

ADJUSTING NOMINATING PETITION DEADLINE IN THE EVENT OF CITY CLERK ERROR

Phone: (517) 373-8080
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House Bill 4892 reported from Committee as amended

Sponsor: Rep. Lee Chatfield

Committee: Elections and Ethics

Complete to 9-5-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4892 would amend Michigan Election Law (MCL 168.644f) to allow a city clerk to adjust the deadline for nominating petitions for odd year general elections if a city clerk publishes the incorrect date for nominating petitions and does not correct the mistake in a timely manner, and at least one candidate relies on the incorrect information. It would also provide a set of measures which must be followed in that city over the next three years to address the mistake and ensure that it is not repeated.

The bill would allow a city clerk to adjust the nominating petition filing deadline for all candidates for city offices in cases where candidates were informed of the wrong deadline by a city clerk in the 2017 calendar year. (See ***Background***, below) If the state Bureau of Elections (BOE) confirms (1) that the error occurred, (2) that it was not corrected in a timely manner, and (3) that at least one candidate failed to meet the filing deadline because of reliance on the information (but submitted a sufficient nominating petition by the incorrectly published deadline), the Michigan Secretary of State would authorize the city clerk to include on the general election ballot all eligible candidates who properly filed sufficient nominating petitions by the eleventh Tuesday before the primary or general election.

If a city falls under the circumstances described in the bill in 2017, it would also be subject to all of the following:

- Until December 31, 2019, the city clerk must attend at least one annual ***election training school*** conducted by the state Director of Elections.
- Until December 31, 2019, the city clerk must receive ***approval from the Secretary of State*** (SOS) for the form of nominating petitions before they may be circulated for signatures, as well as any election filing deadline calendars before providing them to the public.
- The SOS must conduct a ***postelection audit*** after each November election held in the city in 2017, 2018, and 2019.
- The SOS must conduct an ***administrative audit*** of the city clerk's elections operations, with the results reported to the House and Senate committees dealing with elections no later than February 28, 2018.
- Until August 31, 2018, the SOS must conduct ***preelection precinct election inspector training*** for those acting as inspectors at any August or November election held in the city.

- From September 1, 2018 to December 31, 2019, the city's precinct election inspectors must also attend a *preelection training school* conducted by the county clerk.

Additionally, the bill updates the procedure for communities in which clerks misinformed candidates of the deadline prior to December 31, 2015—namely, Flint. (see *Background*, below)

Finally, the bill would impose a civil fine of \$2500 on the cities that fall under the circumstance described in the bill for the 2017 general election. Further, beginning January 1, 2018, cities would be subject to a \$5,000 fine if the situation at issue occurs.

These civil fines would be paid to the state treasury and credited to the Department of State for enforcement of Section 644f.

BACKGROUND:

The current problem

The bill is understood to address similar situations in the communities of Sault Ste. Marie, Tecumseh, Bessemer, and Lake Angelus for the upcoming November 2017 general election. Legislation passed in 2014 moved the deadline for filing nominating petitions to at least 15 weeks before the August primary. In some of those cities, city clerks mistakenly believed that the city charters took precedence over this state law, and published the incorrect filing deadline. In others, the deadline was simply miscalculated.

Without this legislation, current law would only allow candidates who met the statewide filing deadline to appear on the general election ballot in November, and all other candidates would be subject to a "write in" candidacy. In some cities, this would mean that no candidates would appear on the ballot for a given race.

Flint, 2015

The same section of the Election Law—Section 644f—was previously amended in 2015 to address a similar situation that year in Flint.¹ In that instance, an employee in the Flint City Clerk's office told aspiring candidates that the deadline to file their nominating petitions was April 28, 2015—a week later than the April 21 deadline. Consequently, none of the candidates who submitted nominating petitions qualified to appear on the ballot since all missed the filing deadline. (One candidate who did file petitions before April 21 had an insufficient number of signatures, and was declared ineligible to appear on the ballot.)

Without verified candidates, no August primary election would have been held. And, without candidates' names on a printed ballot, voters would have had to "write-in" the names of their preferred candidates during the November general election. Public Act 43 of 2015 (Senate Bill 329/House Bill 4589) instead allowed for a temporary exception to the 15-week filing deadline, allowing city officials to print an election ballot with the names of candidates who properly filed nominating petitions a week late.

¹ For more information, refer to the House Fiscal Agency analysis:
<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4589-0A9C6937.pdf>

DISCUSSION:

All agreed that the present situation is unfortunate and should not have occurred. When the state election law was changed in 2015 to address the Flint situation, it was understood that it was a one-time fix.

Some argued that this legislation is bad public policy, and would represent a continuation of a slippery slope—one community in 2015, four in 2017, and how many more in 2019? If the legislature sends the message that it will clean up the mess every time communities make mistakes, officials in those communities lose the incentive to do their jobs properly.

Others stated that just because a single official made a mistake, an entire community should not have to bear the brunt of that mistake by having their choices in an election limited. Instead, the state should preserve the integrity of the election process, ensuring that citizens are able to make a choice between all candidates, including those who relied on their city clerk's incorrect information.

Some raised concerns that this legislation would push back the process for printing ballots, potentially beyond the deadline of 45 days before the election when ballots for military serving overseas must be mailed. In response, the Secretary of State's (SOS) office testified that if the House and Senate pass the bill in an expedited manner, and it is immediately signed by the governor, the SOS believes it is possible for municipalities to meet that September 23rd deadline.

FISCAL IMPACT:

The bill would have a limited fiscal impact on the state or local units of governments.

The costs of the bill's added administrative requirements would not be significant and could be absorbed within the existing Bureau of Elections budget. The additional training required is provided regularly by the state at no cost to the locals; thus, the bill would not create additional costs.

The bill would create a cost to cities that have filing deadline errors in the future through newly proposed civil fines. The fine revenues would be directed to the SOS and would offset enforcement costs.

Legislative Analyst: Jenny McInerney

Fiscal Analyst: Mike Cnossen

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.