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SFA**BILL ANALYSIS**

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House Bill 5061 (Substitute H-3 as passed by the House)
Sponsor: Representative Mickey Mortimer
House Committee: Constitutional Law and Ethics
Senate Committee: Government Operations

Date Completed: 12-2-99

CONTENT

The bill would amend the Michigan Election Law to revise provisions that regulate the submission of petitions to propose an amendment to the State Constitution, initiate legislation, or invoke a referendum; require ballot questions to be identified by number rather than letter; specify when a question would be considered to be filed to appear on the ballot; allow the Board of State Canvassers and other election officials to use the Qualified Voter File (QVF) to check the validity of signatures on petitions; and specify criminal and administrative penalties for violations committed by petition circulators and signers, candidates, and persons sponsoring a petition drive.

Constitutional Amendments/Initiative/Referendum

Article 12, Section 2 of the State Constitution provides that amendments to the Constitution may be proposed by petition of registered electors. Article 2, Section 9 allows the people to propose laws and enact and reject laws (the initiative), and to approve or reject laws enacted by the Legislature (the referendum), by petition. Under the Election Law, petitions proposing a constitutional amendment must be filed with the Secretary of State at least 120 days before the election at which the amendment is to be voted upon. Referendum petitions must be filed within 90 days after the final adjournment of the Legislature. The bill provides that initiative petitions would have to be filed at least 160 days before the election at which the proposed law was to be voted upon.

Under the bill, if signatures on a petition to propose a constitutional amendment, or a petition to initiate legislation, were collected both before and after a November general election at which a governor was elected, the signatures collected before the election, or the signatures collected after the election, at the option of the organization or other person sponsoring the petition drive, would be invalid.

The bill provides that after the day on which a petition was filed, the Secretary of State could not accept further filings of that petition to supplement the original filing. This provision would apply to a petition proposing a constitutional amendment, an initiative petition, and a petition to invoke the referendum. The bill also specifies that the circulator of such a petition only would have to be qualified to be a registered elector of the State at the time of circulation and at the time of executing the certificate of circulator. (Under the Election Law, the circulator of a nominating petition must be registered in the city or township indicated in the certificate of the circulator on the petition, and must be a registered elector of the State at the time of circulation.)

Article 2, Section 9 of the Constitution provides that to invoke the referendum, petitions containing the minimum number of signatures as specified must be submitted; once invoked, the law that is the subject of the referendum cannot take effect until it is approved by a majority of the voters at the next general election. The bill provides that the referendum would be invoked once the Board of State Canvassers made its official declaration of the sufficiency of the referendum petition. The Board would have to complete the canvass of a referendum petition within 60 days after the petition was filed with the Secretary of State; the Secretary of State could grant one 15-day extension if necessary to complete the canvass.

Ballot Questions

The bill would require the Board of State Canvassers to assign a number designation to appear on the ballot for each question to be submitted on a Statewide basis. (Currently, ballot questions appear with a letter designation.) The bill would require the number designation to consist of three or four digits. The first two digits would have to be the last two digits of the year of the election. The next digit or, if necessary, two digits would have to indicate the chronological order in which the question was authorized to appear on the ballot. A question would have to be considered to be filed to appear on the ballot as follows:

- A general revision of the Constitution would have to be considered to be the first question filed to appear on the ballot for those elections at which a general revision of the Constitution would appear on the ballot.
- An amendment to the Constitution proposed by petition of the voters, or legislation initiated or a referendum invoked by petition of the electors, would have to be considered to be filed to appear on the ballot when the petition was filed with the Secretary of State.
- An amendment to the Constitution proposed by the Legislature to be submitted to the voters would have to be considered to be filed to appear on the ballot when the joint resolution proposing the amendment was filed with the Secretary of State.
- A referendum submitted to the voters by the Legislature would have to be considered to be filed to appear on the ballot when the legislation was filed with the Secretary of State. (Article 4, Section 33 of the State Constitution allows the Legislature to submit any proposed legislation, except a bill appropriating money, to the voters for approval or disapproval.)

Signature Validation

The Election Law requires various filing officials to determine the validity and sufficiency of petition signatures. The Board of State Canvassers must determine the validity and sufficiency of signatures on petitions proposing to amend the State Constitution, initiate legislation, and invoke the referendum. Further, local election officials are required to validate signatures on recall petitions. The bill would allow the Board and filing officials to use the QVF to determine the validity of petition signatures by verifying the registration of signers. If the QVF indicated that, on the date the elector signed the petition, the elector was not registered to vote, there would be a rebuttable presumption that the signature was invalid. If the QVF indicated that, on the date the elector signed the petition, the elector was not registered to vote in the city or township designated on the petition, there would be a rebuttable presumption that the signature was invalid.

At least two business days before the Board of State Canvassers met to make a final determination on challenges to and sufficiency of a petition, the Bureau of Elections would have to make public its staff report concerning disposition of challenges filed against the petition. Beginning with the receipt of any document from local election officials indicating that signatures were invalid, the Board would have to make that document available to petitioners and challengers on a daily basis.

Penalties/Board Sanctions

The Election Law prohibits a person from signing a petition with a name other than his or her own name; knowingly making a false statement in a certificate on a petition; signing as a petition circulator if he or she is not a circulator; or signing as a petition circulator a name other than his or her own name. A violation of these provisions is a misdemeanor. The bill specifies that the misdemeanor would be punishable by a fine of up to \$500, imprisonment for up to 93 days, or both. If, after a canvass and a hearing on a petition (to nominate a candidate to office, or to submit a ballot question to the electors at large), the Board of State Canvassers determined that an individual had knowingly and intentionally failed to comply with these provisions, the Board could impose one or both of the following sanctions:

- Disqualify any obviously fraudulent signatures on a petition form on which the violation occurred, without checking the signatures against local registration records.
- Disqualify from the ballot a candidate who committed, aided or abetted, or knowingly allowed the violation on a petition to nominate that candidate.

If an individual committed a violation and the affected petition sheet were filed, each of the following who knew of the violation before the filing and who failed to report the violation to the Secretary of State, the filing official

(if different), the Attorney General, a law enforcement officer, or the county prosecuting attorney, would be guilty of a misdemeanor, punishable by a fine of up to \$500, imprisonment for up to one year, or both:

- The circulator of the petition, if different than the individual who committed the violation.
- If the petition were a nominating petition, the candidate whose nomination was sought.
- If the petition were a petition for a ballot question or recall, the organization or other person who sponsored the petition drive.

Further, if after a canvass and a hearing on a petition (to nominate a candidate or to submit a ballot question), the Board of State Canvassers determined that an individual had failed to report, as described above, the Board could impose one or more of the following sanctions:

- Impose on the organization or other person who sponsored the petition drive an administrative fine of up to \$5,000.
- Charge the organization or other person who sponsored the petition drive for the costs of canvassing any petition form on which a violation occurred.
- Disqualify an organization or other person from collecting signatures on a petition for up to four years.
- Disqualify any obviously fraudulent signatures on a petition form on which a violation occurred, without checking the signatures against local registration records.
- Disqualify from the ballot a candidate who committed, aided or abetted, or knowingly allowed a violation on a petition to nominate that candidate.

If an individual refused to comply with a subpoena of the Board in an investigation of an alleged violation, the Board could hold the canvass of the petitions in abeyance until the individual complied.

MCL 168.471 et al.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government. The bill would create a new misdemeanor for providing false information on a petition for which the punishment would be a maximum fine of \$500 and/or up to 93 days' incarceration, and a new misdemeanor for not reporting false information on a petition for which the punishment would be a maximum fine of \$500 and/or up to one year's incarceration. Local units of government receive the fine revenue or incur the costs of incarceration for misdemeanors. Incarceration costs vary among the counties.

There also could be administrative costs imposed on the State to determine the validity of petition signatures, as well as to make a final determination on challenges to and sufficiency of a petition. However, the extent of these costs would depend on the number of signatures and challenges to a petition to be checked.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.