



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 Bill 951 (Substitute S-1 as reported)
Senate Bill 952 (Substitute S-1 as reported)
Senate Bill 953 (Substitute S-1 as reported)
Senate Bill 954 (Substitute S-1 as reported)
Sponsor: Senator Michelle A. McManus (S.B. 951 & 954)
Senator Cameron S. Brown (S.B. 951)
Senator Mark C. Jansen (S.B. 953)
Committee: Campaign and Election Oversight

Date Completed: 11-23-09

RATIONALE

The State Constitution establishes the right of the electors to propose constitutional amendments by petition, the power to propose and enact laws (called the "initiative"), and the power to approve or reject laws enacted by the Legislature (the "referendum"). Both the Constitution and the Michigan Election Law establish the procedures that must be followed in order for a proposal, initiative, or referendum to appear on the ballot. The law prescribes criteria for petition forms and circulators, as well as the responsibilities of the Elections Bureau, in the Department of State, and the Board of State Canvassers, which is an appointed body mandated by the Constitution.

In recent years, various aspects of the petition process have been the subject of controversy and litigation. In some cases, fraud and misrepresentation in the signature-gathering process have been alleged. A prominent example of this issue is the Michigan Civil Rights Initiative, Proposal 06-2, which was adopted in 2006. At other times, petitions have been found to be defective and invalidated after they already were signed and submitted, because the sponsors did not seek preapproval from the Bureau of Elections—something that is currently optional. This happened, for example in the case of the Michigan Campaign for New Drug Policies in 2002. In addition, some of the disputes have involved the responsibility of the Board of State

Canvassers to certify petitions for ballot proposals if it finds that signatures are sufficient and valid. In the past, courts have found that the Board exceeded its legal authority by engaging in a legal analysis or considering the substance of a proposal.

Since 2007, workgroups have examined these and other issues, and various recommendations have been made for statutory changes.

CONTENT

Senate Bill 951 (S-1) would amend the Michigan Election Law to do the following:

- **Require a petition proposing an amendment to the State Constitution or to initiate legislation to be submitted to the Director of Elections for review before being circulated.**
- **Require the Director to determine whether the petition form met formatting requirements and that, if a statement describing the proposal appeared on the form, the statement fairly reflected the proposal; and require the Director to report to the Board of State Canvassers.**
- **Require the Board of State Canvassers to meet within 30 days after a petition was submitted to the Director for review.**

- Allow a petition to be circulated for the collection of signatures after the Board adopted a motion to approve the form of the petition.
- Prohibit circulation of a petition if the Board adopted a motion not to approve the form of the petition.
- Allow a petition to be circulated for signatures, without Board approval, if the Board failed to meet within the required 30-day period or if the Board met but failed to adopt a motion to approve or not approve the petition form.
- Specify that the substance of a proposal would not be subject to review by the Director or the Board, and that a statement describing a proposal's subject matter would not be subject to review by the Board.
- Allow aggrieved parties to appeal to the Michigan Court of Appeals on an expedited basis.

Senate Bill 953 (S-1) would amend the Michigan Election Law to require the Secretary of State to post on its website a statement describing the subject matter of a proposal to amend the Constitution or initiate legislation, as it appeared on the petition form, at least 18 hours before the Board of State Canvassers was scheduled to meet to consider approving the petition form.

Senate Bill 952 (S-1) would amend the Michigan Election Law to revise requirements regarding petitions proposing constitutional amendments, initiated legislation, or referendum legislation. The bill would do all of the following:

- Require the full text of the proposal to appear on the petition.
- Require added language to be shown in capital letters and deleted language to be struck out with a line.
- Require a circulator to certify that he or she was qualified to be an elector in the State at the time of circulating the petition, and other assertions.
- Specify certain warnings and notices that a petition would have to include.

Senate Bill 954 (S-1) would amend the Michigan Election Law to apply the provisions of Senate Bill 952 (S-1) to petitions to place a question on the ballot before the electorate of a political subdivision under a statute that refers to Section 488 of the Law (the section that Senate Bill 954 (S-1) would amend).

All of the bills would take effect on November 15, 2010.

Senate Bill 953 (S-1) is tie-barred to Senate Bill 951. Senate Bills 952 (S-1) and 954 (S-1) are tie-barred to each other.

Senate Bills 951 (S-1) and 952 (S-1) are described in detail below.

Senate Bill 951 (S-1)

Under the bill, a petition proposing an amendment to the State Constitution or to initiate legislation would have to be submitted to the Director of Elections for review before being circulated. When submitted, the petition form would have to be accompanied by an affidavit executed by the printer who prepared the petition form attesting that the type sizes used on the form complied with the type size requirements specified under the Michigan Election Law.

Upon receiving a petition, the Director would have to determine whether it complied with all applicable formatting requirements. If a statement describing the subject matter of the proposal appeared on the form, the Director would have to determine whether the statement fairly reflected the proposal. The Director would have to prepare a written report concerning the review of the petition form for presentation to the Board of State Canvassers. The report would have to include a copy of the petition form, the affidavit submitted by the printer, and certification by the Director that the petition complied with the applicable formatting requirements. If a statement describing the proposal's subject matter appeared on the form, the report also would have to include the Director's certification that the statement fairly reflected the proposal.

The Board would have to meet within 30 days after the petition sponsor submitted the petition to the Director for review, to

receive the report prepared by the Director and to consider the approval of the petition form. If the Director requested a revision of the petition during the course of the review process, the Board would have to meet within 30 days after the petition sponsor submitted the final petition revision requested by the Director. The Board could not meet to consider the approval of the petition form unless and until the Director certified that the petition complied with the applicable formatting requirements and that the statement describing the subject matter of the proposal fairly reflected the proposal, if a statement describing the proposal appeared on the form.

If the Board adopted a motion to approve the form of a petition, the petition sponsor could proceed with circulating the petition. Any signatures affixed to the petition that were dated before the date of the Board's approval would be invalid.

If the Board adopted a motion not to approve the form of a petition, the petition sponsor could not circulate the petition for the collection of signatures. Any signatures affixed to a petition form that was not approved by the Board would be invalid. A motion not to approve the form of a petition would have to specify the deficiencies identified in it. The petition sponsor could correct the form and resubmit the petition to the Director for review and reconsideration. The Board would have to meet to consider the approval of a corrected petition form within 30 days after the sponsor submitted it to the Director.

If the Board failed to meet to receive a report prepared by the Director within the required 30-day period, or if the Board met to receive the Director's report within that period and failed to adopt a motion to approve or not approve the petition form, the petition sponsor could proceed with circulating the petition. Any signatures affixed to the petition that were dated on or before the date the 30-day period elapsed, or that were dated on or before the date the Board met to receive the Director's report, if an earlier date, would be invalid. If the petition form subsequently were used to submit a filing to the Secretary of State, the petition form would be subject to review and approval by the Board as a part of the canvass of the petition for sufficiency.

The substance of a proposal appearing on a petition submitted to the Director would not be subject to review or consideration by the Director or the Board. If the petition included a statement describing the subject matter of the proposal, the statement would not be subject to review or consideration by the Board.

After the Board approved a petition form, the petition could not be altered or modified in any way before or during its circulation, except for any tear-off sheets that provided for directory information.

Any person who felt aggrieved by a determination made by the Director or the Board relative to the form of a petition or a statement describing the proposal's subject matter, if any, could have the determination reviewed on appeal by the Michigan Court of Appeals on an expedited basis.

Senate Bill 952 (S-1)

Section 482 of the Michigan Election Law includes requirements for petitions proposing a constitutional amendment, initiation of legislation, or referendum of legislation. It requires that each petition be 8½ inches by 14 inches in size. The bill would require the petition format to be arranged horizontally on the petition sheet.

Currently, the full text of the proposed amendment must "follow" the petition and be printed in 8-point type. The bill would require instead that the full text of the proposed amendment to the Constitution, proposed law, or law that is the subject of the referendum be "printed on" the petition in 8-point type. If the petition involved a proposed amendment to the Constitution, proposed law, or referendum that included alterations to existing provisions of law, the alterations would have to be presented by showing any language that would be added to the provision in capital letters and any language that would be deleted from the provision struck out with a line. The full text of the proposed constitutional amendment, proposed law, or referred law would have to appear on the signature side of the petition sheet after an introduction specifying the provisions of the Constitution or the title and provisions of law that the proposal was designed to alter, abrogate, or create.

If the proposed constitutional amendment, proposed law, or referred law were too long to print in the available space on the signature side of the petition sheet, a statement describing the subject matter of the proposal would have to appear on the signature side. The statement would be limited to words and phrases that objectively delineated the purpose of the proposal and could not include words or phrases designed to promote the passage of the proposal. A reference would have to be made to the reverse side of the petition sheet for the full text of the proposed amendment, proposed law, or referred law. The full text of the proposed amendment, proposed law, or referred law would have to appear on the reverse side of the petition sheet after an introduction specifying the provisions of the Constitution or the title and provisions of law that the proposal was designed to alter, abrogate, or create.

If the full text of the proposed amendment, proposed law, or referred law were too long to be printed on the reverse side of the petition sheet, the language of the proposed constitutional amendment, proposed law, or referred law would have to be continued on a fold-over extension to the petition sheet. The fold-over extension could not be removed before the filing of the petition.

The bill would require a statement that the proposal would be voted on at the November general election to appear in 8-point type on the signature side of the petition sheet after the information required above.

Section 482 requires that a warning be printed in 12-point type immediately above the place for signatures. The warning informs a person that knowingly signing the petition more than once, in a name other than his or her own, when not a qualified and registered elector, or indicating a signature date other than the actual date of the signature is violating the Michigan Election Law. The bill would require that warning, and the notice described below, to be in 12-point, boldfaced type.

The required notice would inform people to read the proposal carefully and that the proposal and any statement describing its subject matter that appeared on the petition were written by the sponsor and not the State. It also would indicate that a

statement describing the subject matter of the proposal that appeared on the petition may not fully explain the proposal.

The bill would require a petition to contain seven or 10 lines printed in 8-point type, as provided in the bill, for petition signers to enter their city or township of registration, signature, printed name, street address or rural route, zip code, and date of signing.

The bill includes a certificate that would have to be printed in 8-point type in the lower left corner of the signature side of the petition sheet. The certificate would assert that the circulator of the petition had the qualifications to be an elector in the State of Michigan at the time he or she began circulating the petition; that each signature on the petition was signed in the circulator's presence; that, to the circulator's best knowledge and belief, each signature was genuine; and that each signer was, at the time of signing, a qualified and registered elector of the city or township indicated on the petition.

The bill also includes a warning that would have to be printed in 12-point, boldfaced type in the lower left corner of the petition sheet immediately beneath the circulator's certificate. The warning would inform people that a circulator who knowingly made a false statement in the certificate, a person not a circulator who signed as a circulator, or a person who signed a name other than his or her own as a circulator would be guilty of a misdemeanor.

In addition, the bill includes information that would have to be printed in 8-point type in the lower right corner of the petition sheet, where the circulator would enter his or her signature, printed name, street number or rural route, city or township where qualified to be registered, zip code, and date of signing.

Under the bill, an instruction to the circulator not to sign or date the certificate until after circulating the petition would have to be printed in 12-point, boldfaced type appearing above the information identifying the circulator.

Proposed MCL 168.483a (S.B. 951)
MCL 168.482 (S.B. 952)
Proposed MCL 168.483b (S.B. 953)
MCL 168.488 (S.B. 954)

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 bills would take a number of steps to improve the process for Michigan electors to amend the State Constitution and initiate legislation. In regard to the preapproval of petitions, Senate Bill 951 (S-1) would formalize what is now optional. The bill would mandate that the sponsor of a ballot proposal submit the petition for the Elections Director to review the form of the petition and the Board of State Canvassers to approve it, before the petition could be circulated for signatures. While the Director and the Board would have to act within set time frames, the bill would allow flexibility for the Director to continue negotiating with the sponsor. If the Board did not meet by its deadline, or met and deadlocked, the sponsor could gather signatures without the Board's approval. These requirements would prevent situations in which defective petitions are not invalidated until after they have been signed because the sponsors chose not to seek preapproval from the Elections Bureau.

Also, in addition to determining that a petition met applicable formatting requirements, the Elections Director would have to certify that a statement describing the proposal's subject matter fairly reflected the proposal. Currently, petitions may be preapproved as to form but statements on them are not subject to review. This requirement in Senate Bill 951 (S-1), together with requirements in the other bills, would help ensure that people signing petitions are adequately informed about what they are signing.

Under Senate Bill 952 (S-1), the full text of a proposal would have to appear on the signature side of a petition; if it did not fit, then an objective statement describing the proposal would have to be shown on that side. The petition also would have to warn signers that the statement was not written by the State and might not fully describe the proposal. In addition, the bill would require petitions to show clearly new language that would be added to existing law, and existing language that would be deleted.

Senate Bill 951 (S-1) also would clarify the role of the Elections Director and the Board of State Canvassers, by specifying that neither could review of the substance of a proposal and the Board could not review a statement describing a proposal's subject matter.

Senate Bill 953 (S-1) would require public notice of meetings of the Board of State Canvassers to approve petition forms, and Senate Bill 954 (S-1) would extend applicable provisions of Senate Bill 952 (S-1) to local elections.

The bills are the product of a series of bipartisan meetings that began in 2007, and the legislation reflects some of the key issues addressed in those discussions.

Response: A number of additional reforms have been suggested. In particular, the legislation should give people an opportunity to withdraw their signatures within a certain period of time after signing a petition. This option would have been welcome in 2006, when many people signing the Michigan Civil Rights Initiative evidently misunderstood the nature of that proposal.

Another suggestion would set a minimum number of signatures per Congressional district, to make sure that all or most of the signatures were not gathered in only one place or part of the State.

It also has been suggested that the Michigan Election Law should prohibit a person from inducing or advising a petition circulator to violate the law, obtaining a signature through fraud or deceit, or misleading an elector as to the substance of a petition.

Opposing Argument

Senate Bill 951 (S-1) would give considerable authority to a single person--the Elections Director--who would decide whether a petition met formatting requirements and whether a statement describing a proposal's subject matter fairly reflected the proposal. While the Board of State Canvassers would have to approve or disapprove the petition form, the Board could not review a statement describing the proposal.

Response: The bill would allow a person to seek expedited review by the Michigan Court of Appeals if he or she were dissatisfied with a determination of the Director or the Board.

FISCAL IMPACT

Senate Bill 951 (S-1)

The Department of State should be able to absorb within current annual appropriations the costs associated with the review of petitions by the Director of Elections. However, if an extraordinary number of petitions were filed in any given year, the associated costs for review could exceed appropriated amounts. Those costs are indeterminate at this time.

Senate Bills 952 (S-1), 953 (S-1), & 954 (S-1)

The bills 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.