



Senate Fiscal Agency  
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## BILL ANALYSIS

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House Bill 4275 (as reported without amendment)  
Sponsor: Representative Barbara Vander Veen  
House Committee: Oversight, Elections and Ethics  
Senate Committee: Government Operations

Date Completed: 6-15-05

### **RATIONALE**

Article 2, Section 7 of the State Constitution requires a four-member Board of State Canvassers to be formed, and the Michigan Election Law sets forth procedures for the appointment of the Board. The four members are appointed by the Governor with the advice and consent of the Senate. The Board must consist of two members from each major political party, selected by the Governor from a list of three names submitted by each party's State central committee. One of the Board's central responsibilities is the certification of petitions for ballot proposals to be voted on statewide. Related duties include preparing a statement of purpose of a proposed amendment or question; assigning a number designation to appear on the ballot for each question to be submitted on a statewide basis; and, upon receiving notice from the Secretary of State that petitions have been filed, canvassing the petitions to determine whether they contain the required number of signatures.

The Election Law further requires the Board to make "an official declaration of the sufficiency or insufficiency of a petition". In recent years, several decisions of the Board have led to controversy and litigation over the extent of the Board's authority to decide whether a petition to amend the State Constitution meets statutory requirements. (The lawsuits are described below, in **BACKGROUND**). In particular, these cases involved allegations that some Board members voted against certification of ballot proposal petitions based on the substance of the proposals. To prevent this in the future, it has been suggested that the Board should

be required to certify a ballot proposal that is technically sufficient.

### **CONTENT**

The bill would amend the Michigan Election Law to require the Board of State Canvassers to declare a ballot question petition sufficient unless it determined that the petition was not in proper form or that the number of valid signatures was less than the required minimum number. In determining the sufficiency of the petition form, the Board could not consider the substance of the proposal affixed to the petition.

MCL 168.477

### **BACKGROUND**

#### Proposal 02-4

Citizens for a Healthy Michigan, a group composed of hospitals and antismoking interests, circulated petitions to place on the 2002 ballot a constitutional amendment to reallocate the State's \$8 billion share of the national settlement agreement between 46 states and the U.S. tobacco industry. Since the settlement was reached, the revenue had been dedicated to the Merit Award Trust Fund, which funds the Merit Award Scholarships and other education-related activities, such as the Tuition Incentive Program and the Nursing Scholarship Program, and the Tobacco Settlement Trust Fund, which supports various health-related initiatives, including the Elder Prescription Insurance Coverage (EPIC) Program and the Life Sciences Corridor. The proposed

constitutional amendment would have required 90% of the State's share of the settlement to be allocated to health care for smokers, medical research, smoking prevention programs, the Nursing Scholarship Program, and EPIC; and the remaining 10% to be allocated to the General Fund. The two Republican members of the Board of State Canvassers voted against certification of the petition, asserting that the wording of the proposal was defective.

The Election Law requires the Board to make "an official declaration of the sufficiency or insufficiency of a petition", and prescribes the form and wording of a petition to amend the Constitution. In addition to containing the full text of an amendment, "[i]f the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted, preceded by the words: 'Provisions of existing constitution altered or abrogated by the proposal of adopted'". In this case, the opposing members claimed that the petition was defective because it did not list all of the existing constitutional provisions that the proposal would alter or abrogate.

Citizens for a Healthy Michigan filed a complaint for mandamus seeking an order from the Michigan Court of Appeals requiring the Board to declare the petition sufficient and certify it for placement on the ballot (*Citizens for a Healthy Michigan v Board of State Canvassers*, Docket No. 243505). In an order dated September 6, 2002, the Court of Appeals disagreed with the Board, acknowledging that the Election Law authorizes it to make a determination with regard to the petition's sufficiency, but specifying that the Board's authority does not extend to conducting a complex legal analysis of constitutional issues. The Court also stated, "The proponents of the petition are not required to list every provision of the constitution that might indirectly or contingently be affected by the proposed amendment," and ordered it to certify the petition for the ballot. The Supreme Court then denied leave to appeal. Therefore, the proposal was certified as Proposal 02-4.

#### Proposal 04-2

A citizen initiative group called Citizens for the Protection of Marriage circulated

petitions to put before the voters at the November 2004 general election a proposal to amend the Constitution to provide that "the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose."

When the Board met to certify that the petitions had an adequate number of signatures from registered voters, the two Republican members voted "yes" and the two Democrats voted "no", resulting in a deadlock. Those who voted "no" asserted that the language of the proposal was unlawful and unconstitutional. There was no dispute that the form of the petition was sufficient, nor was there any dispute that there was a sufficient number of signatures in support of the proposal. Since an action of the Board is effective only if at least one member of each major political party concurs in the action, the Board's tie-vote denied certification of the petitions. The Board later met again to consider the proposal's ballot language, assuming the petitioners would ask the Michigan Court of Appeals to order the proposal certified. Again, the Democrats voted "no", expressing concerns that the phrase "or similar union for any purpose" potentially would prevent employers from offering domestic partnership benefits, such as health insurance, to their employees' life partners, and that the proposal would invalidate the domestic partnership benefits that some cities, universities, and private firms already extended to both same-sex and opposite-sex unmarried couples. To the extent that the proposal would have that impact, it was suggested that the amendment would conflict with constitutional provisions that prohibit the impairment of contracts and that require equal protection under the law, as well as Federal laws governing labor relations and employee benefits.

Citizens for the Protection of Marriage then filed a complaint for mandamus seeking an order from the Michigan Court of Appeals compelling the Board to declare the petition sufficient and certify it for inclusion on the ballot, (*Citizens for the Protection of Marriage v Board of State Canvassers*, Docket No. 257542). In an order dated September 3, 2004, the Court held that the Board was obligated to certify the petition, as the form was proper and the number of signatures was adequate. The Court

concluded that "...the Board erred in considering the merits of the proposal. Not only did the Board have no authority to consider the lawfulness of the proposal, but it is also well established that a substantive challenge to the subject matter of a petition is not ripe for review until after the law is enacted." The Court granted the complaint for mandamus and directed the Secretary of State to place the proposal on the ballot.

## **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**

As demonstrated by the cases described above, Board members sometimes attempt to decide substantive questions that appropriately should be decided by courts. By providing clear parameters that explicitly describe the Board's duties, the bill would give the Board guidance and enable members to fulfill their responsibilities in a professional manner, less constrained by the pressure of the political parties that nominate them for office. The courts already have said that the Board has no authority to address the substance of a ballot proposal. Making this clear in statute, as well, could prevent future litigation like that seen before the last two general elections.

Legislative Analyst: Julie Koval

## **FISCAL IMPACT**

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

Fiscal Analyst: Bill Bowerman

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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.