

Ballot Proposal 1 of 2022



TERM LIMITS FOR STATE LEGISLATORS AND FINANCIAL DISCLOSURE REPORTS OF STATE ELECTED OFFICIALS

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Proposal 22-1
November 8, 2022 General Election
Placed on the ballot by the Legislature
Complete to 10-11-22

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

SUMMARY:

Proposal 22-1 would amend the state constitution to change its term limit provisions for state legislators. Currently, a person cannot be elected more than three times as a state representative and more than two times as a state senator. The proposal would instead provide that a person cannot be elected as a state legislator for terms or partial terms totaling more than 12 years, regardless of whether that time is served in the House or in the Senate. The proposal also would require certain state elected officials to file an annual financial disclosure report that describes such things as the official's assets, liabilities, sources of income, gifts from lobbyists, and other positions held. Finally, the proposal would indirectly repeal the law that now governs the assignment of seats in the House of Representatives.

The following is the official language as it appears on the November 2022 ballot:

<p>Proposal 22-1</p> <p>A proposal to amend the state constitution to require annual public financial disclosure reports by legislators and other state officers and change state legislator term limit to 12 total years in legislature</p> <p>This proposed constitutional amendment would:</p> <ul style="list-style-type: none">• Require members of legislature, governor, lieutenant governor, secretary of state, and attorney general file annual public financial disclosure reports after 2023, including assets, liabilities, income sources, future employment agreements, gifts, travel reimbursements, and positions held in organizations except religious, social, and political organizations.• Require legislature implement but not limit or restrict reporting requirements.• Replace current term limits for state representatives and state senators with a 12-year total limit in any combination between house and senate, except a person elected to senate in 2022 may be elected the number of times allowed when that person became a candidate. <p>Should this proposal be adopted?</p> <p style="text-align: right;">[] YES [] NO</p>

Proposal 22-1 was placed on the ballot after the adoption of House Joint Resolution R by a two-thirds vote of each house of the legislature on May 10, 2022.¹

¹ <http://legislature.mi.gov/doc.aspx?2022-HJR-R>

Term limits

Section 54 of Article IV of the state constitution currently provides that a person cannot be elected more than three times as a state representative and cannot be elected more than two times as a state senator. Partial-term appointments or elections count as one election with regard to the limits if the legislator serves more than half of the regular term.

Proposal 22-1 would instead provide that a person cannot be elected for terms or partial terms that add up to more than 12 years total, regardless of whether served in the House, the Senate, or both. (That is, these limits would be based on total years rather than on a number of terms.)

Comparison of maximums currently and under the proposal

The term of office for a state representative is two years, and for a state senator is four years, so the most a person now can serve in both houses combined is 14 years—six years in the House (three two-year terms) and eight years in the Senate (two four-year terms).

Although the proposal's maximum total of 12 years is less than the current 14-year maximum, the limits under the proposal would allow a legislator to serve for a longer time in a single house than they can now. For example, under the proposal's 12-year total limit, a person could serve six two-year terms in the House (where currently the limit is three) or three four-year terms in the Senate (where currently the limit is two).

Exception

The proposal includes an exception to allow a person elected as a state senator in 2022 to be elected to that office the number of times allowed at the time the person became a candidate—that is, as far as serving in the Senate goes, they would still be subject to current limits and not those under the proposal. The exception states that the proposal's 12-year limit “does not prohibit a person elected to the office of state senator in 2022 from being elected to that office for the number of times permitted at the time the person became a candidate for that office.” (Note that House Joint Resolution R was adopted by the legislature *after* the April 19 filing deadline for those candidates.)

This exception would apply to legislators who have served three two-year House terms and one four-year Senate term and are elected in 2022 to a *second* four-year Senate term. That second Senate term would exceed the proposal's 12-year cap, but the exception would allow those candidates, if elected, to serve their second term in the Senate because it was allowed under the constitution at the time they filed to run for that office. There are nine candidates who have served a single term in the Senate and the maximum number of terms now allowed in the House and who are on the 2022 ballot seeking election to their second Senate term.

The exception also would allow a person who in 2022 is elected to the office of state senator for the *first* time to subsequently serve a second term in the Senate, regardless of whether that second term would violate the proposal's 12-year limitation on total time served in the legislature. For example, the exception would allow a state representative who has served the maximum six years in the House and is elected to a first Senate term in 2022 to run for reelection as state senator in 2026, even though that second Senate term would give them more total years of service (14) than allowed under the proposal (12). There are 13 former or current state representatives who have served the maximum number of terms now allowed in the House and who are on the 2022 ballot seeking election to their first Senate term.

Financial disclosure report

Proposal 22-1 also would amend section 10 of Article IV, which now prohibits a state officer or member of the legislature from having an interest in a contract with the state or its political subdivisions that causes a substantial conflict of interest.

The proposal would additionally require the governor, the lieutenant governor, the attorney general, the secretary of state, and each member of the House and Senate to electronically file an annual financial disclosure report with the Department of State. The report would have to be filed by April 15, 2024, and by a date prescribed by state law every following year. The Department of State would have to prescribe the form and manner in which the report must be made and also make the report available to the public online. The report would have to include information regarding all of the following:

- Description of assets and sources of unearned income. (Unearned income is income from something other than work—for example, income from investments, inheritance, or rent.)
- Sources of earned income. (Earned income is income from work—for example, wages, salaries, tips, bonuses, or commissions.)
- Description of liabilities. (Liabilities are what a person owes to someone else—for example, loans, mortgages, alimony payments, or other debts.)
- Positions currently held as an officer, director, trustee, partner, proprietor, employee, representative, or consultant of any organization, business, nonprofit, or institution other than the state of Michigan. However, honorary positions and positions in a religious, social, fraternal, or political organization would not have to be disclosed.
- Agreements or arrangements with respect to future employment, a leave of absence while serving as a legislator or state officer, continuation or deferral of payments by a former or current employer other than the state of Michigan, or continuing participation in an employee welfare or benefit plan maintained by a former employer.
- Gifts received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.²
- Travel payments and reimbursements received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.
- Payments to a charity made by a lobbyist or lobbyist agent in lieu of honoraria.

The legislature would have to further implement the above provisions by appropriate legislation that could not limit or restrict how the provisions are applied (but could establish, for example, penalties for a violation). If legislation implementing the above provisions has not been enacted by December 31, 2023, any Michigan resident could sue the legislature and the governor in the Michigan Supreme Court to enforce those requirements.

² Public Act 472 of 1978, known as the lobbyist registration act, requires registered lobbyists and lobbyist agents to file and submit a report with the secretary of state twice a year that generally includes expenditures in specified categories such as food and beverages, travel and lodging, and direct financial transactions with an official in the legislative or executive branch of state government. However, expenditures must be reported only if they meet a specified threshold amount. Those amounts are adjusted annually for inflation. Thresholds for 2022 are available here: <https://www.michigan.gov/sos/-/media/Project/Websites/sos/11diljak/LobbyThresholds.pdf>

The act is here: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-472-of-1978.pdf>

More information can be found here: <https://www.michigan.gov/sos/elections/disclosure/lobby>

House of Representatives seating assignments

As noted above, Proposal 22-1 would amend section 54 of Article IV of the state constitution. A provision in Public Act 58 of 1893, which governs the assignment of seats in the House of Representatives, says that it no longer applies if section 54 of Article IV is amended after December 29, 2020. Thus, if passed, Proposal 22-1 would effectively repeal Public Act 58 of 1893. If that happens, it is unclear what procedures would apply to provide for the assignment of seats in the House of Representatives. (House rules are adopted each session and do not carry forward.)

Currently, under Public Act 58 of 1893, on the first day of the first regular session of each legislature, the clerk of the House of Representatives must allocate seats in the House chamber between the political parties whose members were elected the previous November. The majority and minority leaders then assign a seat to the members of their respective caucuses. Any member not assigned a seat through that process (for example, because of no party affiliation) is assigned a seat by the majority leader. The seat assignments are then printed in the House Journal.

BACKGROUND:

Term limits

In 1992, about 59% of Michigan voters approved Proposal B, which added Michigan's current term limits to the state constitution.³ According to the National Conference of State Legislatures (NCSL),⁴ Michigan is one of 15 states with legislative term limits, and one of five (alongside California, Missouri, Nevada, and Oklahoma) with *lifetime* limits. In those states, a legislator who reaches the specified limit cannot ever serve in that office again. Term limits in the 10 other states are *consecutive* limits, which require that a legislator not serve in the same office after reaching the threshold number of consecutive terms or years, but allow them to serve again in that office after being away for a specified time.

Michigan's lifetime limits (six years in the House, eight in the Senate) are among the most restrictive in the nation. Nebraska (which has only one legislative chamber) limits its legislators to eight consecutive years (two four-year terms), but resets that clock if they wait four years before running again. Other states have the following limits:

- Missouri: Lifetime limits of eight years in the House and eight in the Senate.
- Arizona, Colorado, Florida, Maine, Montana, Ohio, South Dakota: Consecutive limits of eight years in the House and eight in the Senate.
- California and Oklahoma: Lifetime limit of 12 total years served in either house. (This is the limit Proposal 22-1 would implement in Michigan.)
- Arkansas: Consecutive limit of 12 years served in either house.
- Nevada: Lifetime limits of 12 years in the House and 12 in the Senate.
- Louisiana: Consecutive limits of 12 years in the House and 12 in the Senate.

It is worth noting that, because Michigan has lifetime limits, the changes that would newly allow legislators to serve up to 12 years in a single house could affect the eligibility for office

³ Proposal B also provided term limits for the governor, lieutenant governor, attorney general, and secretary of state, which still apply, and for Michigan's representatives and senators in the United States Congress, which in 1995 were found by the U.S. Supreme Court to be unconstitutional.

⁴ <https://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>

of past legislators, in addition to current and future ones. In particular, former legislators who reached the current three-term (six-year) limit in the House of Representatives and did not serve in the Senate (or served only one term there) would be newly eligible under the proposal to serve again in the House. Similarly, any former state senators who reached the current two-term (eight-year) Senate limit and did not serve in the House would be newly eligible under the proposal to serve one additional Senate term.

Financial disclosure

According to the NCSL, Michigan and Idaho are the only two states that do not have financial disclosure requirements for state legislators.⁵ In 2020, the Coalition for Integrity ranked Michigan 47th among states based on laws and regulations governing ethics and transparency in the executive and legislative branches (ahead of only Arizona, Idaho, and Wyoming),⁶ while in 2015 the Center for Public Integrity ranked Michigan last in its grading of states for transparency and accountability.⁷ Bills to require certain state officials or candidates to file financial disclosure reports have been introduced in every legislative session since 2007-08. Three of these bills were passed by the House of Representatives: House Bill 4285 in 2007, House Bill 4381 in 2009, and House Bill 4685 in 2021.

Voters for Transparency and Term Limits initiative petition

Proposal 22-1 is similar, but not identical, to a 2022 initiative petition sponsored by a group called Voters for Transparency and Term Limits. The Board of State Canvassers approved the form and summary of that petition on March 23, 2022.⁸ To be placed on the ballot, the petition would have had to have garnered at least 425,059 valid signatures and have been submitted to the Board of State Canvassers by July 11, 2022. After the legislature introduced and adopted House Joint Resolution R on May 10, 2022, those signature efforts were suspended.

Comparison of initiative petition and Proposal 22-1

The term limit provisions of the Voters for Transparency and Term Limits petition were identical to those proposed by Proposal 22-1, but there are several differences between the financial disclosure requirements of the petition and the proposal. Like Proposal 22-1, the petition would have required the filing of annual financial disclosure reports by the governor, lieutenant governor, secretary of state, attorney general, and state legislators. However, unlike Proposal 22-1, the petition also would have required the filing of *periodic financial transaction reports* by those individuals.

While the petition would have required the reports to disclose information regarding assets and unearned income, earned income, and liabilities, Proposal 22-1 would require the reports to include information regarding *a description of assets and sources of unearned income, sources of earned income, and a description of liabilities*. Further, in addition to the above information, the petition would have required disclosure of information regarding *purchases, sales, or exchanges of a security or real property*.

⁵ <https://www.ncsl.org/research/ethics/financial-disclosure-for-legislators-income.aspx>

⁶ <https://www.coalitionforintegrity.org/swamp2020/>

⁷ <https://publicintegrity.org/politics/state-politics/state-integrity-investigation/how-does-your-state-rank-for-integrity/>

⁸ See [https://www.michigan.gov/sos/-/media/Project/Websites/sos/24delrio/Voters_for_Transparency_and_Term_Limits_03-28-2022_750777_7-\(2\).pdf](https://www.michigan.gov/sos/-/media/Project/Websites/sos/24delrio/Voters_for_Transparency_and_Term_Limits_03-28-2022_750777_7-(2).pdf)

Like Proposal 22-1, the petition would have required disclosure of positions held with certain nonstate entities (as described above), except that the petition would not have limited this disclosure only to positions *currently* held.

The petition would have required disclosure of information concerning leaves of absence only during an individual's service as a state officer. Proposal 22-1 also would require information regarding a leave of absence while serving as a legislator.

In addition, both the proposal and the petition address, in some form, disclosure of gifts, travel payments and reimbursements, and payments made to a charity by others in lieu of honoraria. However, those categories are described differently in the two proposals. The petition would have required disclosure of "gifts, as defined in section 4 of 1978 PA 472, MCL 4.414" (which is the lobbyist registration act); "travel payments and reimbursements"; and "payments made by others to a charity in lieu of honoraria." Proposal 22-1 would require disclosure of "gifts received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law"; "travel payments and reimbursements received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law"; and "payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria."

Finally, the petition would have required the legislation to implement provisions at least as stringent as the requirements that apply to annual financial disclosure reports and periodic financial transaction reports by members of the United States Congress under Title I of the federal Ethics in Government Act of 1978, 5 USC App 101 to 111.⁹ Proposal 22-1 does not contain such a requirement.

Placement on ballot

Enrolled House Joint Resolution R was filed with the secretary of state on May 13, 2022. The legislature included a statement describing the joint resolution that it intended to appear on the ballot in November. At its August 19 meeting, the Board of State Canvassers instead approved the state election director's 100-word descriptive statement for use on ballots and designated the joint resolution as Proposal 22-1. (The main difference between the two descriptive statements was that, while the joint resolution said the proposal would "*reduce* current term limits... *to* a 12-year total limit," the adopted statement said it would "*replace* current term limits... *with* a 12-year total limit.")

On August 30, several individuals together filed a lawsuit in the Michigan Supreme Court asking the court to do the following: declare the adopted ballot statement to be not true or impartial and direct the Board of State Canvassers to approve a different one; declare that the legislature does not have the authority to require that specific language be used on the ballot; and declare the proposal itself invalid and direct that it not be submitted to voters as written because it deals with two subjects that are not necessarily related to one another (i.e., term limits and financial disclosure).¹⁰

The Supreme Court issued an order denying the complaint on September 7, saying that "the Court is not persuaded that it should grant the requested relief."¹¹

⁹ <https://www.law.cornell.edu/uscode/text/5a/compiledact-95-521/title-I>

¹⁰ https://www.courts.michigan.gov/4a5805/siteassets/case-documents/briefs/msc/2022-2023/164747/164747_01_01_complaint.pdf

¹¹ https://www.courts.michigan.gov/4a540d/siteassets/case-documents/uploads/set/public/orders/164747_11_01.pdf

FISCAL IMPACT:

Proposal 22-1 would require additional administrative work hours from Department of State staff to develop the financial disclosure report form and to compile and make the reports available online. Any potential additional staff costs would be dependent on whether existing staff could accommodate the report related requirements of the proposal.

There could also be additional information technology development costs, depending on the manner in which the Department of State chooses to receive electronic filings of the annual financial disclosure reports and make them available online.

Proposal 22-1 would have no fiscal impact on other state government entities or on local units of government.

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■ 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.

APPENDIX: THE TEXT OF THE AMENDMENT

Under Proposal 22-1, the relevant sections of Article IV of the state constitution would read as follows:

Sec. 10. (1) No member of the legislature nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest.

(2) By April 15, 2024, and by a date each year thereafter as prescribed by state law, each member of the legislature, the governor, the lieutenant governor, the secretary of state, and the attorney general shall electronically file an annual financial disclosure report with the department of state that complies with this section. A report required to be filed under this section must include information regarding all of the following:

(a) Description of assets and sources of unearned income.

(b) Sources of earned income.

(c) Description of liabilities.

(d) Positions currently held as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any organization, corporation, firm, partnership, or other business enterprise, nonprofit organization, labor organization, or educational or other institution other than the state of Michigan. The positions required to be disclosed under this subdivision do not include positions held in any religious, social, fraternal, or political entity, or positions that are solely of an honorary nature.

(e) Agreements or arrangements with respect to future employment, a leave of absence while serving as a legislator or state officer, continuation or deferral of payments by a former or current employer other than the state of Michigan, or continuing participation in an employee welfare or benefit plan maintained by a former employer.

(f) Gifts received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.

(g) Travel payments and reimbursements received and required to be reported by a lobbyist or lobbyist agent, as prescribed by state law.

(h) Payments made by a lobbyist or lobbyist agent to a charity in lieu of honoraria.

(3) The financial disclosure report required under subsection (2) must be filed with the department of state in a form and manner prescribed by state law. The department of state shall make the report available to the public online.

(4) The legislature shall further implement this section by appropriate legislation. Legislation implementing this section must not limit or restrict the application of subsections (2) and (3).

(5) If legislation implementing this section is not enacted by December 31, 2023, a resident of this state may initiate a legal action against the legislature and the governor in the Michigan supreme court to enforce the requirements of this section.

Sec. 54. (1) A person may not be elected to the office of state representative or state senator for terms or partial terms that combined total more than 12 years. However, this limitation does not prohibit a person elected to the office of state senator in 2022 from being elected to that office for the number of times permitted at the time the person became a candidate for that office.

(2) This section is self-executing. Legislation may be enacted to facilitate operation of this section, but a law must not limit or restrict the application of this section.