




Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Joint Resolution K (Substitute S-1 as reported)  
Sponsor: Senator Michelle A. McManus  
Committee: Campaign and Election Oversight

Date Completed: 5-5-08

### **RATIONALE**

Under Article II, Section 9 of the State Constitution, the people may, through initiative petition, propose, enact, and reject laws and, through referendum, approve or reject laws passed by the Legislature. Initiative petitions and referendum petitions must contain a number of unique signatures equal to at least 8% and 5%, respectively, of the total number of votes cast for Governor in the previous election. There are no requirements concerning geographic representation of electors and signatures may come from electors located anywhere in the State. Reportedly, signature gatherers often acquire enough signatures from electors in a few highly populated cities without soliciting signatures from people in rural and sparsely populated areas. Some people believe that, in order to ensure that voters throughout the State are represented in the initiative and referendum processes, petitions should have to include signatures collected in many different parts of the State.

### **CONTENT**

The joint resolution would amend Article II, Section 9 of the State Constitution to require that petitions for initiative or referendum be signed by at least 100 registered electors, unless the Legislature required a greater number of registered electors, in each of at least 42 counties of this State and by at least one registered elector in each county of this State.

These representation requirements would apply in addition to the current requirements based on the percentage of total votes cast

for gubernatorial candidates the last time a Governor was elected.

Under Article II, Section 9, the power of referendum does not extend to acts making appropriations for State institutions or to meet deficiencies in State funds. Under the joint resolution, instead, the power of referendum would not extend to general appropriation acts making appropriations that substantially funded one or more State departments or to acts making appropriations to meet deficiencies in State funds.

If two-thirds of the members elected to and serving in each house of the Legislature approved the joint resolution, it would have to be submitted to voters at the next general election.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The joint resolution would ensure representation in the initiative and referendum processes for registered electors in counties that often are overlooked because of small populations. Because 3,801,256 people voted for a gubernatorial candidate in the 2006 election, petitions in 2008, 2009, and 2010 must contain at least 304,101 valid signatures to be considered by the Legislature or placed on the 2008, 2009, or 2010 election ballots. Currently, signature gatherers may collect signatures

from electors in only one or two highly populated counties where it is easy to find many people in a short amount of time. This leaves electors living in northern and rural areas of the State out of the process and results in petitions that are potentially unrepresentative. Because of the practical reasons for signature gatherers to ignore sparsely populated areas, it is necessary to require them by law to collect signatures from all over the State.

### **Supporting Argument**

The bill would address the exception to the power of referendum contained in Article II, Section 9. When this power is invoked through the submission of sufficient petition signatures, the law in question is not effective until and unless it is approved by a majority of the electors voting on it at the next general election. (The power of initiative, on the other hand, does not suspend a law pending a vote of the people.) Currently, the power of referendum does not apply to "laws making appropriations for state institutions or to meet deficiencies in state funds". In a 2001 decision, the Michigan Supreme Court interpreted the phrase "laws making appropriations for state institutions" (*Michigan United Conservation Clubs v Secretary of State*, 464 Mich 359). The case dealt with Public Act 381 of 2000, which amended the concealed weapon law to revise requirements for the issuance of licenses to carry concealed pistols. The Act also appropriated \$1.0 million to the Department of State Police for trigger locks, application kits, fingerprinting, and other purposes.

Based on the plain language of Article II, Section 9, four justices agreed that Public Act 381 was not subject to a referendum because of this appropriation. The three dissenting justices argued, however, that "laws making appropriations for state institutions" referred only to general appropriations bills containing substantial grants to State agencies, for the support of their core functions. Otherwise, as the case demonstrated, any appropriation included in any legislation will make it "referendum-proof".

The joint resolution would address this by changing the language in Article II, Section 9 to exempt from the power of referendum, "general appropriations acts making

appropriations that substantially fund 1 or more state departments".

### **Opposing Argument**

Because of population variation among counties, representation should not be based on a specified number of signatures per county, but instead should be based on population. According to estimates based on the 2006 census, the counties with the fewest and the most residents, Keweenaw County and Wayne County, have populations of 2,183 and 1,971,853, respectively. By requiring that at least one signature come from a registered elector in each of those counties and each of the other 81 counties, and that at least 100 signatures come from electors in each of 42 counties, the joint resolution could violate the Equal Protection clause of the United States Constitution and the guarantee that every individual is entitled to one vote.

### **Opposing Argument**

The Legislature has the ability to require geographic representation in the signature-collecting process. Amending the State Constitution should be done only if there are no other options.

Legislative Analyst: Craig Laurie  
Suzanne Lowe

### **FISCAL IMPACT**

The joint resolution would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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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.