



**House
Legislative
Analysis
Section**

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**NAMES OF CANDIDATES
ON THE BALLOT**

**House Bill 5335 as enrolled
Public Act 163 of 2002
Second Analysis (7-22-02)**

**Sponsor: Rep. Andrew Richner
House Committee: Redistricting and
Elections
Senate Committee: Government
Operations**

THE APPARENT PROBLEM:

The Michigan Election Law contains a number of provisions dealing with how a candidate's name should appear on the ballot. In one case, the law addresses the issue of how candidates should be designated when they have the same or a similar surname. Another section deals with how a candidate should be designated when his or her name has been recently changed. Critics of the current law have proposed legislation to amend provisions dealing with both kinds of cases in response to perceived problems and abuses.

Currently, when two or more candidates for the same office have the same or similar surname, a candidate can request a clarifying designation on the ballot. The request is made to the board of county election commissioners in cases involving a single county and to the board of state canvassers in cases involving more than one county. The determining board in each instance must notify the requester and the other candidate affected of its determination by first-class mail sent within 24 hours after the final date for the determination. A candidate who is dissatisfied with a determination can appeal to circuit court. The election law says that in the case of similar names, the determining board would have the occupation or residence of each candidate printed on the ballot or ballot labels under the candidates name. The term "occupation" includes a current political office even if it is not the candidate's principal occupation but does not include reference to a previous position or occupation. The board of state canvassers is required to issue guidelines to ensure fairness and uniformity in the granting of designations and is authorized to issue guidelines regarding what constitutes same or similar surnames.

(The State Constitution requires that incumbent judges be designated as incumbents on the ballot, but

does not allow other elected officials to be designated on the ballot, with the exception of the "similar name" situation. Designation as an incumbent is generally regarded as advantageous.)

Critics point out that the law requires only that the candidates with the same or similar names be notified of the board decision, which means other candidates for the same office might not be aware that one of the candidates has a special designation on the ballot until they see the ballot. This seems unfair since a ballot designation, particularly one that designates one of the candidates as the current officeholder, could have an effect on voter behavior. All candidates, they say, should be notified when a request for a clarifying designation has been made, so that they can attend the board hearing. All should later be notified of the decision so that all can have an opportunity to appeal to circuit court.

Critics also complain that candidates use these provisions to manipulate the system. For example, if an incumbent officeholder gets another person with the same or similar name to become a candidate in a primary, he or she can be designated as the incumbent officeholder on the ballot, which is thought to be a significant advantage. Some people believe that when the two candidates with the same or similar name are related (suggesting collusion), the clarifying designation should not refer to a candidate as the incumbent officeholder.

Moreover, Michigan election officials say that the current section of election law dealing with candidates who have changed their names is outdated and confusing and needs to be replaced with clear and relevant instructions about how candidates names may appear on election ballots.

House Bill 5335 (7-22-02)

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law in the following ways.

Candidates with the same or similar name. In a case when two or more candidates for the same office have the same or similar surnames and a candidate requests a clarifying designation from the county board of election commissioners or the board of state canvassers, the determining board would have to immediately notify each candidate for the same office of the request and of the date, time, and place of the hearing on the request. Following the determination, the board would notify each candidate (rather than, as now, "the other candidate affected") for the same office of the determination. A candidate who was dissatisfied with the determination of the county board could appeal to the circuit court in that county and a candidate dissatisfied with the determination of the state board could appeal to the Ingham County Circuit Court within 14 days after the final date for making the determination (rather than within 7 days as is now the case).

Related candidates with the same or similar name. If two or more candidates with the same or similar surnames are related, the board of county election commissioners would only be allowed to print the residence or date of birth of each of the candidates as a clarifying designation. (Currently, in such a case, the board could print the occupation or residence, with the term "occupation" to include a currently held political office. The bill would add date of birth.) By "related", the bill would mean that the candidates with the same or similar surnames are related within the third degree of consanguinity. (This refers to parents, children, grandparents, grandchildren, siblings, great-grandparents, great-grandchildren, nephews, nieces, uncles, and aunts.)

Judgeship candidates with the same or similar name. In cases in which there were two candidates with the same or similar surnames for a judgeship contest, and one of the candidates was an incumbent entitled to an incumbency designation (as granted by the state constitution for judges and justices), no designation would be granted the other candidate. If there were more than two candidates with the same or similar surname in such a contest, a clarifying designation could be given to the non-incumbent candidates for the judgeship.

Candidates with name changes. The bill would repeal current provisions (in Section 557) regarding the affidavit of candidacy of a candidate whose name

has been changed and provide a new set of provisions regarding how the name of a person whose name had been changed would appear on the ballot. Ballots that violated these provisions could not be produced, printed, or distributed. The new provisions are as follows.

- In the affidavit of identity required of candidates, the candidate would have to specify the manner in which he or she wished to have his or her name to appear on the ballot and the affidavit would have to contain a statement regarding whether or not the candidate was using a name, whether a given name, surname, or otherwise, other than a name he or she was given at birth. If a candidate was using a name other than the name given at birth, the candidate would have to include on the affidavit of identity the candidate's full former name. The requirement to indicate a name change on the affidavit would not apply if the name in question had been formally changed at least 10 years before filing as a candidate; the name had been changed in a certificate of naturalization issued by a federal district court at the time the individual became a naturalized citizen at least ten years before filing; the name was changed because of marriage; or the name was changed because of divorce (but only if to a legal name by which the individual was previously known). By a "name that was formally changed", the bill would mean a name changed under Chapter XI of the Probate Code or through a similar, statutorily sanctioned procedure under the law of another state or country.

- A candidate who was required to indicate a name change on the affidavit of identity would be listed on the ballot with his or her current name and former name as prescribed by the secretary of state. For other candidates, the bill would specify that, with certain exceptions, both the candidate's given name (first name) and surname given at birth, and only those names, could appear on the ballot. The exceptions to this would be if: the name in question, whether a given name, surname, or otherwise, was a name that had been formally changed; the secretary of state required that the candidate's current name and former name be printed on the ballot; the name in question had been changed in a certificate of naturalization issued by a federal district court at the time an individual became a citizen at least 10 years before filing as a candidate; a name was changed because of marriage; or a name that was changed because of divorce (but only if to a legal name by which the individual was previously known).

- A candidate could specify that both his or her given name and middle name, or only a middle name, appear on the ballot. A candidate could also specify that either an initial or a recognized diminutive for the candidate's given or middle name, or for both, appear on the ballot. A candidate would be prohibited from specifying that a nickname that is not a recognized diminutive of the candidate's given name or middle name appear on the ballot. A married individual would be prohibited from specifying that his or her spouse's given name, or an otherwise permitted alternative for that name, appear on the ballot.

The bill also would specify that the current affidavit of identity filing requirement does not apply to candidates nominated for the office of President of the United States or Vice President of the United States.

Section 971 Amendment. A recent amendment to Section 971 of the election law (added by Public Act 91 of 2002) would prevent a special election from being held to fill a vacancy created by a recall of an elected official in a city, township, or village when the governor appointed a review team for that local unit under the Local Government Fiscal Responsibility Act. (This is understood to apply to a situation in Flint.) The new provision would specify that within five days of reporting its findings, the review team would submit to the county election scheduling committee a proposed date for the special election. Under the new provision, if the review team was appointed after a date for a special election had been proposed by the responsible local election official or after the date had been scheduled by the county scheduling committee, the action of the local official or county committee would become void when the review team was appointed. House Bill 5335 would amend this new provision to specify that it would apply to any special election scheduled but not yet held as of the effective date of House Bill 5335, which was April 9, 2002.

MCL 168.2 et al

FISCAL IMPLICATIONS:

The House Fiscal Agency has reported that the bill would have no fiscal impact on the state or on local units of government. (HFA analysis of bill as introduced dated 10-31-01)

ARGUMENTS:

For:

It is only fair that when a candidate for office seeks a clarifying or descriptive ballot designation, because another candidate in the race has the same or similar surname, that all of the candidates for that office be informed of the request and have an opportunity to appear at the hearing on the request. Such a ballot designation can be advantageous (rather than merely "clarifying") for the candidate receiving it, and the other candidates ought not to find out about the designation only upon seeing the printed ballot. Currently, only the candidates with the similar names are informed, and then only after a decision has been made by the county or state election officials. The bill also would extend the amount of time available to appeal a clarifying designation to circuit court from 7 to 14 days.

Furthermore, officeholders should not be allowed to get other candidates with the same or similar surname to run against them so that they can receive a designation as an incumbent officeholder on the ballot, as critics allege now occurs, or to otherwise get their occupation on the ballot. The bill would prevent this in the case of relatives on the ballot. The bill would not permit the use of an occupation or political office as a clarifying designation in such cases, only the residence of the candidate or the candidate's date of birth. Allowing one candidate to use an officeholder designation (or other occupational designation) is not fair to the other candidates on the ballot.

Response:

Why focus just on relatives involved in such situations? (It should be noted that relatives are not always on friendly terms and should not be assumed to be in collusion.)

For:

State election officials say that the current provisions regarding how candidates names appear on the ballot are outdated and confusing. The bill would put in place new provisions about names on the ballot, covering such matters as name changes, initials, and nicknames. The bill would not permit nicknames that are not diminutives. Election officials say that the name change provisions do not represent significant changes in current public policy.

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.