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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 441 (as passed by the Senate)
Sponsor: Senator Ed Fredricks
Committee: Government Operations

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RATIONALE

The State Constitution provides for the collection of signatures of registered electors on petitions to propose constitutional amendments or to initiate legislation. The Constitution also prescribes some of the criteria that petitions must meet to be considered valid. For instance, for proposed constitutional amendments enough signatures must be collected to equal at least 10% of the total votes cast for the office of Governor at the preceding general election; to invoke an initiative, signatures representing at least 8% of the votes cast for the office of Governor must be collected. The Constitution does not, however, specify all procedures for the handling of petitions and the collection of signatures, and instead leaves this task to the Legislature.

While the Constitution is silent regarding the length of time a signature on a petition remains valid, a provision in the Michigan Election Law, adopted in 1973, specified that petition signatures were to be considered void if made more than 90 days before the petition was filed. The provision was amended later in 1973 to extend the time limit to 180 days. In 1974, an Attorney General's opinion (No. 4813) declared the provision unconstitutional, stating that signatures were to be considered valid as long as they were gathered during a single four-year term bounded on both sides by a gubernatorial election.

From the issuance of the opinion until 1986, the Elections Division of the Department of State did not enforce the provision. In 1986, however, Detroit Edison and Consumers Power filed a suit claiming that the 180-day limit was valid, and that signatures on petitions proposing a constitutional amendment to limit utility rate

increases were therefore invalid. The Ingham County Circuit Court ruled that the 180-day limit was valid, and reinstated the law. Subsequent appeals to the Michigan Court of Appeals and the Michigan Supreme Court were unsuccessful in having the 180-day limit ruled unconstitutional. As a result of the rulings, the utility rate proposal and a proposed amendment removing the constitutional ban on capital punishment were not allowed on the ballot.

It has been argued that the 180-day limit unduly restricts the public's ability to carry out its constitutional right to initiate legislation or propose constitutional amendments, because the number of signatures needed to be collected cannot reasonably be gathered in 180 days. Some people feel that the current limit should be extended.

CONTENT

The bill would amend the Michigan Election Law to provide that a signature on an initiative petition proposing an amendment to the State Constitution, or to initiate legislation, would be considered void if it had been made more than 12 months before the petition was filed with the Secretary of State's office, or if a general election had been held between the date the signature was made and the date the petition was filed. The bill would take effect January 1, 1990.

MCL 168.472a

FISCAL IMPACT

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

S.B. 441 (7-26-90)

ARGUMENTS

Supporting Argument

Getting the necessary number of signatures to initiate legislation or propose constitutional amendments can be an imposing task in and of itself, but placing an unduly restrictive time limit on collection of the signatures is simply unfair and usurps the people's ability to exercise their will. The right of the people to initiate legislation or propose constitutional amendments by petition has, since 1913, been something that the State's citizens could always turn to in times when action was needed or desired, but the Legislature found itself unable to act because of self-interest or special interest pressure. From 1913 until 1973 the time limit for the collection of signatures was the time between gubernatorial elections. (Governors were elected for two-year terms until the adoption of the 1963 Constitution, which extended the term to four years.) The 180-day time limit was adopted by the Legislature in 1973, but promptly declared unconstitutional in 1974 by an Attorney General opinion. The 180-day limit remained unenforced until a 1986 court case resulted in a ruling that the limit was valid. This means that the traditional time for gathering signatures--the time between gubernatorial elections--remained valid for 73 years with only one minor interruption.

Now, citizens wishing to initiate legislation or propose a constitutional amendment find themselves in the position of having to collect from 100,000 to 300,000 signatures (depending upon the size of the vote in the last gubernatorial election) in less than half a year, which is 18 months shorter than the two-year period that was in effect until 1963 and three and one-half years shorter than the period allowed until 1986. The people reserved for themselves the right to change the laws and the State Constitution--to take direct action when enough people felt that action was necessary. It is a method that opens the political process to every citizen individually, and grants individuals collectively the opportunity to establish their common beliefs as a part of our laws. It is a method that can place an effective limit on the political power of the government; no one branch of government, or no individual executive, legislator, or justice, can take an unreasonable, unpopular, or punitive action that cannot eventually be overturned by the people.

This right is simply too important to restrict through the use of an arbitrary time limit. By extending the limit to one year, the bill would give the people a more realistic chance of exercising that right.

Opposing Argument

The process whereby the people initiate a law or propose a constitutional change should be an imposing task, not something that every person with an axe to grind can easily accomplish. The public mood swings from time to time depending upon events or circumstances, but the framers of the State Constitution, following the lead of the framers of the U.S. Constitution, were wise and cautious enough to know that the public's mood of the moment doesn't always demand sweeping fundamental changes. For instance, an unpopular tax imposed at an inopportune time can raise the ire of the public to a fever pitch, even though the tax may have averted a financial disaster for the taxing unit. In such an instance, in which the failure of the taxing unit may have caused a much greater harm and cost to the citizens than the unpopular tax increase, should the people have an easy avenue to act upon their anger, or should they have to make a substantial effort to alter the course set for them by their elected representatives? If a small group of the citizenry fervently believes in a cause, while the rest of the populace is indifferent, or even opposed, should the small group be allowed to impose its will on the rest of the State through the use of the initiative? Our laws and, especially, our constitutional provisions are meant to be difficult to change so that we do not take in haste regrettable actions that, upon reflection, should never have been seriously considered in the first place. While the 180-day limit may seem to be a tough standard, the inability of petition-gatherers over the course of six months to meet the objective may say more about the weakness of a proposal than the injustice of the standard. The Legislature does not need to deal continually with initiated proposals, and the voters do not need to be confronted with endless ballot proposals at each election. The 180-day limit, while strict, reserves for the people the right to petition for only those causes that attract the serious and earnest attention of the citizens. As the Michigan Supreme Court reiterated in 1986 in Consumers Power v Attorney General, "...the requirements of these statutes serve to further the important state interest of insuring the

purity of elections" (426 Mich 1). The Court also pointed out that the statute itself does not get a 180-day time limit for obtaining signatures; rather, it creates a rebuttable presumption that a signature, affixed to a petition more than 180 days before the petition is filed, is void. This law fulfills the constitutional directive that only registered electors may propose a constitutional amendment or initiate a law.

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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.