



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ELECTED COUNTY EXECUTIVE: LINE OF SUCCESSION

House Bill 5351 as introduced
First Analysis (12-9-03)

Sponsor: Rep. Craig DeRoche
Committee: Local Government and
Urban Affairs

THE APPARENT PROBLEM:

There are three kinds of county government in Michigan: general law counties; charter (or home rule) counties; and optional unified counties. By far the most prevalent are the general law counties—accounting for 80 of the 83 counties in the state. There is one charter (or home rule) county—Wayne. There are two optional unified counties—Bay and Oakland.

Bay and Oakland Counties are governed by a county board of commissioners and an elected county executive. If the county executive dies in office or resigns while in office, the county board of commissioners appoints the successor. That person then serves the balance of the term, and a new executive is elected at the next general election.

Both Bay and Oakland Counties have chief deputy executives who report to the county executive. If the county executive is absent or unable to perform his or her duties, the chief deputy executive generally takes over the administrative responsibilities. However, there is no provision in the law to provide for immediate succession. In contrast, immediate succession is provided for the county treasurer, county clerk, and sheriff.

Occasionally an emergency situation requires the chief deputy executive to assume administrative responsibilities when the executive is unavailable. For example, during the August blackout when electricity was unavailable for the eastern and mid-western regions of the country for several days, Oakland County's executive was traveling out-of-state, and was unable to return immediately in order to oversee the emergency operations of his county.

Legislation has been introduced in order to provide a clear line of succession for the county executives in Bay and Oakland Counties, most especially during times of emergency. The bill is a re-introduction of Senate Bill 687 passed by the House and Senate earlier in this legislative session, but vetoed by the

governor. (See *BACKGROUND INFORMATION*, below)

THE CONTENT OF THE BILL:

House Bill 5351 would amend Public Act 139 of 1973, which concerns the forms of county government, to clarify the procedures that would be used to fill the vacancy in the position of a county executive caused by death or resignation.

Currently under the law, when the office of elected county executive becomes vacant due to resignation or death, it is filled by appointment of the board of county commissioners until the next general election. Then a new county executive is elected at the next general election, following procedures outlined in the act. The newly elected county executive serves a term equal to the balance of the term for which the county executive who resigned or died was elected. House Bill 5351 would eliminate this provision.

Instead, House Bill 5351 specifies that if a vacancy occurred in the office of the elected county executive due to death or resignation, the chief deputy would take the constitutional oath of office and serve as the county executive until the county board of commissioner appointed a successor, or until a special election was held. If the commissioners elected to appoint a successor, the appointment would be made no later than 30 days from the date of the death or resignation, and the appointed person would serve until the next general election. If the commissioner did not make an appointment within the required 30 days, then a special election would be held at the earliest possible date allowed by law.

If the chief deputy was unable to serve as the county executive due to death or resignation, the next highest ranking deputy would take the oath of office and serve as the county executive until the commissioners appointed a successor, or until a special election was held.

House Bill 5351 (12-9-03)

The bill specifies that a new county executive would be elected at the next general election, as provided in section nine of the act, and the newly elected executive would serve a term equal to the balance of the term for which the county executive who died or resigned was elected.

Within 10 days after being sworn in, the county executive would be required to appoint a chief deputy, and could also appoint additional deputies whom he or she considered necessary to perform the functions and duties of the office. The executive would be required to file a statement with the county clerk identifying the individual appointed as chief deputy, as well as all other individuals appointed as deputy or assistant deputy, and identify their ranking order. However, the executive could revoke the appointments at any time. Finally, if the county executive were absent or unable to perform the duties of the office, then the chief deputy would perform those duties until the elected executive could resume his or her work.

MCL 45.559 and 45.560

BACKGROUND INFORMATION:

A substantially similar bill, Senate Bill 687, was passed by the House and Senate earlier in the legislative session, but vetoed by the governor on December 2, 2003. The vetoed bill differed from House Bill 5351, in that it was amended on the House floor to exempt Bay County from its provisions. In contrast, House Bill 5351 would treat all county executives in a uniform manner with regard to their lines of succession.

Governor Granholm's veto message, dated December 2, 2003, reads in part:

"Today I return with my objections Enrolled Senate Bill 687, as provided under Section 33 of Article IV of the Michigan Constitution of 1963. The bill would amend Public Act 139 of 1973, which relates to the optional unified form of county government to:

- Authorize a deputy to perform the duties of county executive when the county executive is absent or unable to perform his or her duties; and
- Change the process for the appointment or election of a new county executive in the event of the death or resignation of a county executive.

The stated intent of this legislation--to provide a clear line of succession for the office of county executive in Oakland County--is laudable. Unfortunately, while

creating new procedures for Oakland County, this bill would repeal any legal authority to fill a vacancy in the office of county executive in Bay County. This is a serious flaw that cannot be ignored.

Because legal uncertainties could arise in Bay County if Senate Bill 687 were enacted, I have vetoed the bill. While I return Enrolled Senate Bill 687 without signature, I look forward to supporting a new bill that addresses the shortcomings of this legislation."

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that as written, House Bill 5351 should have no significant impact on state or local revenues. (12-8-03)

ARGUMENTS:

For:

In times of emergency, it is important to have a clear line of succession for those with the authority to govern. That way, the public's health and safety can better be ensured. Currently the law allows other county officials—treasurers, clerks, and sheriffs—to designate deputies who can handle their tasks if an emergency occurs during an absence. County executives cannot. In August 2003, during the failure of the electrical power grid in the eastern and mid-western states, the airport that serves Detroit shut down. At the time, the Oakland County executive was out-of-state and a county-wide emergency needed to be declared—a declaration that must be made by the chief executive or his or her designee, under the Emergency Management Act. Although the deputy acted on the absent executive's behalf in this instance, the law does not authorize that succession of authority. This legislation is needed to make the line of succession clear, in order to ensure the welfare of citizens during times of emergency.

POSITIONS:

The Oakland County Board of Commissioners indicated support for the bill. (12-9-03)

When an identical bill, Senate Bill 687, was reported from the Local Government and Urban Policy Committee on November 4, 2003, it was supported by the Oakland County executive, and also the Oakland County Board of Commissioners. (11-04-03)

Analyst: J. Hunault

■ 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.