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.¹⁵ While these procedures have been in place since 1980, the BSC does not have explicit statutory authority to use random sampling when canvassing petitions.

BRIEF DISCUSSION:

According to committee testimony, House Bills 5571 to 5576 are intended to clarify and simplify the petition process. Supporters of the bills argue that transitioning to the substantial compliance standard would ensure that the will of the voters is not overruled by a technicality, and the other proposed changes would codify the BSC's current practices and reduce the burden on Bureau of Elections staff when processing petitions.

¹⁰ See: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-168-544f.pdf>.

¹¹ For a summary of the 2018 changes, see: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6595-C445C2B1.pdf>.

¹² The full decision can be found here: <https://www.courts.michigan.gov/48fd9f/siteassets/case-documents/briefs/msc/2021-2022/163711/twv-op.pdf>.

¹³ <https://drive.google.com/file/d/1ORWj9ZPUBV9kVLTgDj9GkV8a-qv3ED6/view>.

¹⁴ <https://www.bridgemi.com/michigan-government/board-denies-craig-johnson-others-spots-michigan-ballot-lawsuits-next>.

¹⁵ 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>.

The substitutes adopted by the House Elections committee for House Bills 5571, 5573, 5574, 5575, and 5576 modified petition form requirements to account for the substantial compliance standard, amended the requirements for a petition summary of purpose, added definitions to determine whether a proposed constitutional amendment would alter or abrogate an existing provision of the constitution, provided that incorrect or missing contact information is not a sufficient reason to invalidate a signature, added a process for aggrieved parties to pursue judicial relief, and provided that both the BSC and BOE would have the authority to refer obviously fraudulent signatures to the attorney general for review, among other changes.

The substitutes also removed modifications to petition filing deadlines proposed by the introduced versions of the bills and a related joint resolution, House Joint Resolution P.¹⁶ Concerns were raised during committee testimony that amending current deadlines would make the signature-gathering process too challenging, since signature gatherers would have to either collect signatures during a shorter window or begin signature collection earlier in the year, when it is colder.

HOUSE FLOOR ACTION:

The proposed H-4 floor substitute for House Bill 5571 removes a current provision of the Michigan Election Law that states that for nominating petitions, a printed name written in the proper space does not constitute a signature.

The proposed H-4 floor substitute for House Bill 5573 removes provisions from the as-reported version of the bill that would have granted ballot proposal sponsors and challengers five days after the BOE concludes its staff review to submit rebuttal documents and then five days to submit additional documents, prohibited the BSC from accepting further challenges or documents after the final response deadline, and required the BOE to post an online report of the final determination of the validity of signatures on a petition sheet within five days after the response deadline.

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.

House Bill 5573 would require the Bureau of Elections to make copies of filed petitions available to petitioners and challengers upon request and make original petition sheets available for review. The bill would allow the Bureau of Elections to charge a reasonable fee to cover any administrative costs the bureau may incur related to these requirements.

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

¹⁶ Together, HJR P and HB 5575 as introduced would have required 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, and required petitions proposing an initiated law to be filed at least 200, rather than 160, days before the election at which the proposed law would appear on the ballot if the legislature rejects or does not enact it.

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.

In addition, the bills also would have an indeterminate fiscal impact on the state and on local units of government related to the creation of new felony offenses as described above. The number of convictions that would result under the bills is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$49,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

Representatives of the following entities testified in support of the bills (6-4-24):

- Department of State
- Promote the Vote

The following entities indicated support for the bills (6-4-24):

- Michigan League of Conservation Voters
- Voters Not Politicians

Pure Integrity for Michigan Elections indicated opposition to the bills. (6-18-24)

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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.