



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373 6466

VILLAGE DISINCORPORATION PROCEDURES

Senate Bill 433 (Substitute H-1)
First Analysis (2-2-88)

Sponsor: Sen. Harmon Cropsey
Senate Committee: Local Government and Veterans
House Committee: Towns and Counties

THE APPARENT PROBLEM:

Public Act 3 of 1895, which provides for the incorporation of villages, outlines steps to be taken when qualified electors of a village decide to vacate the incorporation. These steps include submitting petitions, holding a special meeting, and balloting. Some people contend that the law and its procedures are archaic and, instead of providing electors in a village an opportunity to vote on the issue of vacating incorporation, the law actually makes it more difficult. Supporters of changing the law point to two incidents that occurred in Muskegon and Kalamazoo Counties. In 1975, a village in Muskegon County called an election on disincorporation and conducted the election like a general election, as one way of trying to meet the requirements of Public Act 3. In January 1987, the Village of Climax, in Kalamazoo County, held an election at the same time it conducted a village meeting in order to comply with the law, after the village had sought advice from the village attorney, the Kalamazoo County clerk, and election officials within the Department of State. In light of these instances in which the method of disincorporation was handled differently each time, some people contend that the law should be updated and clarified to reflect current procedures for conducting a referendum election.

THE CONTENT OF THE BILL:

The bill would amend Public Act 3 of 1895 to revise procedures for vacating incorporation of a village, provide language for a ballot proposition on vacating incorporation of a village, and repeal certain procedures found in the act.

The bill would require that any proposition to vacate incorporation of a village would have to be submitted to the qualified electors of the incorporated village at the next general election or at a special election. If the proposition were submitted to the qualified electors at the next election, on or before August 30, the bill would require that the village council have voted by majority vote to submit the proposition to the village electors, or that there had been filed with the village clerk petitions requesting the submission of the proposition, which had been signed by at least one-fourth of the village electors as shown by the registration list as of the close of registration prior to the last village election, requesting that the incorporation of the village be vacated.

If the proposition were submitted to the qualified electors at a special election, the special election could not be held less than 60 days after either the date the village council had voted to submit the proposition to the electors of the village or the date there had been filed with the village clerk petitions requesting the submission of the proposition. (The date must have been approved by the county election scheduling committee.) The procedures for conducting the election would be those provided in the "general election law."

The ballots would have to be cast and canvassed, and the results of the election certified, in the same manner as ballots on any question submitted to the electors of the village. If a two-thirds majority of the village votes canvassed were in favor of vacating, the council, or a majority of the council, would immediately have to cause a transcript of all the proceedings in the case to be certified to the clerk of the county in which the village or the principal part of the village was located, as well as to the secretary of state.

The bill would not authorize the qualified electors of any incorporated village, or the county board of commissioners, to vacate or alter any recorded plat of the village, or any street or alley in the village.

The bill would repeal current procedures for vacating village incorporation, which include submitting petitions, holding a special village meeting, and voting.

MCL 74.18a

HOUSE COMMITTEE ACTION:

The House Towns and Counties Committee adopted a substitute which rewrote minor portions of the bill as it passed the Senate. One of the provisions in the substitute would require that the transcript of the proceedings to vacate a village incorporation be certified, not only to the clerk of the county in which the village or principal part of the village was located, but also to the secretary of state.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal implications for the state. (1-29-88)

ARGUMENTS:

For:

Upon receipt of a petition, signed by at least one-fourth of the registered electors in a village, the village council is required under current law to order that a special meeting of the village electors be held for voting on the question of disincorporation. The current procedures require that a type of town meeting be held for electors to vote on the issue. While the town meeting concept may have been appropriate almost a century ago when the law in question was enacted, today's working and living schedules do not make it feasible for electors to attend one meeting, which might not be scheduled for a time that is convenient for all electors. Thus, some voters may, in effect, be disenfranchised because they are unable to attend the meeting. Instead, the election would have to be conducted according to procedures in the "general election law", which would include holding the election from 7 a.m. to 8 p.m. — as other elections are held. This would provide ample opportunity for all qualified electors to vote.

OVER

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For:

Under state election laws, if a person has not voted in the past four years, that voter registration is placed in an inactive file where it can stay for up to six years — unless action is taken to restore it to the active file or expunge it from the file. Thus, a person could remain on the registration file for 10 years and not have voted in that time. Public Act 3 provides that a village must "order a special meeting of the electors of the village to be held for the purpose of voting on the question of vacating the incorporation of the village." Since the law is not clear if "electors" include inactive as well as active voters, theoretically the number required could include both inactive and active voters, which could amount to more people than there were actual residents of the village. By following general election procedures, as the bill specifies, the question of who would be eligible to vote would be dealt with under current election laws.

For:

By requiring that procedures for conducting an election on disincorporation follow the "general election law," the bill would provide a mechanism for allowing the use of absentee-voter ballots, for which there are no provisions in Public Act 3. This would provide an opportunity for all electors in the village to vote.

Response: While the bill refers to the "general election law," it is not clear whether that means the Michigan Election Law (MCL 168.1 - 168.992). Also, election procedures as to posting notices on the date and time of the election, absentee ballots, etc. should be specifically mentioned in the bill so there would be no uncertainty as to the requirements.

For:

In January 1987, the Village of Climax faced the issue of disincorporation. Because the law was vague and out-of-date, the village had to seek advice from its attorney, the Kalamazoo County clerk, and state election officials on how to implement the procedures of Public Act 3. The bill would go a long way in clarifying and updating procedures that villages must use when dealing with disincorporation, which would prevent other village officials from having to seek help in understanding the law.

Against:

The bill would provide electors of a village the opportunity to submit signed petitions to put the question of disincorporation on a ballot, but provides no deadline by which these petitions must be submitted. Without this provision, the act would not conform to the procedures found in the "general election law" regarding the submission of signed petitions. The bill should be amended to include a deadline — a six-month deadline has been suggested — by which these signed petitions must be submitted.

POSITIONS:

The Department of State supports the bill. (1-27-88)

The Michigan Municipal League would support the bill if it were amended to include a deadline by which electors' signed petitions requesting a vote on disincorporation must be submitted. (1-28-88)