



League of Women Voters of Michigan

Lame Duck Study

A Look at the Procedures and Issues in Legislative Lame Duck Sessions

Lame Duck Study Group
11-14-2020

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LAME DUCK STUDY

IMPETUS FOR THE LAME DUCK STUDY

From informal discussions at the LWVMI 2019 state convention and earlier conversations among League members, many perceived Lame Duck sessions in a negative light. Primarily, it was the substance of the bills introduced and passed in Lame Duck session since 2012 that was concerning. See *High Profile Lame Duck 2012 Policy Disputes: What Happened?*

Since 2012, LWVMI has publicly opposed the majority of bills taken up during the Lame Duck session. Opposition was based on existing LWVMI and/or LWVUS positions. Some may question whether the League would have undertaken this study had the bills that passed during these Lame Duck sessions been more to “our liking.”

However, under closer scrutiny, the LWVMI Board recommended a new study of the process of Lame Duck sessions. To that end, at the 2019 LWVMI Convention the membership approved a new study on the

“Structure and Process of the Michigan Legislature limited to exploring the ramifications on democracy, if any, posed by lame duck sessions and developing guidelines, if warranted, regarding the type of bills and how such bills should be handled in a lame duck session.”

Hence, this is a process-oriented study rather than a review of the substance of bills passed in Lame Duck session.

The Lame Duck Study Group was chaired by Paula Bowman, LWVMI board member and from LWV NW Wayne. The other contributing study group members were : Joan Hunault and Marian Kromkowski, LWV Leelanau County; Beth Moore, Lansing Area League; Carla Barrow-Wiggins, Oakland Area League; Christina Schlitt LWVMI President; Glenn Anderson, NW Wayne League; Jerry Demaire, Macomb MAL; Jim Treharne, Oakland Area League; and Priscilla Burnham, Marquette League. The committee met and formulated the scope of the study.

THE SCOPE THE LAME DUCK STUDY INCLUDES

- A review of the constitutional authority provided to a lame duck **OF** legislative body in Michigan
- The pros and cons of Michigan’s lame duck process
- A review of lame duck authority and process in other states
- Possible (future) constraints to Michigan’s lame duck session

AN OVERVIEW OF THE LEGISLATIVE PROCESS MAY BE FOUND AT

How Bill Becomes a Law

https://www.michigan.gov/som/0,4669,7-192-29701_29704-2836--,00.html

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A Student's Guide to the Legislative Process

<https://www.legislature.mi.gov/Publications/StudentGuide.pdf>

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OVERVIEW OF A LAME DUCK SESSION

Introduction

Legislative Sessions span two years. The seven weeks at the end of all even-numbered years—that is, the period between the November general election and the end of December when the session adjourns—are called Lame Duck Sessions. A significant percentage of term-limited state legislators serve during that time, before the newly elected legislators are sworn into office on the second Wednesday in January of the odd-numbered years.

Observations

Every year, the last seven weeks of the legislative session are very busy—but often twice as busy during a Lame Duck session as the session’s first year. Using the number of bills enacted into law as an indicator, about 40 percent of the Legislature’s work is accomplished in the seven weeks after the November General Election every year. This is known in the political science literature as the “legislative logjam.” The legislative “log jam” occurs in every legislature, whether full or part-time. (Michigan is one of four¹ states that has a full-time, professional legislature, established in the 1963 State Constitution.) The number of bills enacted into law in the Michigan legislature often doubles during the second year of the two-year session—the Lame Duck year.

Summary of Findings

The chart below tells the number of bills signed into law by the Governor after the November General Election, during both the first and second (Lame Duck) years, of the 10 two-year legislative sessions between 1999 – 2018. Also given is the percentage of post-election bills of the total bills enacted each year and the governor for each year.

Between 1999 and 2018, during the first year of the two-year sessions, the total number of bills signed into law ranges from 221 – 340. The average is 282 bills; the median is 278 bills.

Between 1999 and 2018, during the second year (Lame Duck), the total number of bills signed into law ranges from 285 – 747. The average is 565 bills; the median is 584. The average and median for Lame Duck years are 50 percent and 48 percent higher, respectively.

Between 1999 and 2018, the average percentage of the total bills enacted into law after the November General Election during both Lame Duck years and odd-numbered years

¹ The four states with full-time professional legislatures are Michigan, California, New York, and Pennsylvania. In seven other states--Alaska, Florida, Illinois, Massachusetts, New Jersey, Ohio, and Wisconsin--legislators work the equivalent of 80 percent of a fulltime job, according to the National Conference of State Legislatures.

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was 39.3 percent. The range during Lamé Duck years was 20 percent to 49 percent. The range during odd-numbered years was 33 percent to 42 percent.

Over these 10 legislative sessions, the percentage of bills signed into law after the General Election during Lamé Duck years while irregular, is trending higher.

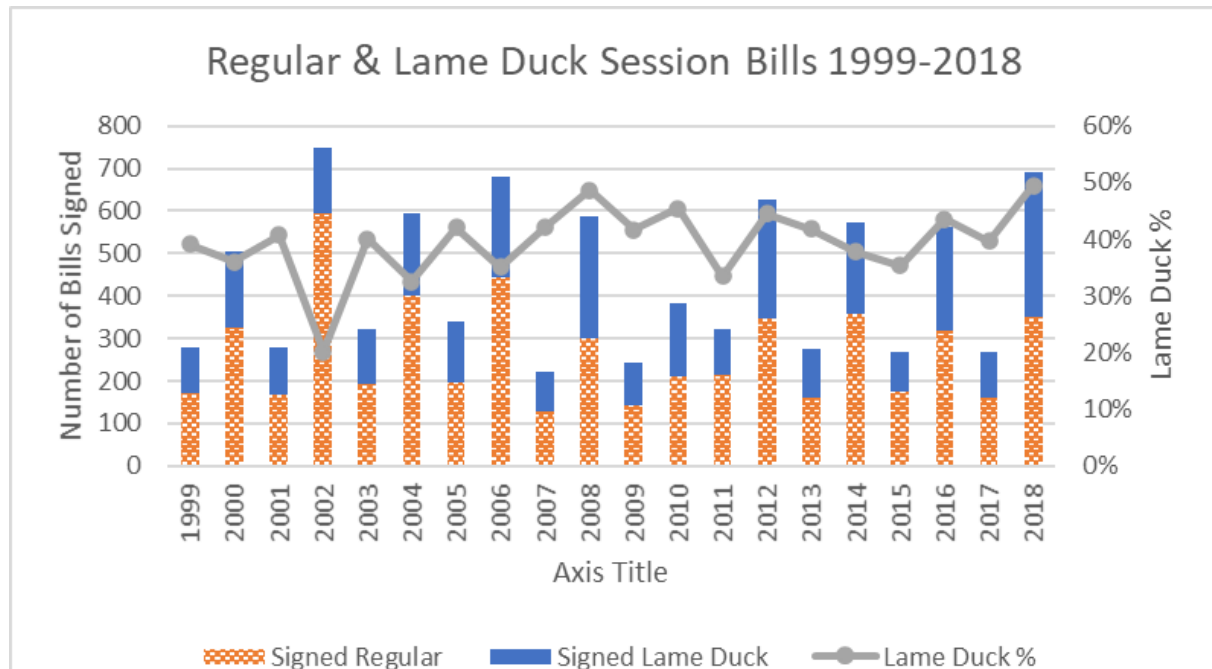
Between 1999 and 2018, the Governor vetoed 44 bills during the first years of the sessions, and 250 bills during the second (Lamé Duck) years. The range, average, and median for the first year are 0-17, 4.4, and 2, respectively (including four years with zero vetoes). The range, average, and median for the Lamé Duck sessions are 2-61, 25, and 15, respectively.

Between 1999 and 2018 under Republican administrations with a Republican majority, an average of 26% of bills introduced that session passed in Lamé Duck sessions. Under Democratic administrations with a Democratic majority, an average of 29% of bills introduced in that session passed in Lamé Duck sessions.

John M. Engler (R) was governor from 1991-2002. Jennifer M. Granholm (D) was governor from 2003-2010. Rick Snyder (R) was governor from 2011-2018; Gretchen Whitmer (D) became governor in 2019.

Data

This chart shows the number of bills passed during the regular and Lamé Duck sessions by year. The left axis is for the stacked bar chart and shows number of bills. The right axis shows percents and is for the line showing the percent of bills passed during Lamé Duck. The detail data is included in an attachment.



1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 Red for Republican Governor and Majority; Blue for Democratic Governor and Majority

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Source: The Public Act Tables. Michigan Legislative Service Bureau. Retrieved during March 2020 from www.legislature.mi.gov

Summary

The Lame Duck sessions tend to be quite productive. Legislators use this time to tie up loose ends. There are no special procedural rules for the Lame Duck sessions, though the majority party tends to take advantage of their numbers by voting to bypass certain procedures and push through legislation without the normal committee or public review period. The majority party can:

- Discharge a bill from committee
- Use a vehicle bill, into which new, unpublished, and unreviewed legislation is substituted
- Use voice votes instead of roll call votes

Bypassing the normal procedures during Lame Duck sessions results in a lack of transparency in the legislative process, a lack of legislative accountability for citizens, and a lack of time for legislators to adequately study the bills placed before them. More information on these procedures is provided in the overviews to the consensus questions in this document.

The lack of time for legislators to study the bills placed before them, often on short notice, is a great concern to legislators in both political parties. For example, in January 2019, in the month following the hurried 2018 Lame Duck Session, a bi-partisan group of State Representatives—13 Republicans and 13 Democrats—introduced Joint Resolution C, shortly after they were sworn into office. The primary sponsor of HJR C was Representative Gary Howell (R-North Branch).

HJR C would have amended Article IV Section 13 of the Michigan Constitution to require that the State Legislature adjourn before Election Day in November of even-numbered years. This would eliminate Lame Duck sessions. A copy of HJR C can be found here:

<http://www.legislature.mi.gov/documents/2019-2020/jointresolutionintroduced/House/pdf/2019-HIJR-C.pdf>

The members of the LWVMI Lame Duck Study Committee attempted to interview all legislators who co-sponsored HJR C, asking each a series of nine questions. About a quarter of the legislators responded to our request for an interview. In addition, three retired legislators who served in leadership positions were surveyed, two Republicans and one Democrat. All of those interviewed expressed both their concerns about, and the positive aspects of, Lame Duck Sessions. Those interviewed were not optimistic that a Resolution to eliminate the Lame Duck Session would move through the legislature.

Three additional Joint Resolutions to set voting limits during Lame Duck Sessions were introduced in the House. In February 2019, House Joint Resolution D was introduced. It

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would have amended Article IV Section 26 of the Michigan Constitution to specify that *“A bill considered during a session held after the November election in an even-numbered year shall not become law without the approval of two-thirds of the members elected to and serving in each house.”*

And, in February and again in June 2019, House Joint Resolution E and House Joint Resolution L were introduced. They were identical, each specifying that *“A bill introduced during a session held after the November election in an even-numbered year shall not become law without the approval of two-thirds of the members elected to and serving in each house.”* An identical resolution was introduced in June in the Michigan Senate, Senate Joint Resolution H.

Had the Michigan Legislature approved any of these proposed Lame Duck Constitutional Amendments, they would have appeared on the 2020 General Election ballot as proposals for citizens to vote up or down. Instead, the joint resolutions were referred to the House or Senate Government Operations Committees, and none received a public hearing during the two-year legislative session.

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Discussion Questions Part A: Reactions to Lame Duck Sessions

In this section the study committee listed thoughts from the legislators that responded, along with ideas generated during our study committee meetings. The entire group assembled at the consensus meeting could answer Part A collectively, or League members could answer individually to assess their initial thoughts about Lame Duck sessions.

Please answer if the following is a Negative, a Positive aspect of Lame Duck Sessions, or designate Both if people have mixed views.

1. Legislators who are not returning due to either term limits or election loss may push their pet projects.

Negative Positive Both

2. Legislators who are not returning due to either term limits or election loss may feel desperate to get legislation passed during their tenure, and sometimes lame duck serves as their final effort to get legislation passed for their district.

Negative Positive Both

3. Legislators who are not returning due to either term limits or election loss may have already been given a conditional offer of employment by another entity and will use lame duck to deliver a win to their future employer at the eleventh hour outside of the public committee process.

Negative Positive Both

4. Lame Duck sessions provide an opportunity to handle emergency issues. (E.g. public health crisis, financial crisis)

Negative Positive Both

5. Legislators who are not returning due to either term limits or election loss may no longer have to look at the long-term consequences of their actions; they are looking at their next job and may be voting with that job in mind.

Negative Positive Both

6. When the power shifts because of the elections, the controlling party may use the lame-duck session as a final effort to push through their agenda and deliver to their donors.

Negative Positive Both

7. Lame Duck sessions ensure continuity and an uninterrupted capacity to govern or to ensure maximum flexibility when setting legislative policy agendas and priorities.

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Negative Positive Both

8. The regular legislative process may be bypassed (this can happen anytime, albeit with more visibility when in regular session) resulting in a lack of transparency, shortened or eliminated review periods for legislators and the public.

Negative Positive Both

9. Lame Duck sessions provide an opportunity to tie up loose ends.

Negative Positive Both

10. A pending bill's content may be replaced or substituted, hence, undercutting any prior review (Vehicle Bills)

Negative Positive Both

11. Legislators leaving office due to term-limits will never have to answer to the voters for any of the bad policy decisions they make.

Negative Positive Both

12. There is decreased opportunity for public comment from citizens that may lead to over-reliance on the opinions of special interest lobbyists.

Negative Positive Both

13. Lame Duck sessions provide the opportunity for passage of good policy bills that had been stalled throughout the term for various reasons.

Negative Positive Both

14. The volume and speed of bills taken up during the lame duck session may deprive members of the opportunity to thoroughly read, research, and weigh the pros and cons of the bills prior to the vote.

Negative Positive Both

15. Marathon sessions during Lame Duck can be utilized to drastically reduce the effectiveness of legislators who are present on the House floor for numerous, continuous hours and then voting on issues without proper rest.

Negative Positive Both

16. Legislation may be pushed through without proper vetting by the committee process and legislative research staff.

Negative Positive Both

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17. Lame Duck sessions provide the final opportunity to finish legislation prior to a new session where all bills must be re-introduced.

Negative Positive Both

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Consensus Questions Part B: Procedures and Concerns

Part B has nine questions; most describe the procedures used in legislative sessions and what happens when the normal procedures are bypassed. The last question is a little different. Each question starts with an overview, describing legislative procedures and providing background for the question, and ends with the actual question to be answered.

After discussion, answer the first 8 questions with YES, NO, or NO CONSENSUS REACHED. The ninth question has a different set of answers.

Question 1: Public Hearing Process in Regular Session

Overview: Each bill introduced in the Michigan Senate and Michigan House is referred to a standing committee, or to the Appropriations Committee (which refers bills to its subcommittees). Only a committee chair can schedule a public hearing on a bill (often with the informal consent of the chamber's leadership).

Most standing committees meet once each week (for 90-minutes at the same time and day, Tuesday through Thursday, and in the same committee room) during the spring, winter, and fall. The purpose of these committee meetings is public hearings on bills. In this manner, there are scores of public hearings convened in every two-year legislative session. Minutes of each committee meeting, prepared by the committee's clerk, are printed in the House and Senate Journals.

A public notice of the committee's public hearing (called an Agenda) lists the bill(s) to be considered. The Agenda must be posted publicly at least 18 hours before the public hearing begins. (Many Agendas are published on Mondays before 3 pm for the coming week.) However, each committee chair retains the right to take up any bill previously referred to the committee, without noting the bill number on the Agenda.

Any citizen can offer oral or written testimony in a public hearing; no invitation to testify is necessary. If oral testimony is given, a citizen fills-out an available testimony card in the committee room the day of the public hearing, and hands the card to the committee clerk before the public hearing begins. At this time, written testimony can be given to the clerk for distribution to committee members. Those offering testimony are called forward by the committee chair.

Following a public hearing, a bill can be reported out to the floor of the Senate or House with the recommendation that it pass, or the bill can be retained in committee for further testimony at a future public hearing.

A bill can also be discharged from committee, by a motion and vote of the full chamber. Discharge motions are rare, and must be announced from the chamber floor, specifying a date on which the discharge vote will be taken (customarily the next day of session). A bill discharged from committee need not have been the subject of a public hearing.

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A record of all those who testify in committee (either in support or opposition to the bill), and their written testimony is retained in a committee's bill records. All of this information—including bills referred to each committee, a committee's record of public hearings and discharges (if any), the minutes of each public hearing, and all written testimony—is available on each committee's webpage which can be found on the legislature's website at www.legislature.mi.gov

Also see:

A Student's Guide to the LEGISLATIVE PROCESS in Michigan

<https://www.legislature.mi.gov/Publications/StudentGuide.pdf>

SOM – How does a Bill become a Law? – State of Michigan

https://www.michigan.gov/som/0,4669,7-192-29701_29704-2836--,00.html

Summary: While the committee process allows time for both legislative and public review of proposed bills, the discharge process enables this to be bypassed with a simple majority vote. Once discharged, a bill may come before the legislature for a vote without review and debate. This reduces the transparency of the legislative actions, especially late in the session when legislators are facing deadlines and sometimes a change in majority party when the new legislative session convenes in January.

Question

1. Should public hearings, along with the ability for public comment, be scheduled before the enactment of any legislation?

YES NO NO CONSENSUS REACHED

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Question 2: Process of Bill Publication & Public Access in Regular Session

Overview: All bills in the Michigan legislature are drafted by drafting attorneys in the bi-partisan Legislative Service Bureau. Nearly all bills are introduced to propose changes to already existing statutes published as the Michigan Compiled Laws, although occasionally a bill will propose an entirely new law. The drafting attorneys have expertise areas of the Michigan Compiled Laws.

Each bill is drafted by an LSB attorney in consultation with the bill's sponsor. The bill is returned to the sponsor in "blue back" form, allowing the sponsor to circulate it among fellow legislators to seek co-sponsors.

The bill begins its public journey through the legislative process when the sponsor submits the "blue back" bill to the Clerk of the House or to the Secretary of the Senate, who publicly during that day's legislative session, then assigns the bill a number, reads the bill title into the record, and assigns it to a committee. This information is printed in the House or Senate Journal, published on-line daily when the legislature is in session. Each bill is also then printed and published on-line. All bills are available on the legislature's website at www.legislature.mi.gov where each bill has its own webpage.

Each bill's webpage—accessible by bill number—records all activity taken on the bill. The webpage displays the bill's language upon introduction, and includes its sponsors and co-sponsors, the committee to which it has been referred, and substitute versions of the bill (if the bill is later amended). The non-partisan House and Senate Fiscal Agencies prepare a summary of and cost estimate for the bill when it is scheduled for public hearing by the committee. The same agencies prepare a more in-depth analysis, including fiscal implications, for each bill when it is reported from the committee to the chamber floor. Each bill's summary and analyses, as well as the bill's history of public hearings and floor action are included on a bill's webpage.

The Michigan Constitution requires that after introduction, each bill "lay over" for five days in each chamber, before any action can be taken. Specifically, Article IV Section 26 says, "No bill can become law at any regular session of the legislature until it has been printed and reproduced and in the possession of each house for at least 5 days."

Summary: The normal process includes a "lay over", which allows adequate time, once a bill is published, for review by all parties. This enables deliberation and transparency in the legislative process. The "lay over" period can be avoided if a vehicle bill is substituted. (See Overview for Question 3 below) When the "lay over" is eliminated, legislators do not have time to study the bill to be able to vote knowledgeably. In addition, the time for public review and comment is significantly shortened and sometimes eliminated.

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Question

2. Should all bills be published and available to the public for a reasonable period before a vote?

YES NO NO CONSENSUS REACHED

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Question 3: Using Substitute “Vehicle” Bills to Fast-track New Legislation

Overview: The lame-duck legislative session begins after the November general election in even-numbered years and it lasts until the legislature adjourns *sine die* in December. So, the lame-duck session lasts about seven-weeks, at the end of every two-year legislative session. As the two-year session draws to a close, the legislative leadership (in collaboration with the Governor) sometimes seeks passage of a new law quickly—a rare and often controversial decision. To that end, the leaders will authorize the use of a substitute “vehicle” bill to embody a new statute they hope to enact. Leaders use the substitute “vehicle” bill to avoid both the constitutionally required five-day layover rule imposed on new bills, and the customary public hearing in committee. To hasten the process, the leaders identify a bill introduced earlier in the legislative session that was drafted to amend the same section of the Michigan Compiled Laws, but as originally introduced, designed for a different purpose. That bill is discharged from committee to the chamber floor, without a public hearing. If the discharge motion passes, the leader substitutes new content (already drafted by the attorneys) and amends the bill’s title so that it comports with the new body of the bill. The newly substituted bill is thereby transformed into the substitute “vehicle” bill that is needed to convey the proposed statute more quickly through the legislative process and to the Governor’s desk for signature.

Example: During the 2012 lame duck session, two substitute “vehicle” bills—House Bill 4003 to amend PERA, and Senate Bill 116 to amend the private employee law—were used to enact Michigan’s Right to Work Laws, allowing the bills to move through the legislative process in four legislative session days. An article describing the process can be found here:

<https://www.michiganradio.org/post/5-things-about-michigans-fast-moving-right-work-bills>

Summary: Vehicle bills are used to bypass the legislative procedures that build in time for committee and public review, thereby enabling legislation to be moved through the legislative process faster. Public and committee review of the actual final content of the bill are essentially eliminated. Legislators do not have time to study the bill prior to voting and the public has little or no time to review and comment. There is no transparency in this approach.

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Question

3. Should legislative leaders be allowed to substitute vehicle bills, thus avoiding both the constitutionally required five-day layover rule imposed on new bills, and the customary public hearing in committee?

YES NO NO CONSENSUS REACHED

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Question 4: Supermajority Required to Pass Bills

Overview: In general, nearly all legislative actions require a simple majority vote (an affirmative vote of more than one-half of the members elected to a legislative body).

However, the Michigan Constitution currently imposes a supermajority requirement (either three-fourths or two-thirds of the members serving in the Senate and in the House of Representatives) in certain instances.

For example, a three-fourths vote is required by each chamber of the legislature for the following:

- to raise school operating ad valorem property tax rates (state and local taxes) above the limits in effect on February 1, 1994 (Article IX, Section 3); and
- to amend or repeal an initiated law adopted by the voters (Article II, Section 9).

The Constitution also requires a two-thirds majority vote in each chamber of the legislature for several other specific actions, including:

- to expel a member of either chamber of the legislature (Article IV, Section 16)
- to give a law immediate effect (Article IV, Section 27)
- to enact local or special acts (Article IV, Section 29)
- to appropriate public money or property for local or private purposes (Article IV, Section 30)
- to override a gubernatorial veto (Article IV, Section 33)
- to amend or repeal a banking law (Article IV, Section 43)
- to remove the auditor general for cause (Article IV, Section 53)
- to establish or alter district courts (Article VI, Section 1)
- to adopt a concurrent resolution asking the governor to remove a judge for reasonable cause (Article VI, Section 25)
- to submit for voter approval a question of long-term borrowing (Article IX, Section 15)
- to declare an emergency in accordance with a request by the governor to allow the state to exceed the revenue limit established in Article IX, Section 26 (Article IX, Section 27)
- to designate any part of state lands as a state land reserve (Article X, Section 5)
- to reject or reduce increases in rates of compensation for state classified civil servants that are authorized by the state Civil Service Commission (Article XI, Section 5)
- to convict civil officers of impeachment for corrupt conduct in office or for crimes or misdemeanors (2/3 in Senate only) (Article XI, Section 7)
- to propose an amendment to the Constitution (Article XII, Section 1)

Source: Citizens Research Council, 2012

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Summary: During a Lamé Duck session (starting the day after the November election and continuing through December), many of the voting legislators have been term-limited or defeated or have chosen not to run for re-election. A large number of bills are considered during the Lamé Duck session as legislators try to tie up loose ends. The Lamé Duck session is also sometimes used by the majority party to pass unpopular legislation absent the customary public review. Since many of the legislators are not returning for the new session, they are not held accountable for their votes.

Sometimes during hurried Lamé Duck sessions, the leadership bypasses procedures by using vehicle bills and discharging bills from committee that result in less or no time for legislative and public review. Since many types of legislation require only a simple majority vote and there is essentially no committee or public oversight when procedures are bypassed, the majority party is able to pass legislation with virtually no involvement from the minority party. There is essentially no transparency in this process, especially when bills are passed on a voice vote instead of a roll call vote.

Question

4. Should a supermajority of 2/3 of those elected and serving be necessary to pass a bill in a Lamé Duck Session?

YES NO NO CONSENSUS REACHED

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Question 5: Lamé Duck Sessions

Overview: Since the citizens of Michigan adopted the 1963 state Constitution, Michigan has had a full-time legislature that meets all year. As stated in Article IV Section 13, the Legislature convenes on the “second Wednesday in January of each year at 12 o’clock noon.” The Constitution further specifies that at the end of each regular session, the Legislature “shall adjourn without day, on a day determined by concurrent resolution, at 12 o’clock noon.” Consequently, the custom of the Legislature is to adopt joint rules at the beginning of its session in January that specify the Legislature can, later in the session, adopt a concurrent resolution to specify when the Legislature will adjourn. By concurrent resolution, the *sine die* adjournment is set for the last Friday in December. (In practice, the Legislature often recesses earlier, near mid-December, and the members depart. Then, on the specified *sine die* date, some members return to vote for adjournment *sine die*.)

Some have observed that the Legislature could, itself, eliminate the Lamé Duck Session by passing a concurrent resolution that specifies it will recess before the General Election in even-numbered-years. (The General Election is always on the Tuesday following the first Monday in November during even-number years.)

In contrast, others have argued that a citizen-initiated Constitutional Amendment would be necessary in order to change the Legislature’s now nearly 60-year-old custom. Many who favor a constitutional amendment note that with a few modifications, and by adding one sentence to Article IV Section 13, Lamé Duck sessions would be eliminated. They note that the changes to Article IV Section 13 would read: *The regular session in an odd numbered year shall adjourn without day, on a day determined by concurrent resolution, at 12 o’clock noon. The regular session in an even numbered year shall adjourn without day on the Friday before the first Monday in November.*

In response, those who oppose a constitutional amendment note that a citizen-initiated Constitutional Amendment petition drive would be a costly statewide undertaking. Such a ballot drive would require four phases: a citizen education phase; a volunteer recruitment phase to identify and train thousands of petition-circulators; a signature collection phase; and an on-going multi-million-dollar fundraising campaign.

Question

5. Would you support the elimination of Lamé Duck sessions if a constitutional amendment were required?

YES NO NO CONSENSUS REACHED

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Question 6: Adoption of Citizen-Initiated Ballot Proposals

Overview: Public Act 368 of 2018 and Public Act 369 of 2018 were enacted by the Legislature in December 2018 following the November General Election. Both bills—Senate Bill 1171 and Senate Bill 1175—were introduced to amend two laws that had been enacted by the Michigan Legislature just four months earlier, on September 5, 2018. The two laws enacted in September were citizen-initiated laws headed to the General Election ballot as statewide ballot proposals. To prevent their appearance on the ballot so citizens could vote on them, the Legislature exercised its constitutional prerogative of enacting the citizen initiatives into law.

The laws the Legislature enacted in September 2018 were identical to the citizen-initiated laws circulated in petitions. Earlier in 2018, citizens collected enough signatures by circulating two separate petitions statewide, to place two initiatives on the ballot that would have, among other things, raised the minimum wage to \$12 per hour for all Michigan workers; and, guaranteed one hour of sick time for 30 hours worked.

When the Legislature adopted these laws in September 2018, many worried they did so, only to deny citizens the opportunity to vote on them in the November Election. Further, many expressed the concern that legislative leaders intended to significantly weaken the new laws by amending them during the Lame Duck session following the election. Although that had never happened before, that is exactly what the Legislature did. Both laws were changed in ways the petition circulators opposed. The process followed by the Legislature to foil a vote of the people came to be called ‘Adopt and Amend.’

‘Adopt and Amend’ within the same legislative session is a controversial legislative tactic. Its constitutionality depends upon an interpretation of Article 2 Section 9 of the Michigan Constitution. In 1964, then Michigan Attorney General Frank Kelly ruled that ‘adopt and amend’ was unconstitutional when he issued AG Opinion No. 4303. Fifty-four years later, on December 3, 2018, then Attorney General Bill Schuette issued AG Opinion No. 7306 to reverse Kelly’s ruling.

In February 2019, legislative Democrats, serving in the minority and led by Senator Stephanie Chang of Detroit, requested newly elected Attorney General Dana Nessel to review the constitutionality of ‘Adopt and Amend’ once again, and issue an AG Opinion. However, Nessel announced she would delay her Opinion, to allow the Michigan Supreme Court to review the constitutionality of ‘Adopt and Amend.’ How did the Michigan Supreme Court get involved?

A seldom-used provision of the Constitution allows the Legislature (or the Governor) to ask the Michigan Supreme Court to issue an advisory opinion on the constitutionality of a law. Although the Supreme Court is occasionally asked to do so, it seldom exercises its discretion in these matters. In February 2019, the House and Senate Republican leadership asked the Michigan Supreme Court for such an advisory opinion. They hoped their request would rule-out an Attorney General’s Opinion in the meantime

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(which it did). The Supreme Court agreed to hear the matter; invited written briefs from both those who supported the ‘adopt and amend’ process, and those who opposed it; and asked the Office of the Attorney General to brief and argue both sides of the issue. The Attorney General did so, appointing two attorneys from her staff of assistant attorneys general.

On June 19, 2019, the American Civil Liberties Association (ACLU) of Michigan filed an amicus brief joined by the League of Women Voters of Michigan and the American Association of University Women, in support of the brief filed in the Michigan Supreme Court on behalf of the two organizations that had successfully circulated the citizen-initiated petitions, Michigan One Fair Wage and Michigan Time to Care. The brief filed by the ACLU and the LWVMI urged the Supreme Court to reject the legislature’s attempt to undermine the will of the voters by removing citizen-led proposals from the ballot through the anti-democratic maneuver known as “adopt and amend.” Voters Not Politicians (a group that circulated petitions to place the independent citizens redistricting proposal on the November 2018 General Election ballot) also filed an *Amicus Curiae* brief, urging the Michigan Supreme Court to rule as unconstitutional the Michigan Legislature’s ‘adopt and amend’ practice of passing then gutting citizen-initiated legislation in the same session. The ACLU’s brief explained: The Michigan Constitution gives citizens the right to propose laws that must either be adopted by the Legislature or voted on by the electorate. “It therefore violates the Constitution for the Legislature to do what it did here: ‘adopt’ the people’s proposal—with no intention of allowing it to become law—and then snuff out that proposal during the same legislative session.”

The briefs were argued in the Michigan Supreme Court on July 17, 2019. Five months later, on December 18, 2019, the Michigan Supreme Court announced that it would not decide whether the Legislature’s maneuver to ‘adopt and amend’ the state’s minimum wage and paid sick leave laws during the 2018 lame-duck session was constitutional. The order said: “We are not persuaded that granting the requests would be an appropriate exercise of the Court’s discretion.” They advised that the Court would only rule if there were an “actual controversy” through a lawsuit challenging the laws.

Summary: The Michigan constitution allows the Legislature to amend or repeal citizen-initiated laws passed during a general election. However, once the voters say yes, there is a restriction: any legislative action to amend or repeal that law requires a three-fourths majority vote in both chambers. The constitution also allows the Legislature to adopt a proposed citizen-initiated law without changes, before it goes to the ballot, on a simple majority vote, thus avoiding a vote by the people at the general election.

As noted above, in 2018, to avoid the three-fourths vote requirement, the Legislature adopted two citizen-initiated proposed laws (without changes) before the general election (on a simple majority vote), keeping them off the ballot. Then during Lame Duck, the Legislature amended both citizen-initiated laws on simple majority votes. A 1964 Attorney General’s opinion says this illegal; a 2018 Attorney General’s opinion

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says it is legal. The Michigan Supreme Court has refused to rule on the legality of the process, saying the court will only settle the dispute if there is an “actual controversy” through a lawsuit challenging the laws. When a majority party uses this tactic, it takes away the People’s right to initiate their laws, guaranteed in the constitution.

Question

6. Should the Legislature be prohibited from adopting a citizen-initiated ballot proposal before the election, thus keeping the proposed citizen-initiated law off the ballot, only to amend that law during the Lamé Duck session after the election in ways that alter the petition circulators’ original intent?

YES NO NO CONSENSUS REACHED

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Question 7: Record Roll Call Votes and Voice Votes

Overview: Final passage of a bill is accomplished with a record roll vote. When a bill is passed on a record roll call vote, the vote is recorded and each legislator’s vote (yea or nay) is printed in either the Michigan House Journal or the Michigan Senate Journal, both of which are published the following day. The Journals are available on-line at www.legislature.mi.gov

A second kind of vote is a voice vote. Before its final passage with a record roll call vote, a bill can be modified (amended or substituted) on the floor with a voice vote. When a leader calls for a voice vote, a legislator’s vote is neither recorded as yea or nay, nor is the vote printed in the House or Senate Journal. Instead, the presiding officer announces the prevailing side.

Once a bill is passed, a third kind of vote is frequently used: an immediate effect vote. The Michigan Constitution, in Article IV, Section 27, specifies:

“No act shall take **effect** until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give **immediate effect** to acts by a two-thirds vote of the members elected to and serving in each house.”

As a result of this provision, bills enacted during the two-year legislative session go into effect as new laws (or become binding) on or about April 1 of the first year in the next session.

However, today, nearly all bills are given immediate effect in the Michigan legislature, often on a voice vote. That means the bills become binding as new laws immediately upon approval by the Governor and filing with the Secretary of State—a process that can take as little as one day.

NOTE: A new law’s effective date can also be stated within the language of the bill, itself, and different sections of the bill can specify different effective dates.

Summary: The normal legislative process includes a roll call vote, which records the vote of each voting member and prints the vote in the daily journal. When legislative leaders call for a voice vote instead, no record is kept of who voted for or against a bill and citizens cannot hold their legislators accountable for their votes. While immediate effect votes require a two-thirds majority, on a voice vote this can be difficult to verify and objections to the outcome can be overruled.

Question

7. Should there be only record roll call votes for all bills during a Lame Duck session?

YES NO NO CONSENSUS REACHED

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Question 8: Planning for Bills in Lamé Duck

Overview: The Quadrant Leaders of the Michigan Legislature include the 1) Senate Majority Leader (of the political party holding most of the Senate’s 38 seats) and 2) the Senate Minority Leader (of the other party), plus 3) the Speaker of the House (leader of the political party holding most of the 110 House seats), and 4) the House Minority Leader (leader of the other party). These four leaders—The Quadrant, two from each political party—collaborate to make decisions about who among their respective caucus members will serve on appropriations committees, standing committees, and conference committees. Also, the bi-partisan Quadrant usually collaborates on scheduling, ceremonial functions, and some non-partisan staffing decisions. Most of the time, however, the bi-partisan Quadrant does not make the decisions. Instead, the ultimate and customarily unilateral authority in each chamber rests with the Senate Majority Leader in the Senate, and the Speaker in the House. They need not collaborate with the Minority Leaders in their chambers, and in hyper-partisan times, they seldom do.

Question

8. Would you support a rule that the bi-partisan Quadrant meet, before the November election, to compile a list of pending bills that may be addressed during a Lamé Duck session?

YES NO NO CONSENSUS REACHED

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Question 9: Lamé Duck Usage by Party

Overview: Between 1999 and 2018 under Republican administrations with a Republican majority, an average of 26% of bills introduced that session passed in Lamé Duck sessions.

Under Democratic administrations with a Democratic majority, an average of 29% of bills introduced in that session passed in Lamé Duck sessions.

Also, see the following documents:

- “Lamé Duck Accountability: What Legislation is ‘Rushed’?”
- Chart – Lamé Duck Activity 1999-2020 Recorded During Republican and Democratic Administrations & Legislative Majorities in the House and Senate

Question

9. Rank the level of surprise to learn that both parties have used Lamé Duck sessions to pass legislation.

VERY SURPRISED

SOMEWHAT SURPRISED

NOT SURPRISED

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APPENDIX

Constitutionality of Lame Duck Sessions

Priscilla Burnham, JD

“Lame duck” legislative sessions come in two general guises: 1) an “extraordinary” session, that is, a legislative session convened outside of the normal course of the legislative calendar or 2) the portion of the regular legislative session that occurs after an election but before the new legislature and/or executive branch assumes office.

“Lame duck” legislative sessions have provoked debate over the years, with proponents supporting them as necessary to enable enactment of important legislation – emergency or otherwise – that wasn’t addressed during the regular session and opponents citing the proclivity for passage of the losing party’s agenda in the final days of office, or legislation passed without opportunity for hearings and debate, often with unnoticed ‘pork’ tucked among the other legislative provisions.

There has been renewed focus on lame duck legislative sessions as a result of several recent State elections that flipped the party-affiliation of either the legislature or the executive branch, as happened in Wisconsin and Michigan, or both.

State Leagues have participated with other allied plaintiffs in several court challenges. Some of the challenges have been procedural, i.e., that the legislature did not follow proper procedures in convening an extraordinary session. Other lawsuits challenged the laws that came out of these lame duck sessions on the grounds of substantive defects. And still other cases have argued that lame duck legislative sessions are inherently violative of State and/or Federal Constitutional principles.

To date, the legal arguments leveled against lame duck legislative sessions have not, by and large, succeeded in either the State or the Federal Courts that have taken up the issues. Constitutionality of Lame Duck Legislative Sessions In this section of the LWVMI’s Lame Duck Study, we will take a look at the constitutional arguments relating to lame duck legislative sessions.

The constitutional challenges to lame duck legislation have typically posed one or more of the following questions:

1. Was the procedural mechanism by which the lame duck legislative session was convened unconstitutional?
2. Was the legislative action taken during a lame duck session unconstitutional?
3. Are lame duck legislative sessions inherently unconstitutional?

Constitutional Litigation – Wisconsin – A case study

1. After the governor’s office changed hands in Wisconsin as a result of the November, 2018, election, the legislators convened an “extraordinary” (i.e., lame duck) session of

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the legislature and proceeded to pass legislation that, among else, limited the powers of the incoming administration.

The Wisconsin LWV, along with other allied plaintiffs, challenged the legislation passed during the “extraordinary” legislative session on the grounds that the regular legislative session had ended in March, 2018, and the legislature had not followed the state constitution when it called the legislature back into session in December.

Although the litigants found a receptive judge in state circuit court, a majority of the Wisconsin Supreme Court summarily overturned the lower court’s finding that the session was convened in violation of the constitution. The appellate court found that the convening of the “extraordinary” session was a legitimate exercise of the legislature’s power, and therefore its actions during the “extraordinary” session were legal. The majority in the Wisconsin Supreme Court also determined that some 80 “lame duck” appointments by the outgoing Governor were also within his executive powers.

The dissenters on the Wisconsin Supreme Court agreed with the LWVWI and its litigation partners that there was nothing in the Wisconsin Constitution affirmatively giving the legislature the “authority” to call the legislators back into session once the regular term ended.

{Editorial aside} Somewhat ironically, perhaps, the [Democratic] dissenters took a “strict constructionist” view of the state constitution (if the power is not spelled out in the constitution, it cannot be presumed to exist), while the [Republican] majority took the opposite position: if it isn’t specifically prohibited under the constitution, then the legislature’s action is presumed to be a valid exercise of its powers.

We have probably not heard the last of this argument. Challenges to the ability of a legislative body to call itself into “extraordinary” session simply to enact legislation that it didn’t accomplish during its regular, constitutionally-mandated session, rather than for the more limited purpose of responding to a true ‘emergency’ unforeseen during its regular term, will likely be brought in the future and/or in other jurisdictions in this hyper-partisan environment. The likelihood that a change in control of one, two or all three branches of government will result in renewed challenges to lame duck legislation by the adversely affected party or its supporters only increases with each electoral season.

2. A second constitutional challenge to the laws that were passed during Wisconsin’s December 2018 “extraordinary” legislative session was brought by Wisconsin Democrats using a First Amendment Constitutional argument.

They argued that the lame duck legislation violated the US Constitution as an impermissible violation of Democratic voters’ first amendment rights. In essence, the argument went, the voters had “spoken” by voting for a Democratic governor, and the legislature was attempting to “stifle” their free speech.

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However, a federal judge rejected the argument, stating that, while “there are many reasons to criticize the lame-duck laws, the role of a federal court is not to second-guess the wisdom of state legislation, or to decide how the state should allocate the power among the branches of government.”

In this instance, the intent – and effect – of the legislation passed during the lame-duck session was clearly to limit the powers of the incoming executive branch of government and to preserve and enhance the opposite party’s control of the legislative branch.

‘Sorry,’ said Judge Peterson, that is not enough to raise a federal Constitutional claim. The legislation may have “harmed” the ability of the plaintiffs to get their policies enacted, but the remedy was not to strike down the legislation as a violation of the United States Constitution but rather to take it up in the legislature or in the state courts.

A three-judge panel from the 7th U.S. Circuit Court of Appeals upheld Peterson’s decision, finding that Democrats were seeking an unprecedented interpretation of voting rights, and that legislators’ partisan intentions don’t violate voters’ rights.

And following Judge Peterson’s determination that any constitutional challenge belonged in the state Supreme Court, the Wisconsin Supreme Court for a second time ruled against union plaintiffs’ argument that laws passed during the lame-duck legislative session violate the state constitution’s separation of powers guarantee by infringing on the executive branch’s authority.

3. In Michigan, the constitutionality of lame-duck legislation wound up before the Michigan Supreme Court in a lawsuit that was brought on behalf of the LWVMI, among others.

Although there were some successful challenges to the specific substance of laws passed by the lame-duck legislature and signed by the outgoing Governor, the challenge to the process of passing a law during the regular session and then amending it during the lame-duck session (a “bait and switch” argument), was side-stepped by the Michigan Supreme Court on the grounds that the lawsuit did not raise an actual, or “justiciable,” issue, and left it to a future Court to decide if the issue comes before it.

Summation

In sum, while some individual laws passed by state legislatures (Wisconsin, Michigan) during lame-duck sessions have been found to be unconstitutional, there haven’t been any legal decisions to date signaling that the courts might declare lame-duck legislative sessions themselves unconstitutional.

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Legislative Session Lengths

Legislative session length may be unrestricted, or it may be limited. Session length limitations are set in a variety of ways. The limits may be found in constitution, statute or chamber rule. They also may set indirectly by restricting the number of days for which a legislator receives compensation, per diem or mileage reimbursement. Currently, only 11 states do not place a limit on the length of regular session – Michigan is one. These 11 states are the most likely to have Lame Duck sessions. In the remaining 39, the limits are set by constitution, statute, chamber rule or indirect method.

Key:

C = calendar day

L = legislative day (that is, a day on which a floor session is held)

Source: National Council of State Legislatures, August 6, 2020

State	Current Session Length Limit	Method of Setting
Alabama	30 L in 105 C	Statute
Alaska	90 C	Statute
Arizona	Sat of week in which 100th C falls	Chamber rule
Arkansas	Odd-60 C Even-30 C	Constitution
California	Odd-None Even-Nov 30 Odd-Sept 12 Even-Aug 31	Constitution Chamber Rule
Colorado	120 C	Constitution

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State	Current Session Length Limit	Method of Setting
Connecticut	Odd-Wed after 1st Mon in June Even- Wed after 1st Mon in May	Constitution
Delaware	June 30	Constitution
Florida	60 C	Constitution
Georgia	40 L	Constitution
Hawaii	60 L	Constitution
Idaho	None	Not applicable
Illinois	None	Not applicable
Indiana	Odd-Apr 29 Even-Mar 14	Statute
Iowa	Odd-110 C Even-100 C	Indirect
Kansas	Odd-None Even-90 C	Constitution
Kentucky	Odd: 30 L or Mar 30 Even:60 L or Apr 15	Constitution
Louisiana	Odd-45 L in 60 C Even-60 L in 85 C	Constitution
Maine	Odd-3rd Wed in June	Statute

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State	Current Session Length Limit	Method of Setting
	Even-3rd Wed in Apr	
Maryland	90 C	Constitution
Massachusetts	Formal sessions: Odd-3rd Wed in November Even-July 31 Informal sessions: None	Chamber rule
Michigan	None	Not applicable
Minnesota	120 L total within biennium or 1st Mon after 3rd Sat in May each year	Constitution
Mississippi	90 C except year after gubernatorial election, then 125 C	Constitution
Missouri	May 30	Constitution
Montana	Biennial session; 90 L	Constitution
Nebraska	Odd-90 L Even-60 L	Constitution
Nevada	Biennial session ; 120 C	Constitution
New Hampshire	45 L or July 1	Indirect
New Jersey	None	Not applicable
New Mexico	Odd-60 C Even-30 C	Constitution

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State	Current Session Length Limit	Method of Setting
New York	None	Not applicable
North Carolina	None	Not applicable
North Dakota	Biennial session ; 80 L	Constitution
Ohio	None	Not applicable
Oklahoma	Last Fri in May	Constitution
Oregon	Odd-160C Even-35C	Constitution
Pennsylvania	None	Not applicable
Rhode Island	None	Not applicable
South Carolina	1st Thurs in June	Statute
South Dakota	40 L	Constitution
Tennessee	90 L	Indirect
Texas	Biennial session ; 140 C	Constitution
Utah	45 C	Constitution
Vermont	None	
Virginia	Odd-30 C Even-60 C	Constitution

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State	Current Session Length Limit	Method of Setting
Washington	Odd-105 C	Constitution
	Even-60 C	
West Virginia	60 C	Constitution
Wisconsin	None	Not applicable
Wyoming	Odd-40 L	Constitution
	Even-20 L	

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Special Sessions

National Council of State Legislatures

3/9/2020

There are two main types of legislative sessions—regular and special (sometimes known as extraordinary). A regular session is the annual or biennial gathering of legislators, the starting date (and often, the length) of which is set by constitution or statute.

Unlike regular sessions, there is no specific timing for special (or extraordinary) sessions. They occur intermittently to deal with the specific issues or topics. Usually, the scope of a special session—that is, the topics that may be taken up—is limited to the issues specified in the notice calling for the special session.

There are no limits on the number of special sessions that may be called. Many factors can influence the number of special legislative sessions that occur in any year, including court decisions; federal government actions; length of or scope limits on regular legislative sessions; length or scope limits on special sessions; natural or other disasters; party control of the legislature and governor's office; political culture of the state; redistricting; or state economy.

A special or extraordinary session is called either by the governor or the legislature. Who has the ability varies among the states.

In 14 states, *only* the governor may call a special session.

Alabama	Indiana	Mississippi	Texas
Arkansas	Kentucky	North Dakota	Vermont
California	Michigan	Rhode Island	
Idaho	Minnesota	South Carolina	

Only Governor Can Call Special Session

In 36 states, a special session may be called by either the governor or the legislature.

Alaska	Iowa	Nevada	Pennsylvania
Arizona	Kansas	New Hampshire	South Dakota
Colorado	Louisiana	New Jersey	Tennessee
Connecticut	Maine	New Mexico	Utah
Delaware	Maryland	New York	Virginia
Florida	Massachusetts	North Carolina	Washington
Georgia	Missouri	Ohio	West Virginia
Hawaii	Montana	Oklahoma	Wisconsin
Illinois	Nebraska	Oregon	Wyoming

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Special Session Can Be Called by Governor or Legislature

How do legislatures call special sessions? Below is a summary of their processes.

Ed Note: Special Sessions in the states that have legislative session limits could be called during a Lane Duck period, however, there are usually significant restrictions that discourage that option.

STATE	DESCRIPTION OF THE PROCESS
Alaska	If two-thirds of the membership responds in the affirmative to a poll conducted by the presiding officer of each house.
Arizona	Upon presentation to the governor of a petition signed by not less than two-thirds of the members of each house.
Colorado	By written request of two-thirds of the members of each house to the presiding officer of each house.
Connecticut	1) Upon presentation to the secretary of state of a petition signed by two-thirds of the members of each house or 2) by joint call of the presiding officers of both houses.
Delaware	By mutual call of the presiding officers of both houses.
Florida	1) Upon the filing with the Department of State of a joint proclamation by the president of the Senate and speaker of the House or 2) if three-fifths of the members of both houses respond affirmatively to a poll by the Department of State—the poll being initiated by certificates from 20 percent of the members of the Legislature.
Georgia	Upon presentation to the governor of a petition signed by three-fifths of the members of each house, with a copy to the secretary of state.
Hawaii	By written request of two-thirds of the members of each house to the presiding officer of each house.
Illinois	Upon the filing with the secretary of state of a joint proclamation by the presiding officers of both houses.
Iowa	By written request of two-thirds of the members of each house to the presiding officer of each house.
Kansas	Upon presentation to the governor of a petition signed by at least two-thirds of the members elected to each house.
Louisiana	By written petition of a majority of the members elected to each house to the presiding officers of both houses
Maine	On the call of the president of the Senate and speaker of the House, with the consent of a majority of the members of the Legislature of each political party, all members having been first polled.
Maryland	Upon presentation to the governor of a petition signed by a majority of the members elected to the Senate and to the House of Delegates.
Massachusetts	Upon presentation to the clerk of the respective chamber of written statements of—and subsequent vote of—21 members of the Senate and 81 members of the House of Representatives

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STATE	DESCRIPTION OF THE PROCESS
Missouri	By joint proclamation of the president pro tem of the Senate and the speaker of the House, upon filing with the secretary of state a petition signed by three-fourths of the members of the Senate and House.
Montana	At the written request of a majority of the members.
Nebraska	By proclamation of the governor, upon filing with the secretary of state a petition signed by 10 or more members of the Legislature and a subsequent poll by the secretary of state approved by two-thirds or more of the members.
Nevada	By petition signed by two-thirds of the members of both the Senate and Assembly.
New Hampshire	By a two-thirds vote (or petition) of the qualified members of each branch of the General Court.
New Jersey	By proclamation of the governor, upon petition of a majority of the members of each house.
New Mexico	By proclamation of the governor, upon petition of three-fifths of the members elected to each house.
New York	By petition of two-thirds of the members of each house to the Senate president pro tem and the speaker of the House.
North Carolina	By joint proclamation of the president of the Senate and speaker of the House, upon written request by three-fifths of the members of each house.
Ohio	By joint proclamation of the presiding officers of the General Assembly.
Oklahoma	By joint order of the Senate president pro tem and the speaker of the House, upon written request of two-thirds of the members of each chamber.
Oregon	By the presiding officers of both houses, upon written request of a majority of the members of each chamber.
Pennsylvania	By the governor, upon petition of a majority of the members elected to each house.
South Dakota	By the presiding officers of both houses upon the written request of two-thirds of the members of each house. The petition of request shall state the purposes of the session, and only business encompassed by those purposes may be transacted.
Tennessee	By the presiding officers of both houses, upon written request of two-thirds of the members of each chamber.
Utah	By the presiding officers of both houses, upon poll of members, to which two-thirds of the members of each chamber are in favor because in their opinion a persistent fiscal crisis, war, natural disaster or emergency in the affairs of the state necessitate the convening.
Virginia	By the governor, upon the application of two-thirds of the members elected to each house.
Washington	By resolution of the Legislature, upon affirmative vote (or poll) of two-thirds of the members elected or appointed thereto.
West Virginia	By proclamation of the governor, upon the application of three-fifths of the members elected to each house.
Wisconsin	1) At the direction of a majority of the members of the committee on organization in each house; 2) by the adoption of and concurrence in a joint resolution on the approval by a majority of the members elected to each house; or 3) by the joint petition of a majority of

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STATE	DESCRIPTION OF THE PROCESS
Wyoming	the members elected to each house submitted to, and using a form approved by, the Senate chief clerk and the Assembly chief clerk. 1) Upon written request to the presiding officer of each house of the Legislature by a majority of the elected members of each house; or 2) the presiding officers of each house shall also jointly call a special session for the purpose of resolving a challenge or a dispute of any kind in the determination of the presidential electors.

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Number of Bills Signed by The Governor During Lamé Duck Sessions, and The Number of Vetoes from 1999-2018

Introduction: Legislative Sessions span two years. The seven weeks at the end of all even-numbered years—that is, the period of time between the November general election and the end of December when the session adjourns—are called Lamé Duck Sessions. A significant percentage of term-limited state legislators serves during that time, before the newly elected legislators are sworn into office on the second Wednesday in January of the odd-numbered years.

These data tell the number of bills signed into law by the Governor **after** the November General Election, during both the first and second (Lamé Duck*) years, of the 10 two-year legislative sessions convening between 1999 – 2018. Also given is the percentage of post-election bills of the total bills enacted each year.

Observations: Every year, the last seven weeks of the legislative session are very busy—but often twice as busy during a Lamé Duck session as the session’s first year. Using the number of bills enacted into law as an indicator, about 40 percent of the Legislature’s work is accomplished in the seven weeks after the November General Election every year. [This is known in the political science literature as the “legislative logjam.”] However, the number of bills enacted into law often doubles during the second year of the two year session—the Lamé Duck year.

Between 1999 and 2018, during the first year of the two-year sessions, the total number of bills signed into law ranges from 221 – 340. The average is 282 bills; the median is 278 bills.

Between 1999 and 2018, during the second year (Lamé Duck), the total number of bills signed into law ranges from 285 – 747. The average is 565 bills; the median is 584. The average and median for Lamé Duck years are 50 percent and 48 percent higher, respectively.

Between 1999 and 2018, the average percentage of the total bills enacted into law after the November General Election during both Lamé Duck years and odd-numbered years was 39.3 percent. The range during Lamé Duck years was 20 percent to 49 percent. The range during odd-numbered years was 33 percent to 42 percent.

Over these 10 legislative sessions, the percentage of bills signed into law after the General Election during Lamé Duck years while irregular, is trending higher.

Between 1999 and 2018, the Governor vetoed a total of 44 bills during the first years of the sessions, and a total of 250 bills during the second (Lamé Duck) years. The range, average, and median for the first year are 0-17, 4.4, and 2, respectively (including four years with zero vetoes). The range, average, and median for the Lamé Duck sessions are 2-61, 25, and 15, respectively.

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Data

1999

Bills signed after election	109
Total bills signed that year	279
Percentage of total	36
Vetoed	4

2000*

Bills signed after election (Lame Duck)	182
Total bills signed that year	506
Percentage of total	36
Vetoed	10

2001

Bills signed after election	114
Total bills signed that year	280
Percentage of total	41
Vetoed	0

2002*

Bills signed after election (Lame Duck)	151
Total bills signed that year	747
Percentage of total	20
Vetoed	19

2003

Bills signed after election	129
Total bills signed that year	322
Percentage of total	40
Vetoed	14

2004*

Bills signed after election (Lame Duck)	194
Total bills signed that year	596
Percentage of total	33
Vetoed	55

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2005

Bills signed after election	143
Total bills signed that year	340
Percentage of total	42
Vetoed	17

2006*

Bills signed after election (Lame Duck)	239
Total bills signed that year	682
Percentage of total	35
Vetoed	55

2007

Bills signed after election	93
Total bills signed that year	221
Percentage of total	42
Vetoed	0

2008*

Bills signed after election (Lame Duck)	285
Total bills signed that year	586
Percentage of total	49
Vetoed	2

2009

Bills signed after election	101
Total bills signed that year	242
Percentage of total	42
Vetoed	0

2010*

Bills signed after election (Lame Duck)	174
Total bills signed that year	383
Percentage of total	45
Vetoed	5

2011

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Bills signed after election	108
Total bills signed that year	323
Percentage of total	33
Vetoed	2

2012*

Bills signed after election (Lame Duck)	278
Total bills signed that year	625
Percentage of total	44
Vetoed	12

2013

Bills signed after election	116
Total bills signed that year	277
Percentage of total	42
Vetoed	2

2014*

Bills signed after election (Lame Duck)	216
Total bills signed that year	572
Percentage of total	38
Vetoed	22

2015

Bills signed after election	95
Total bills signed that year	269
Percentage of total	35
Vetoed	0

2016*

Bills signed after election (Lame Duck)	245
Total bills signed that year	563
Percentage of total	44
Vetoed	9

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2017

Bills signed after election	106
Total bills signed that year	267
Percentage of total	40
Vetoés	5

2018*

Bills signed after election (Lamé Duck)	341
Total bills signed that year	690
Percentage of total	49
Vetoés	61

* = Lamé Duck Year (even-numbered years)

Source: The Public Act Tables. Michigan Legislative Service Bureau. Retrieved during March 2020 from www.legislature.mi.gov

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Overview of Michigan's 2018 Lame Duck Session

2018 Lame Duck Session: What Happened?

2018 was the second year of the two-year 2017-2018 legislation session. During that second year of the session, alone, 690 bills were enacted into law. During the first year in 2017, 267 bills were enacted. So, the second year saw more than 2 ½ times as many bills enacted.

The seven weeks following the November 6, 2018 general election until the Legislature adjourned *sine die* on December 31, 2018 was the Lame Duck Session. During that period, the Governor signed 341 of those 690 bills into law—or 49 percent. The Governor vetoed 61 bills—all but three of them during Lame Duck. (The three bills vetoed earlier concerned use & sales taxes on aviation equipment, and the discharge of ballast water in the Great Lakes, although a modified ballast water bill was subsequently reintroduced and enacted during Lame Duck.) The previous year, 2017, the Governor vetoed five bills. So, during the second year of the session, the Governor vetoed more than 12 times as many bills.

What Passed and Was Signed into Law During the 2018 Lame Duck?

The range of public policy problems addressed within the 341 bills signed during the 2018 Lame Duck Session is extensive, including but not limited to: Elections; Retirement; Occupations; Vehicles, Highway & Traffic Control; Crime Victims Compensation; Crimes & Law Enforcement; Health Facilities; Insurance; Natural Resources; Liquor Control; Foster Care; Education; School Safety; School Aid Appropriations; Affordable Housing; Wrongful Imprisonment Compensation; a Supplemental Appropriations Bill; Ballast Water Regulation; Hazardous Radioactive Waste; Marijuana; Local Government; Financial Institutions; State Financing & Management; Campaign Finance; Mental Health; Agriculture; Environmental Protection; Property Taxation; Veterans; Fire Works; Child Sexual Abuse; Elder Care; Cyberbullying; Drains & Land Use; Courts; Trade; Watercraft; Use Tax; Gaming; Criminal Procedure; and Local Road Improvement.

For a complete list and brief description of the 341 bills, see the “2018 Michigan Public Acts Table.” An excerpt from the Table—pages 36 through 69—summarizes all the legislation passed into law during the 2018 Lame Duck, and is attached. The Public Acts Table is published by the Michigan Legislative Service Bureau, and can be found on the Legislature’s website www.legislature.mi.gov

What Was Vetoed by the Governor During the 2018 Lame Duck Session?

The 58 bills vetoed during the 2018 Lame Duck Session also covered a range of issues, described below by category. Some categories addressed several issues and included

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tie-barred multi-bill packages. The number of bills in each category is included in parentheses.

The vetoes can be summarized as follows: Gaming (8, including internet gambling); **the Legislature (2, including automatic intervention in lawsuits filed by Attorney General)**; Property Tax (1, for alternative energy); School Teacher Retirement (2, to allow a shift from pensions to annuities); Economic Development (2); Traffic Control (1, to allow vehicle window tinting); Property Tax (1, allowing exemption for solar panels); Children (4, to change the definition of newborn); Pet Shops (2); Animal Industry Act (12); Individual Income Tax (3, including deductions for oil and gas exploration & first time home-buyers); Child Residential Facilities (1); Sales Tax (2, on aviation equipment, also vetoed earlier in the year); Civil Procedure (2); Tobacco Tax (1); Corporate Income Tax (2); Natural Resources (1, concerning sand dunes); Financial Institutions (1, concerning credit cards); **State Agencies (1, requiring the legislature to approve memoranda of understanding)**; Highway Advertising Act (2); Insurance (1); Medicaid Policy (2) Military Surplus Vehicles (1); Civil Rights (1, disclosing donor information); Abortion Examination Requirements (1); and **Criminal Procedure (1, to provide a 5-year statute of limitations on campaign finance violations)**.

The vetoed bills in bold print, above, are examples of bills passed by the Legislature that the Governor likely would view as Overreach into the affairs of the Executive Branch, thereby violating the Constitutional separation of powers. Generally, Governors also will often veto bills that would reduce the state's tax revenue. The remaining vetoes are matters of policy disagreement.

A complete list of the Governor's Vetoes each year is provided at the end of every annual Michigan Public Acts Table. The list of vetoes for 2018—pages 70-75—is attached.

What High-Profile Bills Were Both Introduced & Enacted During the 2018 Lame Duck?

A total of 341 bills were signed into law during the 2018 Lame Duck Session. The wide range of policy categories of those bills is described above. As noted, all of the new laws can be reviewed in the 2018 Michigan Public Acts Table.

Fully seventy (70) of those bills—21 percent—were both introduced and enacted during the seven-week Lame Duck session—this despite the fact that the legislature was in recess for two of those weeks. Some of those 70 bills were part of multi-bill packages. Below, those laws highlighted in bold print received a lot of media coverage. The Michigan League of Women Voters took a position to oppose many of the high-profile bills, before their enactment. The 70 laws that moved hurriedly through the Legislature between late November and the end of December 2018 follow.

PA 359 – Mackinac Bridge Authority Utility Tunnel (Senate Bill 1197)

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PA 368 – Establish Stepped Minimum Wage & Tipped Worker Wage (Senate Bill 1171)

PA 369 – Establish Paid Medical Leave Act & Paid Sick Time (Senate Bill 1175)

PA 403-417 & 426 – Liquor Laws Modification (16 bills, SBs 1154-1168, 1181)

PA 440 – Traffic regulation of 1-way streets (SB 1253)

PA 441 – Prohibit municipal electrician’s licensure as condition of apprenticeship (SB 1185)

PA 442 – Regulate unmanned aircraft systems (SB 1233)

PA 443 – Modify membership of Indigent Defense Commission (SB 1187)

PA 447 – Provide for PACE program (All-Inclusive Care for Elderly (HB 6551)

PA 486 – Designate M-10 portion as Violet T. Lewis Memorial Highway (SB 1137)

PA 477 – Mandate Public Employee Contribution to Health Care Benefits (SB 1199)

PA 478 – Require Accessibility Route During Construction (SB 1207)

PA 479 – Expand Sale of Alcoholic Beverages at University Conference Centers (SB 1219)

PA 480-481 – Modify Brownfield Redevelopment Tax Increment Finance (SBs 1222-1223)

PA 482 – Allow Public School Employee Contractors (SB 1225)

PA 483 – Eliminate Sunset Provisions on Foster Care Pilot Programs (SB 1231)

PA 484 – Special Assessment Districts for Police & Fire Services (SB 1235)

PA 485 – Provide procedures for Absences at Public Meetings (SB 1261)

PA 518 – Modify Floodplain Permits (HB 6472)

PA 519 – Allow Electronic Title for Off-road Vehicles (HB 6487)

PA 520 – Enact Corporate Governance Annual Disclosure Model Act (HB 6520)

PA 521-522 – Modify Release of Law enforcement Employment Records (HBs 6573-6573)

PA 523 – Require Identifying Information for FOIA Requests (HB 6582)

PA 579 – Modify Compilation of Public Service Employment Claims (SB 1205)

PA 580 – Eliminate Sunset Provisions on Child Welfare Pilot Programs (SB 1232)

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PA 581 – Modify Hazardous Waste Clean-Up Criteria (SB 1244)

PA 582-583 – Medical Marijuana Facilities & Sentencing Guidelines (SBs 1262-1263)

PA 584 – Send photo of State ID Applicants to Licensing & Regulatory Affairs (SB 1264)

PA 600 – Allow Police Canines in Ambulances (SB 1234)

PA 603-607 – Amend Michigan Election Law [designate citizenship on driver’s license & state ID cards; establish automatic voter registration opt-out for enhanced driver’s licenses]; Update reference in Michigan Campaign Finance Act (SBs 1238-1242)

PA 608 – Put Limits on Petition Signatures for Constitutional Amendments, Citizen Initiatives, & Citizen Referendums) (HB 6595)

PA 629 – Provide Recognition for Veterans in State Capitol (SB 1177)

PA 630 – Appointment of Executive Director of Veterans’ Facility Authority (SB 1180)

PA 631 – Revise the Definition of Wetlands (SB 1211)

PA 668 – Revise Regulation of Motor Vehicle Dealer Agreements (HB 6498)

PA 671 – Establish Inland Lake Aquatic Invasive Plant Species Control Act (SB 1136)

PA 674-676, 682-685 – Update State Police Retirement Act (HBs 6475-6481)

PA 677 – No-Fault Insurance Damage to Property Liability (HB 6484)

PA 678 – Allow Electronic Title for Watercraft (HB 6486)

PA 688-689 – Regulate Hazardous Radioactive Waste in Landfills (SBs 1195-1196)

PA 690 – Enact Insurance Data Security Model Law (HB 6491)

What Happened to Four of the High-Profile Laws After Enactment?

After the Michigan Legislature passed and the term-limited Governor signed four of these lame duck bills into law, their constitutionality was challenged in court by the Attorney General and various parties, including the Michigan League of Women Voters. The laws that were challenged included the following:

PA 359 – Authorize Mackinac Bridge Authority Utility Tunnel (Senate Bill 1197)

This bill was considered in one Senate Committee and one House Committee. It passed the Senate and House in 23 days, and was substituted four times, as well as being amended on the floor.

PA 368 – Establish Stepped Minimum Wage & Tipped Worker Wage (Senate Bill 1171)

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This bill was considered in one Senate Committee and one House Committee. It passed the House and Senate in 20 days, was substituted six times, and was adopted by suspending the layover rule.

PA 369 – Establish Paid Medical Leave Act & Paid Sick Time (Senate Bill 1175)

This bill was considered in one Senate Committee and one House Committee. It passed the House and Senate in 20 days, was substituted five times, and was adopted by suspending the layover rule.

PA 608 – Put Limits on Petition Signatures for Constitutional Amendments, Citizen Initiatives, & Citizen Referendums (House Bill 6595)

This bill was considered in one House Committee, but was never referred to a standing committee in the Senate. It passed the House and Senate in 15 days, was substituted six times, and was adopted by suspending the layover rule.

An overview follows, of the four laws against which legal challenges have been (and as of March 2020 continue to be) mounted.

1. PA 359 – Pipeline 5: Governor’s Request for Attorney General Opinion/ Executive Orders/Attorney General Opinion/Enbridge Lawsuit/Judge’s Ruling/Appeal Pending

The day following the end of the 2018 Lame Duck session, Governor Gretchen Whitmer was sworn into office. One day later, on January 2, 2019, the Governor began her efforts to block the oil pipeline known as Pipeline 5. By formal inquiry, she requested an Attorney General’s Opinion, directing her request to the newly elected Attorney General, Dana Nessel. She asked the Attorney General Nessel to ascertain the legality of PA 359 of 2018, posing six questions that challenged the validity of the new law that amended the Mackinac Bridge Authority Law to authorize acquisition of a “utility tunnel” connecting the Upper and Lower Peninsulas of Michigan. Such a tunnel would carry the Enbridge oil pipeline through the Straits of Mackinac. The Governor’s letter questioned the title of the law, the length of appointments, and other potential conflicts with the state Constitution.

The Governor also issued three Executive Orders, having a direct effect on the Mackinac Straits Oil Pipeline. On February 4, 2019, she issued EO 2019-02 which created the Department of Environment, Great Lakes, and Energy. In doing so, she wrote: “State government needs a principal department focused on improving the quality of Michigan’s air, land, and water. The department should serve as a full-time guardian of the Great Lakes, our freshwater, and our public water supplies.”

The Michigan Legislature refused to approve EO 2019-02, because it would have eliminated some environmental oversight boards having a majority of industry representatives. Following unsuccessful discussions with legislative leaders, the

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Governor issued EO 2019-06, a substantially similar plan to establish the new EGLE Department, but retaining the controversial oversight committees. A few months later, the Governor also issued EO 2019-14, to establish an Upper Peninsula Energy Task Force within EGLE.

In response to the Governor's January request for an AG Opinion, on March 28, 2019, Attorney General Nessel issued Attorney General Opinion 7309 that found several provisions of Public Act 359 of 2018 unconstitutional, and declared the law invalid. An Attorney General's Opinion is controlling for all agencies within the state government (unless or until it is overturned by the Courts), but an AG Opinion does not have the full force and effect of law for parties outside state government.

Negotiations followed with Enbridge, the Canadian owners of Pipeline 5, asking that the 65-year-old crude oil pipeline be removed from the Straits of Mackinac. The negotiations failed. In June 2019, Enbridge filed a lawsuit against the State of Michigan in the Michigan Court of Claims, arguing that Public Act 359 of 2018 was constitutional and should be allowed to go into effect.

On October 31, 2019, Judge Michael Kelly in Michigan's Court of Claims granted a summary judgment in the Enbridge lawsuit, effectively reinstating the controversial Pipeline 5 tunnel deal. Attorney General Nessel quickly announced the State of Michigan would appeal the decision. That appeal was filed on January 16, 2020. The Michigan Court of Appeals denied an immediate stay allowing Public Act 359 to go into effect. Under the court's rules, Enbridge's response is due 35 days after the state's brief, and the state's reply is due 21 days after that. The Court will then set a date for oral argument. As of March 2020, the State of Michigan's appeal awaits a hearing and decision in the Michigan Court of Appeals.

2. **PA 368 Minimum Wage: Legislative Request for a Supreme Court Advisory Opinion/ACLU+LWVMI+AAUW Amicus Brief/Supreme Court Order**

3. **PA 369 Paid Sick Leave: Legislative Request for a Supreme Court Advisory Opinion/ACLU+LWVMI+AAUW Amicus Brief/Supreme Court Order**

Public Act 368 of 2018 and Public Act 369 of 2018 were enacted by the Legislature in December 2018 following the November General Election. Both bills—Senate Bill 1171 and Senate Bill 1175—were introduced to amend two laws that had been enacted by the Michigan Legislature just four months earlier, on September 5, 2018. The two laws enacted in September were citizen-initiated laws headed to the General Election ballot as statewide ballot proposals. To prevent their appearance on the ballot so citizens could vote on them, the Legislature exercised its constitutional prerogative of enacting the citizen initiatives into law.

The laws the Legislature enacted in September 2018 were identical to the citizen-initiated laws circulated in petitions. Earlier in 2018, citizens collected enough signatures

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by circulating two separate petitions statewide, to place two initiatives on the ballot that would have raised the minimum wage to \$12 per hour for all Michigan workers; and, guaranteed one hour of sick time for 30 hours worked.

When the Legislature adopted these laws in September, many worried they did so, only to deny citizens the opportunity to vote on them in the November Election. Further, many expressed the concern that legislative leaders intended to significantly weaken the new laws by amending them during the Lame Duck session following the election. Although that had never happened before, that is exactly what the Legislature did. Both laws were changed in ways the petition circulators opposed. The process followed by the Legislature to foil a vote of the people came to be called 'Adopt and Amend.'

'Adopt and Amend' within the same legislative session is a controversial legislative tactic. Its constitutionality depends upon an interpretation of article 2 section 9 of the Michigan Constitution. In 1964, then Michigan Attorney General Frank Kelly ruled that 'adopt and amend' was unconstitutional when he issued AG Opinion No. 4303. Fifty-four years later, on December 3, 2018, then Attorney General Bill Schuette issued AG Opinion No. 7306 to reverse Kelly's ruling.

In February 2019, legislative Democrats, serving in the minority and led by Senator Stephanie Chang of Detroit, requested newly elected Attorney General Dana Nessel to review the constitutionality of 'Adopt and Amend' once again, and issue an AG Opinion. However, Nessel announced she would delay her Opinion, to allow the Michigan Supreme Court to review the constitutionality of 'Adopt and Amend.' How did the Michigan Supreme Court get involved?

A seldom-used provision of the Constitution allows the Legislature (or the Governor) to ask the Michigan Supreme Court to issue an advisory opinion on the constitutionality of a law. Although the Supreme Court is occasionally asked to do so, it seldom exercises its discretion in these matters. In February 2019, the House and Senate Republican leadership asked the Michigan Supreme Court for such an advisory opinion. They hoped their request would rule-out an Attorney General's Opinion in the meantime (which it did). The Supreme Court agreed to hear the matter; invited written briefs from both those who supported the 'adopt and amend' process, and those who opposed it; and asked the Office of the Attorney General to brief and argue both sides of the issue. The Attorney General did so, appointing two attorneys from her staff of assistant attorneys general.

On June 19, 2019, the American Civil Liberties Association (ACLU) of Michigan filed an amicus brief joined by the League of Women Voters of Michigan and the American Association of University Women, in support of the brief filed in the Michigan Supreme Court on behalf of the two organizations that had successfully circulated the citizen-initiated petitions, Michigan One Fair Wage and Michigan Time to Care. The brief filed by the ACLU and the LWVMI urged the Supreme Court to reject the legislature's

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attempt to undermine the will of the voters by removing citizen-led proposals from the ballot through the anti-democratic maneuver known as “adopt and amend.” Voters Not Politicians (a group that circulated petitions to place the independent citizens redistricting proposal on the November 2018 General Election ballot) also filed an *Amicus Curiae* brief, urging the Michigan Supreme Court to rule as unconstitutional the Michigan Legislature’s ‘adopt and amend’ practice of passing then gutting citizen-initiated legislation in the same session. The ACLU’s brief explained: The Michigan Constitution gives citizens the right to propose laws that must either be adopted by the Legislature or voted on by the electorate. “It therefore violates the Constitution for the Legislature to do what it did here: ‘adopt’ the people’s proposal—with no intention of allowing it to become law—and then snuff out that proposal during the same legislative session.”

The briefs were argued in the Michigan Supreme Court on July 17, 2019. Five months later, on December 18, 2019, the Michigan Supreme Court announced that it would not decide whether the Legislature’s maneuver to ‘adopt and amend’ the state’s minimum wage and paid sick leave laws during the 2018 lame-duck session was constitutional. The order said: “We are not persuaded that granting the requests would be an appropriate exercise of the Court’s discretion.” They advised that the Court will only rule if there is “actual controversy” through a lawsuit challenging the laws.

4. PA 608 Petition Signature Limits: SOS Request for AG Opinion/AG Opinion/LWV Lawsuit/Court Rulings

Public Act 608 of 2018 was introduced as House Bill 6595 on December 6, 2018. It passed the House on December 12, 2018 by a vote of 60 to 49, and was given immediate effect. The Senate made several amendments and passed a substituted bill on December 21, 2018, by a vote of 26 to 12, and was given immediate effect. The bill was returned to the House the same day, where the Senate substitute was concurred in, and passed on a 57 to 47 vote. Then Governor Rick Snyder signed the bill on December 28, 2018, and it became immediately effective. The law imposed additional requirements and limitations on people who circulate petitions to initiate legislation, to invoke the right of referendum, and to amend the Constitution.

On January 23, 2019, newly elected Secretary of State Jocelyn Benson requested an Attorney General Opinion, posing six questions to Attorney General Nessel concerning the constitutionality of several provisions in the new law.

In response, on May 22, 2019, Attorney General Nessel issued Attorney General Opinion No. 7310. In it, she found, among other things, that the Legislature exceeded its constitutional authority in enacting a 15 percent signature distribution requirement based on congressional districts, and that requiring the disclosure of the paid or voluntary status of petition circulators on the face of a petition, violated the speech

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clause of the Michigan Constitution and the U.S. Constitution. That opinion is binding on state officials and agencies.

On May 23, 2019, the Michigan League of Women Voters, acting as lead plaintiff, filed a lawsuit in the Court of Claims against the Secretary of State acting in her official capacity, stating that “Public Act 608 should be declared unconstitutional because it burdens and limits the exercise of self-executing constitutional rights, and because it is an attempt by the legislature to amend the Constitution by statute—arrogating power that is reserved exclusively to the people.” Further, “the 15 percent requirement would dramatically increase the cost and difficulty of mounting successful citizen petition campaigns. The geographic restriction prevents ballot committees from solely targeting the most heavily populated urban areas.” The LWVMI was joined in their complaint by the ballot proposal committee Michiganders for Fair and Transparent Elections, its founder, and two voters.

In early June, 2019, the Michigan House and Senate Republican leadership also filed as plaintiffs in the case. They wanted the entirety of Public Act 608 upheld. Backed by business groups, the Republican lawmakers said it added much-needed transparency and accountability to the petition-gathering process, and ensured statewide input on ballot drives. Former Michigan Solicitor General John Bursch, who spoke in favor of the legislation on behalf of a number of business organizations, said the law was constitutional, and criticized Attorney General Nessel’s decision.

On September 27, 2019, Michigan Court of Claims Judge Cynthia Stephens, ruled that the State cannot restrict the number of signatures a ballot initiative campaign can get from a single Congressional district, and that the provision of the law requiring petition circulators to check a box on their petition sheets indicating whether they are paid or not is unconstitutional. The Michigan State Senate and House Republican leadership appealed the decision to the Michigan Court of Appeals.

On January 28, 2020, a three-judge panel of the Michigan Appeals Court affirmed the Court of Claims in a 2-1 decision. Judges Deborah Servitto and Michael Gadola concurred; Judge Mark Boonstra partly concurred and partly dissented. The Appeals Court panel struck down the 15 percent cap on signatures that can be used from any one of Michigan’s 14 congressional districts, and nullified the new requirement that each petition indicate whether a circulator is paid or a volunteer. The appellate judges went further than the Court of Claims and also invalidated a requirement that paid gatherers file an affidavit with the Secretary of State, saying “it can be seen as imposing a significant burden on the right of political speech protected by the First Amendment.” The LWVMI noted that “The Court’s ruling removes unreasonable barriers to circulating petitions in Michigan, and vindicates the constitutional right to petition.”

The Republican leadership of Michigan’s Senate and House of Representatives appealed the decision to the Michigan Supreme Court. Oral arguments were scheduled for March 11, 2020.

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Glossary of Lame Duck Study Terms

Lame Duck	Legislative session that begins after the November election and lasts until the legislature adjourns in even numbered years
Adjourn Sine Die	To adjourn a session for an indefinite period - without appointing a day on which to appear or assemble again
Adopt and Amend	Tactic where legislature adopts a citizen-initiated law before it can appear on the ballot for all citizens to vote on. The legislature then amends the laws in ways that the petition circulators opposed.
Citizen Initiative Petition	Allows citizens to create a new statute. State legislature has the option to approve it without a vote of electors
Citizen Referendum	Allows citizens to overturn a statute; must be filed within 90 days after the Petition. Legislature adjourns the session when the targeted law was enacted
Immediate Effect Vote	Bill becomes binding as a new law immediately upon approval of the Governor and filing with the SOS
Lay Over	Legislative rules that allow adequate time after a bill is published for review by all parties
Quadrant	Senate Majority and Minority leaders, and House Majority and Minority leaders
Record Roll Call Vote	Unlike a Voice Vote, the vote of each legislature is recorded in the public record

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Special Session	A session called by the Governor and limited to matters specified in advance
Supermajority	3/4 or 2/3 of the elected members serving in the Senate and House.
Vehicle Bill	A bill that was already passed by one chamber but is then stripped of its original content. Substitute language is inserted that will amend the same section of the Michigan Compiled Laws as the original bill, but because it already passed one chamber, it can avoid committee and public review.