

Legislative Analysis



NONPARTISAN ELECTION OF SHERIFF AND PROSECUTING ATTORNEY

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 4150 & 4151

Sponsor: Rep. Joel Johnson

Committee: Ethics and Elections

Complete to 5-21-13

A SUMMARY OF HOUSE BILLS 4150 - 4151 AS INTRODUCED 1-31-13

The bills would amend two separate laws to require that county sheriffs and county prosecuting attorneys be elected at nonpartisan election. The requirement would begin with the 2016 general election and apply every fourth year after that.

House Bill 4151 is tie-barred to House Bill 4150, so that House Bill 4151 could not go into effect unless House Bill 4150 were also enacted into law. A detailed description of each bill follows.

House Bill 4151 would amend the Charter County Act (MCL 45.514) to require that a county charter provide for the non-partisan election of a sheriff and a prosecuting attorney.

Currently the law requires a county charter to provide for the *partisan* election of a sheriff, a prosecuting attorney, a county clerk, a county treasurer, and a register of deeds. (It also allows the county board of commissioners to combine the county clerk and register of deeds into one office). House Bill 4151 would modify this provision to remove the references to a sheriff and prosecuting attorney.

House Bill 4150 would amend the Michigan Election Law (MCL 168.191 et al) by adding a new chapter, and changing 11 existing sections, as follows.

Eligibility. The bill would create a new chapter of the law entitled "Chapter XA - Prosecuting Attorney and Sheriff." The new chapter specifies that to be eligible to campaign to seek the offices of prosecuting attorney and sheriff, a person must be a registered voter in the county, and not convicted of a crime in the 20 previous years.

Non-partisan Primary. Under the bill, beginning with the 2016 general election (and every four years after that), a nonpartisan primary would be held in all 83 counties on the Tuesday after the first Monday in August before any November general election at which a prosecuting attorney and sheriff would be elected. If there were an insufficient number of candidates (as described in the bill), then no primary would be held.

Nominating Petitions; Filing Fee. A candidate for sheriff or for prosecuting attorney could

get on the nonpartisan ballot by filing nominating petitions with the county clerk or by paying a filing fee of \$100 to the county clerk. The required number of nominating petition signatures would differ depending upon the population of a county. The minimum and maximum ranges, by population, can be found at MCL 168.544f. Nominating petitions would be received until 4 p.m. of the 15th Tuesday before the election. Nominating petitions would be subject to challenge.

In either instance, the candidate could not withdraw unless he or she serves a written notice of withdrawal on the county clerk not later than 4 p.m. of the third day after the last day for filing a nominating petition or filing fee.

County Board of Canvassers. The county board of canvassers would certify the non-partisan election and deliver the certificate of election to the county clerk within 14 days after the contest.

Term of Office; Oath. The prosecuting attorney and sheriff would begin serving on January 1 following the November general election (and continue until a successor was elected and qualified). Those elected would take the Michigan Constitutional oath of office, and if necessary give bond. The oath would be delivered to the county clerk and the bond deposited with the county treasurer.

Resignation, Vacancies. The bill describes several scenarios concerning vacancies in office (death, resignation, residing outside the county, removal from office, conviction for a crime, refusing the oath or bond, etc.), and prescribes the manner in which vacancies would be filled.

If resigning, a sheriff would have to file a written notice with the presiding or senior probate judge, the county clerk, and the prosecuting attorney. In addition, any vacancy in the office would be filled by appointment made by those same three individuals.

In contrast, a resigning prosecuting attorney would file written notice with the presiding judge of that "judicial district." [Sec.218a(2)] Any vacancy in the office of prosecuting attorney would be filled by appointment by the judge or judges of that "judicial circuit" [Sec.219c(1)].

In the event of a prosecuting attorney's or sheriff's death before taking office, that vacancy would be filled within 15 days after the beginning of the term, according to law.

The governor could remove a sheriff or prosecuting attorney from office if they were found to be guilty of official misconduct; willful neglect of duty; extortion; habitual drunkenness; being drunk; or convicted of a felony. The bill describes the protocol to be followed to ensure the sheriff or prosecuting attorney were aware of the charges and had an opportunity to respond. A person removed from office would not be eligible for election or appointment to any office for a period of three years.

Filling Vacancies. House Bill 4150 specifies that a person appointed to fill a vacancy in either office must take the oath, give bond in the manner required by law, and hold office

for the remainder of the unexpired term. However, if the vacancy occurs more than 182 days before the next general election and that is *not* the general election at which a successor in office would have been elected (if there were no vacancy), then the person appointed would hold office only until a successor could be elected at the next general November election. The successor would then hold the office for the remainder of the unexpired term of office.

Recount, Recall. The bill specifies that votes cast for a sheriff or prosecuting attorney would be subject to recount. A person elected to either of these posts would be subject to recall.

FISCAL IMPACT:

A fiscal analysis is in process

Legislative Analyst: J. Hunault
Fiscal Analyst: Paul Holland
Jim Stansell

■ 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.