

# Lame Duck Sessions

LWVMI Study: 2020-2021





## 2019 Convention Task:

This study was approved by the delegates at the LWVMI 2019 Convention in Livonia:

Study 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.

## Approved Study Scope:

- A review of the constitutional authority provided to a lame duck 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 sessions

## *Definition*

- A **lame duck session** is the legislative session that begins after the November election in even-numbered years, and lasts until the Legislature adjourns in December.



# *Be Open Minded!*



*Time to eliminate pre-conceived ideas  
about Lame Duck sessions, such as:*

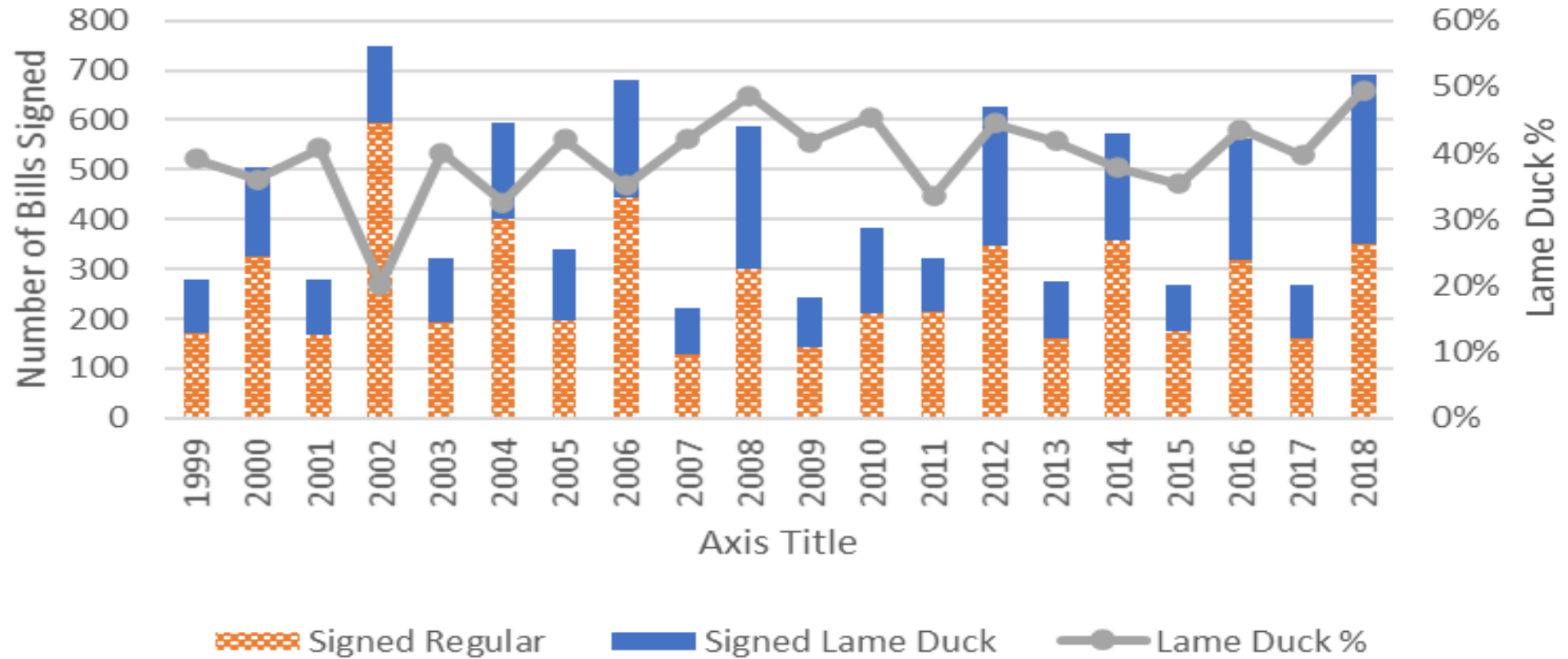
- Lame Duck sessions are evil
- Lame Duck session are always used by one party
- Nothing good ever comes from Lame Duck sessions
- Lame duck sessions are un-constitutional or illegal
- Lame Duck legislation is pushed through by unethical politicians who wait for a chance to skirt the system.



# Process, not substance

- Since 2012, LWVMI has opposed many Lane Duck bills based on LWVMI or LWVUS positions
- Would this study have been proposed if the bills passed in Lane Duck were more in line with LWV positions?
- This study is a process-oriented study, rather than a review of the substance of bills passed during a Lane Duck session.

## Regular & Lame Duck Session Bills 1999-2018



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

Lame Duck  
sessions are  
usually  
productive

- Legislatures tie up loose ends
- No special procedural rules, but majority party tends to bypass procedures to push through legislation
- Bypassing normal procedures results in a lack of transparency in legislative process and lack of legislative accountability for citizens
- Lack of time for legislators to study a 'rushed' bill is a problem



# Recent History: Why was the 2018 Lame Duck session so active?

- Eight weeks left of the trifecta: the Republican party held the senate, house and governorship
- Looming on the horizon: newly elected Governor was a Democrat
- Michigan has a full-time legislature with no limit on session terms.
- After 2018 election, 70% of state Senators and 30% of House Members were leaving office because of term limits; they faced no accountability

*A perfect storm?*

# Joint Resolutions Introduced in 2019

- Bipartisan group – 13 Republicans and 13 Democrats – introduced Joint Resolution C that would have required State Legislature to adjourn before Election Day in November of even-numbered years.
- 3 additional Joint Resolutions to set voting limits during Lame Duck Sessions were introduced in 2019 (would require 2/3 members to approve a new law).
- None of the Resolutions were approved.
- Study Committee attempted to interview all co-sponsors of Joint Resolution C.

# State Stats:

- 4 States have *full time legislatures*: Michigan, New York, California and Pennsylvania
- 7 others work the equivalent of 80% of a full-time job: Alaska, Florida, Illinois, Massachusetts, New Jersey, Ohio, and Wisconsin
- 11 states have *no limits on legislative session lengths* – so all have the potential to have active lame duck sessions: Idaho, Illinois, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin
- *Special Sessions* in the states that have legislative session limits could be called during a Lame Duck period, however, there are usually significant restrictions that discourage that option. A special session may be called either by the governor or the legislature – each state has its own rules.

Source: National Conference of State Legislatures

# Let's get the discussion going. What are your thoughts about these statements?

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

**Negative      Positive      Both**

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**

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**

# More discussion....

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

**Negative      Positive      Both**

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**

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**

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

**Negative      Positive      Both**

# More discussion questions

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**

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

**Negative**    **Positive**    **Both**

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

**Negative**    **Positive**    **Both**

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**

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**

# Last of the general discussion questions

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**

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**

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**

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

**Negative**    **Positive**    **Both**

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**

CONSENSUS is a process whereby members participate in a group discussion of an issue.

The “consensus” reached by members through group discussion is not a simple majority, nor is it unanimity, but refers to the overall “sense of the group”.

Member agreement emerges from the give and take that comes from group interaction and the exchange of viewpoints.

Listening to and participating in discussion helps to shape the recommendations. The goal of consensus is to incorporate the interests of all participants in building meaningful agreement.

# Ready for the Consensus Questions?



# Nine Consensus Questions

Most of the consensus questions 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.

# Consensus Process

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# Question 1: Public Hearing Process in Regular Session

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

YES

NO

NO CONSENSUS REACHED

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

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

YES      NO      NO CONSENSUS REACHED

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

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

# Question 4: Supermajority Required to Pass Bills

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

# Question 5: Lame Duck Sessions

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Would you support the elimination of Lame Duck sessions if a constitutional amendment were required?

**YES    NO    NO CONSENSUS REACHED**

# Question 6: Adoption of Citizen-Initiated Ballot Proposals

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 Lame Duck session after the election in ways that alter the petition circulators' original intent?

YES

NO

NO CONSENSUS REACHED



# Question 7: Record Roll Call Votes and Voice Votes

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

YES

NO

NO CONSENSUS REACHED

# Question 8: Planning for Bills in Lame Duck

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 Lame Duck session?

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**YES    NO    NO CONSENSUS REACHED**

## Question 9: Lame Duck Usage by Party

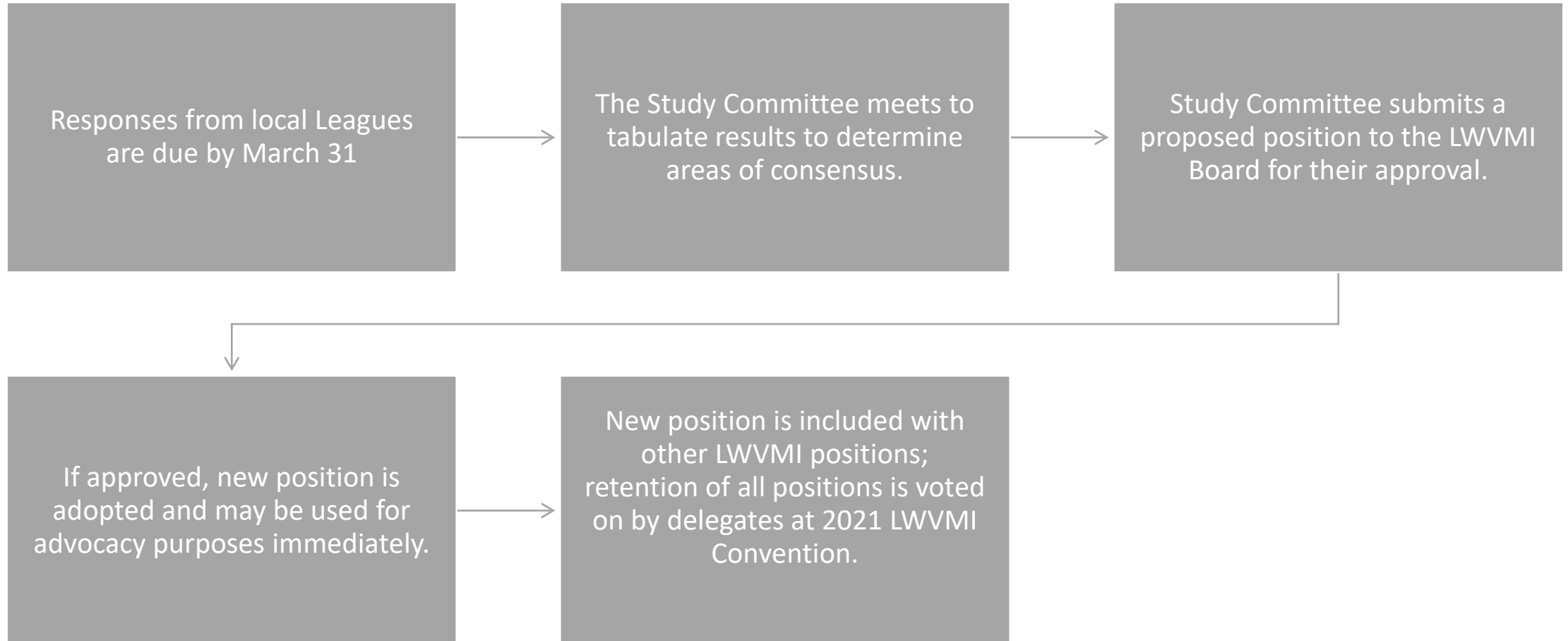
Rank the level of surprise to learn that both parties have used Lame Duck sessions to pass legislation.

VERY SURPRISED

SOMEWHAT SURPRISED

NOT SURPRISED

# What's Next?



Thank you.....

- To local Leagues who are participating in the study
- To the LWVMI Study Committee:
  - Joan Hunault- Leelanau County
  - Beth Moore – Lansing Area
  - Jim Treharne – Oakland Area
  - Jerry Demaire – Macomb County
  - Carla Barrows-Wiggins – Oakland Area
  - Marian Kromkowski – Leelanau County
  - Glenn Anderson – NW Wayne County
  - Priscilla Burnham- Marquette County
  - Paula Bowman – NW Wayne County, LWVMI VP, Program
  - Ex Officio: Christina Schlitt, LWVMI President