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**SFA**

BILL ANALYSIS

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House Bill 5335 (Substitute H-2 as reported without amendment)  
Sponsor: Representative Andrew Richner  
House Committee: Redistricting and Elections  
Senate Committee: Government Operations

Date Completed: 3-6-02

### **RATIONALE**

The Michigan Election Law contains a number of provisions dealing with how a candidate's name should appear on the ballot. Although the State Constitution requires the office of a sitting judge to be designated on the ballot, other incumbents are not entitled to such a designation. Under the Election Law, however, if two or more candidates for the same position have the same or similar names, a candidate may request a "clarifying designation" from the board of county election commissioners or the Board of State Canvassers. Evidently, some candidates use this procedure to gain political advantage.

Under the Law, if the county or State board agrees that candidates' names are the same or similar, each candidate's occupation or residence must appear on the ballot under his or her name. The Law specifies that the term "occupation" must be construed to include political office, even though it is not the candidate's principal occupation, but may not refer to a previous position or occupation. Therefore, in order to have their political office printed on the ballot, some incumbents who are running for reelection apparently will solicit a relative or another person with a similar name to run for the same office. Other candidates also might request a clarifying designation in order to have their occupation printed. In addition, the current provisions have been criticized because they do not require notice to a candidate's opponent if the candidate has requested a clarifying designation, until after the board has made a decision.

The Election Law also requires a candidate to file an affidavit indicating whether his or her name has been changed, and, if it has been,

requires both names to be printed on the ballot, unless an exception applies. Apparently, election officials find these provisions confusing and outdated.

### **CONTENT**

**The bill would amend the Michigan Election Law to do the following:**

- Require a candidate to indicate on an affidavit of identity how the candidate wished his or her name to appear on the ballot and, except under certain circumstances, to indicate a name change.**
- Require that a candidate's given name and surname appear on a ballot, and provide that only those names could appear, unless an exception applied.**
- Limit the designations that could appear on a ballot if two or more candidates had the same or similar names.**
- Require notice to a candidate if another candidate for the same position had requested a clarifying designation.**
- Extend the time for appealing a determination of a request for a clarifying designation.**

#### Affidavit of Identity

The Act requires candidates for Federal, State, and local offices to file an affidavit containing specific information when filing a nominating petition, filing fee, or affidavit of candidacy. The bill would refer to the required affidavit as an "affidavit of identity". The bill specifies that this filing requirement would not apply to

a candidate nominated for the office of President or Vice President of the United States.

In addition to the information that currently must be on an affidavit, the bill would require it to include the manner in which the candidate wished to have his or her name appear on the ballot; and a statement that the candidate either was or was not presently using a name, whether a given name, a surname, or otherwise, that was not a name he or she had been given at birth. A candidate who was using such a name would have to include his or her full former name on the affidavit.

The bill's requirement to indicate a name change would not apply if the name in question were one of the following:

- Formally changed at least 10 years before the person filed as a candidate.
- Changed in a certificate of naturalization issued by a Federal district court when the individual became a naturalized citizen at least 10 years before filing.
- Changed because of marriage.
- Changed because of divorce, but only if changed to a legal name by which the individual was previously known.

The bill would repeal Section 557 of the Michigan Election Law, which contains similar provisions. Under this section, nominating petitions may not be filed unless a candidate also files an affidavit relative to any change that may have been made in his or her name. If the affidavit or the candidate's birth certificate or record discloses that the name used in the nominating petition is other than his or her birth name, the petition may not be filed unless it states both names of the candidate. Also, both names must be printed on the ballot. Section 557 does not apply to a candidate whose name was formally changed at least 12 years before a nominating petition is filed, or whose name change was included in a certificate of naturalization and who has lived in this State for at least 10 years after the naturalization.

#### Candidates' Names on Ballots

Under the bill, a candidate who would be required to indicate a name change on the affidavit of identity, as provided above, would

have to be listed on the ballot with his or her current name and former name, as prescribed by the Secretary of State.

Both a candidate's given name and surname that he or she was given at birth, and only those names, could appear on the ballot, unless 1) the name in question, whether a given name, a surname, or otherwise, was a name that was formally changed; 2) the candidate was required to indicate a name change on the affidavit of identity, or 3) the name in question, whether a given name, a surname, or otherwise, was one of the following:

- A name that was changed in a certificate of naturalization issued by a Federal district court when the individual became a naturalized citizen at least 10 years before filing as a candidate.
- A name that was changed because of marriage.
- A name that was changed because of divorce, but only if changed to a legal name by which the individual was previously known.

(The bill would define "name that was formally changed" as a name changed by a proceeding under Chapter 11 of the Probate Code of 1939 or former Public Act 314 of 1915, or through a similar, statutorily sanctioned procedure under the law of another state or country.)

A candidate could specify, however, that both his or her given name and middle name, or only a middle name, would appear on the ballot. A candidate also could specify that either an initial or a recognized diminutive for his or her given or middle name, or for both, would appear on the ballot.

The bill would prohibit a candidate from specifying that a nickname that was not a recognized diminutive of his or her given name or middle name appear on the ballot. A married individual could not specify that his or her spouse's given name, or an alternative for that given name otherwise permitted under the bill, appear on the ballot.

A ballot that would violate these provisions could not be produced, printed, or distributed.

Currently, the Election Law provides that a candidate's name must be printed showing the

given name or abbreviation or initials of the given name of the candidate, and, in the case of a married woman, may not be printed showing the husband's given name. The bill would delete these provisions.

### Clarifying Designation

Under the Election Law, a candidate may file a request with the board of county election commissioners for a clarifying designation if, in a district that is a county or entirely within one county, two or more candidates for the same office have the same or similar surnames. The board then must determine whether a similarity exists and whether a clarifying designation should be granted. In a district located in more than one county, the Board of State Canvassers must determine whether to grant a clarifying designation upon the request of a candidate who files nominating petitions with the Secretary of State.

The bill would require the county or State board immediately to give each candidate notice that a request had been made and of the date, time, and place of the hearing. Currently, the State or county board must notify the requester and the other affected candidate of its determination within 24 hours of the final date for the determination (which is three days after the request was filed). Under the bill, the board would have to give notice of its determination to each candidate (rather than "the other candidate affected").

A candidate who is dissatisfied with the determination of the board of county election commissioners may file an appeal in the circuit court of that county, and a candidate who is dissatisfied with the determination of the Board of State Canvassers may file an appeal in the Ingham County Circuit Court. The appeal must be filed within seven days after the final date for determination. The bill would extend that to 14 days.

Currently, if the county or State board, or the court, determines that the candidates' names are the same or similar, the occupation or residence of each of the candidates must be printed on the ballot. Under the bill, the occupation, residence, or date of birth would have to be printed. This requirement, however, would be subject to the following provisions of the bill:

- If there were two candidates with the same or similar names and one of the candidates were entitled to an incumbency designation by Article 6, Section 24 of the State Constitution, no other designation could be provided for the other candidate.
- If there were more than two candidates with the same or similar names and one of them were entitled to an incumbency designation under the Constitution, a clarifying designation could be given to the other candidates with the same or similar surname.
- Except for a constitutionally required incumbency designation, if two or more candidates with the same or similar surnames were related (within the third degree of consanguinity), the board could print only the residence or date of birth of each of the candidates as a clarifying designation.

(Under Article 6, Section 24, the designation of the office must be printed on the ballot under the name of each incumbent justice or judge who is a candidate for nomination or election to the same office.)

MCL 168.2 et al.

### **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**

An editorial in the *Detroit Free Press* (6-2-00) described several situations in which candidates legally manipulated the law in order to obtain a clarifying designation on the ballot. In one example, a State Representative's title appeared on the ballot so voters would not confuse him with his nephew, who had the same last name. The candidate admitted, however, that his nephew was going to send letters telling voters to cast ballots for the uncle. Another example involved a nonincumbent candidate for a circuit judgeship, who secured a designation indicating her role as an assistant attorney general, although that was not her primary occupation. According to the editorial, the candidates admitted "...they asked for the designation to improve their chances". Since the Election Law allows this type of maneuvering, the Law should be amended.

Clarifying designations should enable the electors to identify and vote for the candidates of their choice, not give some candidates an unfair political advantage.

The bill would address this situation by limiting permissible clarifying designations to the candidates' residence or date of birth if two or more candidates with the same or similar names were related. This means that an incumbent could no longer solicit a relative to run for office in order to get the office-holder's position on the ballot. In cases involving a judicial candidate entitled to an incumbency designation under the Constitution, no other designation could be used if there were only two candidates with the same or similar names.

In addition, the bill would require the county or State board to give each candidate immediate notice of a request for a clarifying designation and of the hearing on it. This would give the other candidate or candidates an opportunity to attend the hearing and have some input. The bill also would double the time allowed for a dissatisfied candidate to appeal the board's decision. These changes would bring fairness to the process and help prevent abuses of the system.

### **Supporting Argument**

The bill would clarify and update the requirements for an affidavit of identity and the indication of a name change. While some of the provisions in the bill are similar to those in Section 557, that section also contains some rather confusing and outdated language. For example, Section 557 requires a candidate's current and former names to be printed, but states, "...neither the using of abbreviations or initials instead of the full name, nor the use or failure to use any one of his names, except the surname, nor change in spelling of any name, so long as both names may be sounded alike without doing violence to the power of the letters contained in the respective names, shall be held to constitute the use of another or different name."

Under the bill, a candidate would have to indicate a name change on an affidavit of identity, except under specific circumstances spelled out in the bill. If an exception did not apply, both the current and former names of a candidate would have to be printed on the ballot. Otherwise, as a rule, a candidate's first

and last names given at birth, and only those names, would appear on the ballot.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

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

Fiscal Analyst: Jessica Runnels

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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.