



**House
Legislative
Analysis
Section**

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LEGISLATIVE VACANCIES

House Bill 6356 as introduced First Analysis (1-27-03)

Sponsor: Rep. Fred Durhal, Jr.
Committee: Redistricting and Elections
(discharged)

THE APPARENT PROBLEM:

Critics say that governors of both parties have in the past waited too long to call for elections to fill vacancies in legislative seats. Article V, Section 13 of the state constitution says, "The governor shall issue writs of election to fill vacancies in the senate or house of representatives. Any such election shall be held in a manner prescribed by law". The Michigan Election Law says, "Except as otherwise provided in the section, when a vacancy occurs in the office of senator or representative in the state legislature, the governor may call a special election . . . or direct that the vacancy be filled at the next general election". (Underlining added) Four times in the last dozen or so years, including in 2002, a legislative seat has remained empty for over 200 days. On four other occasions, seats have gone unfilled for over 150 days. A vacant legislative seat leaves the people of the district without representation. Legislation to address this issue has been introduced a number of times, including again in the 2001-2002 session.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law to require the governor to call a special election to fill a vacancy in the office of state senator or state representative and to provide a schedule for setting an election date. Currently the law says the governor may call a special election or direct that the vacancy be filled at the next general election.

Under the bill, if a vacancy occurred 76 days or more before the next August primary election in which nominees for the office were to be selected, the governor within 7 days after the date the vacancy occurred would have to call a special primary and general election in the senatorial or representative district. The primary would have to be held no later than 52 days and the general special election not later than 95 days after the date the vacancy occurred. If a deadline fell within 30 days of a primary, general, or special election previously scheduled in the district,

the special primary or special general election called by the governor could be held in conjunction with the previously scheduled election. However, the deadline for a special general election could not be extended more than 30 days.

If the vacancy occurred during the period beginning on the 75th day before and ending on the 15th day before the next August primary in which nominees for the office in question were to be selected, the governor would have to direct that the vacancy be filled at that August primary.

If the vacancy occurred during the period beginning on the 14th day before the next August primary and ending on the 15th day before the next general November election at which the office in question was to be filled, the governor would have to direct that the vacancy be filled at that general November election.

When the governor directed a vacancy to be filled in the circumstances described in the two paragraphs above, he or she would also direct the executive committee of the relevant county committee or county committees of each political party to select by majority vote a candidate for the office. The executive committee would have to certify the name of the candidate to the county board of election commissioners in the district not later than the fifth day before the August primary or general November election, whichever was applicable.

MCL 168.178 and 168.634

FISCAL IMPLICATIONS:

There is no information at present.

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ARGUMENTS:***For:***

Too often vacancies in legislative seats remain vacant for too long. In the most recent case, a seat made vacant at the end of 2001 was not filled until the August 2002 primary election. The bill provides a reasonable process for filling legislative vacancies. If a vacancy occurred on January 1, for example, the special general election would have to be held no later than April 5 (95 days later). While it is true that the bill would remove the discretion of the governor, the occupants of that office have not proven to be sufficiently attentive to the needs of the citizens of the legislative districts suffering vacancies. The current system too often leaves people unrepresented in the legislature for too long.

Response:

In the past, some people have said that the issue needs to be addressed with both a constitutional amendment and statutory changes. It should also be pointed out that there are cost savings associated with filling vacancies at a time when other elections are being held. Some people advocate consolidating election dates so that elections could be held only, say, four times each year. This would save money and improve turnout. This bill runs counter to that popular proposal.

POSITIONS:

There are no positions on the bill.

Analyst: C. Couch

■ 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.