

THE LEGISLATURE

LANSING, MICHIGAN

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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**NOTICE OF PROPOSAL THAT A
RULE BE CHANGED**

TO: Adam Fracassi, Regulatory Manager
Michigan Office of Administrative Hearings and Rules (MOAHR)
Secretary of the Senate
Clerk of the House

FROM: Senator Jon Bumstead, Chair
Representative Luke Meerman, Alternate Chair

DATE: February 23, 2022

As provided in MCL 24.245a(1)(b), the Joint Committee on Administrative Rules is, by a concurrent majority vote, proposing that the following rule set be changed:

JCAR No. 21-72
MOAHR No. 2021-60ST
Department of State,
Bureau of Elections & Campaign Finance

Specifically, the Committee respectfully proposes that the Secretary of State consider changing **R 168.2** and **R 168.3** in the following ways and for the following reasons:

1. **R 168.2(2)** requires a candidate to disclose every Michigan jurisdiction where the candidate sought elected office. The Secretary should strike this provision. First, this isn't a requirement under Michigan's election law. Second, there is no central or easily searchable database with such filing information; thus, verifying it would unreasonably burden filing officials. Third, the rule says that failing to comply won't disqualify a candidate, so there appears to be no purpose to the rule.
2. **R 168.2(3)** requires a filing official to verify the affidavit using state and county records. The Secretary should change this rule to require a filing official to review only state campaign finance records. First, many counties may not have these records. And even if they do have records, many will not be easily accessible, meaning filing officials may not have sufficient time to meet these requirements if a candidate files at the last minute.
3. **R 168.2(4)** requires a filing official to disqualify a candidate for false statements on an affidavit of identity but does not allow the candidate to cure. The Secretary should change this provision. First, this is an excessively strict disqualification requirement that

could disqualify otherwise qualified candidates for simple, benign mistakes. Second, MCL 168.558 already establishes fines and criminal penalties for false averments, so this extra punishment is unnecessary. Candidates should be allowed to cure an incorrect affidavit before the filing deadline.

4. **R 168.3(1)** requires certain information on the affidavit of identity. The Secretary should strike this provision. It nearly duplicates Michigan election law but has just enough changes to create confusion. It should either mirror the law or be stricken.
5. **R 168.3(3)** should be changed for the same reasons articulated for R 168.2(4).

Under MCL 24.245c, if the Committee suggests that a proposed rule be changed, the agency shall, within 30 days, do one of the following:

- (a) Decide to change the rule and, within the 30 days, resubmit the changed rule to the committee. If the agency decides to change the rule, the agency shall withdraw the rule, which is treated as a withdrawal with permission under MCL 24.245a(10), and follow the procedures in MCL 24.245c(2)–(5).
- (b) Decide to not change the rule. If the agency decides to not change the rule, the agency shall within the 30-day period notify the Committee of the decision and the reasons for the decision and file the notice with the Michigan Office of Administrative Hearings and Rules. After the notice is filed, the Committee has 15 session days in which to consider the agency's decision and take 1 of the actions listed in MCL 24.245a(1).

These proposed changes are offered for the purpose of facilitating deliberation between the Secretary and the Legislature regarding this rule set and should not be construed as waiving any bases for filing a notice objection under MCL 24.245a(2).

Sincerely,



Senator Bumstead
Chair



Representative Meerman
Alternate Chair