

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

### September/October 2002



#### **Department of Information Technology: The First Year** by **Bill Bowerman, Chief Analyst**

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While Executive Order 2001-3 created the Department of Information Technology (DIT) effective on October 14, 2001, the DIT's identity as a State department remains obscure. Unlike other State departments, a majority of DIT employees remain physically located within other departments. Several of the Department's core administrative functions, including human resource services, services performed by the internal auditor, the public information officer, the legislative liaison, and part of financial services, are provided under contract by the Department of Management and Budget (DMB). The following is an overview of the current status of the Department of Information Technology.

#### **Department of Information Technology Executive Orders**

Executive Order 2001-3 stated that information technology functions, duties, and responsibilities assigned to various State departments could be more effectively carried out by a new Department of Information Technology, which would promote a unified approach to information technology management. The Department is charged with the goal of achieving the use of common technology across the executive branch, including:

- Coordinating a unified executive branch strategic information technology plan.
- Overseeing the expanded use of project management principles.
- Serving as a general contractor between the State's information technology users and private sector providers of information technology.
- Developing information technology budgets and setting standards for application development for executive branch departments.

Executive Order 2001-3 transferred to the DIT all information technology services that were previously located within any executive branch department or agency, and the following entities which had been located in the Department of Management and Budget:

- the Michigan Administration Information Network.
- the Computing Services Unit.
- the Information Technology Services Division.
- the Office of Project Management.
- the Information Technology Budget and Finance Division.
- the Office of Information Technology Solutions.
- the Telecommunications Services Unit.
- the Michigan Information Network Office.
- the Michigan Information Center.<sup>1)</sup>

Executive Order 2002-2 transferred the e-Michigan Office to the DIT, maintaining the e-Michigan Office as a Type I agency. Subsequently Executive Order 2002-14, through a Type III transfer, abolished the e-Michigan Office and transferred its powers, functions, and responsibilities to the Department of Information Technology.



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**Department of Information Technology Funding**

Because the Executive Order that created the Department was issued subsequent to the adoption of the fiscal year (FY) 2001-02 budget, FY 2002-03 is the first year with line item appropriations in a budget bill for the DIT. Prior to FY 2002-03, DIT expenses were paid directly out of existing appropriations within each department. The FY 2002-03 budget for executive branch departments and agencies creates a new Information Technology appropriation unit in each State department. This funding is the source for interdepartmental grant user fee revenue appropriated to the DIT in the General Government appropriation bill. The base funding for the DIT consists of existing appropriations for information technology functions within State departments and agencies. No new funds were provided for costs associated with the creation of the new Department. The DIT received the same standard adjustments that were applied to other budgets, including reductions to offset employee-related General Fund economic increases.

The Department's unclassified salaries, its administration, and the cost of e-Michigan are to be absorbed through savings generated by consolidation of information technology functions. The 2002 early retirement program also will result in reductions for the DIT. Approximately 17% of the Department's designated employees retired under the 2002 early retirement program. As of this date, no replacements are authorized. Therefore, while the FY 2002-03 General Government appropriation bill includes 1,765.4 FTE (full-time equated) positions and \$424,006,800 for the DIT, the actual number of funded positions is substantially below the appropriated FTE level. Table 1 delineates the costs that the DIT will have to absorb in FY 2002-03.

<b>Table 1</b>	
<b>Department of Information Technology Costs To Be Funded From Existing Resources</b>	
<b>Item</b>	<b>Amount</b>
Unclassified Positions	\$300,000
Administrative Costs <sup>2)</sup>	2,097,000
e-Michigan <sup>3)</sup>	9,300,000
Early Retirement Savings	3,502,100
<b>Total</b> .....	<b>\$15,199,100</b>

**Source:** FY 2002-03 Appropriation Bill and Budget Development Detail.

The Department also will be affected by the 1% savings built into the FY 2002-03 budget for State departments. Departments will be submitting transfer requests to implement those savings. The information technology appropriations in each department could be affected, thereby further reducing funding for the DIT.

The Department plans to achieve savings by consolidating hardware and decreasing staff costs associated with hardware maintenance, taking advantage of economies of scale, and redeploying staff and resources. The Department is in the process of identifying common



technology needs in order to leverage resources that will result in cost savings. The DIT has consolidated the Help Desk staff for approximately 50% of all State users. Eventually, the Help Desks for remaining State agencies will be added to the consolidated process. Technical staff also have been combined in other areas to improve use of resources. The Department has plans to realize savings through a standardized procurement process for information technology purchases. The DIT approved \$6.2 million in End User Computer and Network-related purchase requests for the last quarter of FY 2001-02 compared with an average of \$27.2 million for fourth quarters in previous fiscal years. The Department states that this was the result of redeployment of existing equipment and “careful review of business needs” by the DIT procurement staff. While specific amounts were not given, the DIT also states that savings have been attained from the Oracle contract, the Dell Server agreement, a renegotiated contract with IBM, and Anti-Virus software standardization.

### **Conclusion**

Coordinating and managing State government information technology functions present a complex task. For State government, the technology includes over 55,000 desktop computers, more than 2,000 communication lines, approximately 2,400 servers, widespread legacy databases, hundreds of business applications, and numerous operating systems.<sup>4)</sup> Twenty-three states have separate information technology departments, 17 states have information technology directors who manage a division within a department, and seven states have chief information officers who work between a subdepartmental information technology function and the governor’s office (which was the State of Michigan structure prior to Executive Order 2001-03).<sup>5)</sup> Due to current budgetary constraints in Michigan, providing comprehensive management of information technology resources and activities at a reduced level of funding, as with most of the State’s functions, is necessary with or without a separate department to oversee the State’s information technology functions. As shown above, there are costs associated with the administration of a department. The question remains as to whether the DIT will be able to achieve savings sufficient to offset the costs of a department along with past and impending budget reductions. Failure to achieve savings will result in diminished information technology services and resources for State departments.

### **Footnotes:**

- 1) Executive Order 2002-17, if not disapproved by the Legislature, transfers a portion of the Michigan Information Center to the Department of History, Arts, and Libraries.
- 2) Administrative costs for FY 2002-03 include \$1,627,000 in charges for internal audit functions, accountants, and human resources that are contracted services with the DMB, and \$470,000 for costs to process invoices and purchase orders that will be handled by DIT staff.
- 3) e-Michigan originally received funding in supplemental appropriation bills that included work project authorization. Executive Order 2002-2 transferred e-Michigan to the DIT. No funding was added for FY 2002-03 e-Michigan costs. Therefore, savings in the DIT budget or a reduction in services, will be necessary to fund e-Michigan.
- 4) Source: Department of Information Technology.
- 5) Compendium of Digital Government in the States, National Association of State Chief Information Officers, 2002.

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#### Michigan State Government Debt by Gary S. Olson, Director

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On November 5, 2002, Michigan voters will have the opportunity to vote on a ballot proposal that would authorize the issuance by the State of Michigan of \$1.0 billion of general obligation bonds to finance sewage treatment works projects, storm water projects, and water pollution control projects. This potential State bond issue has raised numerous questions regarding the existing level of debt owed by the State of Michigan. This article provides a review of the current level of Michigan State government debt, the recent growth in the level of State government debt, and the impact of these debt issues on the State budget, as well as a comparison of Michigan State government debt with debt levels in other states.

The State of Michigan issues debt in two broad categories. General obligation bonds are debt instruments backed by the full faith and credit of the State. An example of general obligation debt is the Clean Michigan Initiative bonds approved by the State voters in the November 1998 general election. Nongeneral obligation bonds are debt instruments backed by restricted State revenue sources. Examples of nongeneral obligation bonds include: State Building Authority bonds used to construct State and university buildings and bonds issued by the Department of Transportation for transportation infrastructure projects. (A detailed discussion of the different types of State debt can be found in the Senate Fiscal Agency issue paper entitled, "State Government Debt in Michigan: An Overview and Background", published in October 1997 and available on the Senate Fiscal Agency website.)

Table 1 provides a history of Michigan State government debt outstanding as of September 30 for the years 1979 to 2001. Total debt outstanding over this 23-year period increased from \$2.2 billion to \$17.1 billion, an increase of 765%. Most of this increase occurred in the level of nongeneral obligation debt outstanding. Nongeneral obligation debt increased from \$1.7 billion in 1979 to \$16.1 billion in 2001. This increase in nongeneral obligation debt is attributable to the creation of new and the expansion of existing borrowing programs such as the Higher Education Facilities Authority, the Hospital Finance Authority, the Michigan Municipal Bond Authority, and the Strategic Fund. These debt instruments do not have an impact on the State budget and the repayment of these bonds is by restricted revenue sources outside the overall State revenue system.

Table 2 provides a detailed comparison of the level of Michigan State government debt outstanding as of September 30, 2001, with the level of debt outstanding on September 30, 1990, according to type of debt. Voter-approved general obligation debt has substantially increased over this time period, but the major dollar growth in State debt has been in the nongeneral obligation debt instruments. The debt outstanding issued by the Michigan Municipal Bond Authority, on behalf of local units of government, has grown by \$2.2 billion over this time period. Debt issued by the Michigan State Hospital Finance Authority has grown by \$1.9 billion, debt issued by the Michigan Strategic Fund is \$1.3 billion higher, and debt issued by the Michigan State Building Authority has increased by \$1.1 billion.

As previously mentioned, the majority of the debt issued by the State of Michigan does not have a direct impact on the State budget. The exceptions to this rule are all general obligation bonds



issued by the State and debt issued by the Michigan State Building Authority. The financing of general obligation bonds is a direct cost to the State General Fund/General Purpose (GF/GP) budget. The annual debt service requirement for general obligation bonds is annually appropriated in the Department of Treasury appropriation in the General Government appropriation bill. The cost of financing debt issued by the Michigan State Building Authority is appropriated annually in the Capital Outlay appropriation bill. These debt service appropriations go directly for the repayment of outstanding principal and interest on Michigan State Building Authority bonds issued to finance State, university, or community college construction projects.

<b>Table 1</b>			
<b>Michigan State Government Debt Outstanding</b>			
<b>as of September 30 of each year</b>			
<b>(dollars in thousands)</b>			
<b>State Government</b>			
<b>Debt</b>			
<b>Year</b>	<b>General Obligation</b>	<b>Nongeneral Obligation</b>	<b>Total State Debt</b>
1979	\$482,500	\$1,749,940	\$2,232,440
1980	439,100	2,353,199	2,792,299
1981	409,600	2,692,335	3,101,935
1982	361,000	3,205,816	3,566,816
1983	309,300	4,059,541	4,368,841
1984	259,300	4,790,151	5,049,451
1985	241,700	5,501,591	5,743,291
1986	198,000	6,631,876	6,829,876
1987	157,700	6,661,528	6,819,228
1988	129,500	6,824,257	6,953,757
1989	106,400	6,878,901	6,985,301
1990	187,723	7,619,452	7,807,175
1991	162,133	8,534,758	8,696,891
1992	402,934	9,877,394	10,280,328
1993	420,813	9,667,846	10,088,659
1994	438,040	10,442,492	10,880,532
1995	706,006	11,073,285	11,779,291
1996	684,983	11,488,271	12,173,254
1997	655,184	12,187,613	12,842,797
1998	874,162	13,641,732	14,515,894
1999	839,377	13,812,656	14,652,033
2000	900,223	14,665,579	15,565,802
2001	998,315	16,097,046	17,095,361

**Source:** Michigan Department of Treasury Annual Reports.



<b>Table 2</b>			
<b>Outstanding Michigan Government Debt by Fiscal Year</b>			
<b>(thousands of dollars)</b>			
<b>State Government Debt</b>	<b>Debt Outstanding as of 9-30-1990</b>	<b>Debt Outstanding as of 9-30-2001</b>	<b>Dollar Change</b>
<b>General Obligation Debt</b>			
School Loan	\$ 9,725	\$386,000	\$376,275
Water Resources	78,000	0	(78,000)
Public Recreation	10,000	39,460	29,460
Environmental Protection	89,998	480,565	390,567
Clean Michigan Initiative	0	92,290	92,290
<b>Total General Obligation Debt</b>	<b>\$187,723</b>	<b>\$998,315</b>	<b>\$810,592</b>
<b>Nongeneral Obligation Debt</b>			
<u>Michigan Department of Transportation</u>			
Tax Dedicated Bonds	\$500,711	\$1,081,119	\$580,408
Grant Anticipation Notes	0	400,000	400,000
<u>Department of Natural Resources</u>			
State Park Revenue Bonds	5,635	0	(5,635)
<u>Public Building Corporation Bonds</u>			
State Office Building Corporation	346	0	(346)
<u>Special Authorities-Revenue Bonds and Notes</u>			
International Bridge Authority	7,850	0	(7,850)
Mackinac State Park	1,477	2,725	1,248
Mich. State Housing Development Authority	2,091,879	2,010,900	(80,979)
Mich. State Hospital Finance Authority	1,819,730	3,751,233	1,931,503
Mich. Higher Education Facilities Authority	70,025	293,575	223,550
Mich. Higher Ed. Student Loan Authority	206,645	929,365	722,720
Mich. Municipal Bond Authority	712,044	2,883,835	2,171,791
Mich. State Building Authority	1,083,600	2,159,314	1,075,714
Mich. Strategic Fund	1,115,814	2,432,279	1,316,465
Mich. Family Farm Development	3,696	181	(3,515)
Mich. Underground Storage Tank Authority	0	152,520	152,520
<b>Total Nongeneral Obligation Debt</b>	<b>\$7,619,452</b>	<b>\$16,097,046</b>	<b>\$8,477,594</b>
<b>Total State Government Debt</b>	<b>\$7,807,175</b>	<b>\$17,095,361</b>	<b>\$9,288,186</b>

**Source:** State Treasurer's Annual Report.

Table 3 provides a summary of the annual GF/GP budget cost of the debt service of general obligation and Michigan State Building Authority bonds outstanding. During fiscal year (FY) 2002-03 appropriations for general obligation bond debt service are \$59.6 million and appropriations for Michigan State Building Authority debt outstanding are \$287.2 million.



The United States Bureau of the Census publishes annual data regarding the level of debt outstanding in each state. The Bureau of the Census debt data include both general obligation and nongeneral obligation state debt. In order to provide a meaningful comparison among the states, the Census Bureau debt data also are published on a per-capita basis.

<b>Table 3</b>		
<b>State Debt Impact on General Fund/General Purpose Budget (millions of dollars)</b>		
<b>Fiscal Year</b>	<b>General Obligation Bond Debt Service Appropriations</b>	<b>State Building Authority Bond Debt Service Appropriations</b>
1990-91	\$27.9	\$143.1
1991-92	25.9	180.3
1992-93	38.3	143.7
1993-94	42.2	145.9
1994-95	43.0	150.7
1995-96	40.5	160.7
1996-97	64.2	198.3
1997-98	64.2	233.9
1998-99	94.1	225.6
1999-2000	94.1	246.1
2000-01	91.6	250.8
2001-02	96.3	261.9
2002-03	59.6	287.2

**Source:** Senate Fiscal Agency

Table 4 provides a state-by-state ranking of state per-capita debt outstanding for FY 1980, FY 1990, and FY 2000. During FY 2000, Michigan State government debt per capita outstanding ranked 22 among the 50 states. This does represent a significant movement upward in the state rankings from FY 1980 and FY 1990, when Michigan's State government debt per capita outstanding ranked 36<sup>th</sup> among the states.

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<b>Table 4</b>			
<b>State Rankings of State Debt Per Capita</b>			
<b>States</b>	<b>FY 1980</b>	<b>FY 1990</b>	<b>FY 2000</b>
Alabama	39	31	37
Alaska	1	1	1
Arizona	50	44	49
Arkansas	45	41	43
California	32	33	31
Colorado	46	42	42
Connecticut	8	4	4
Delaware	4	2	7
Florida	38	39	40
Georgia	40	47	46
Hawaii	2	6	5
Idaho	33	34	25
Illinois	21	21	16
Indiana	49	40	36
Iowa	47	43	47
Kansas	43	50	48
Kentucky	15	17	23
Louisiana	17	7	29
Maine	19	16	11
Maryland	14	18	17
Massachusetts	10	5	2
<b>Michigan</b>	<b>36</b>	<b>36</b>	<b>22</b>
Minnesota	25	38	39
Mississippi	35	46	41
Missouri	42	30	27
Montana	27	15	13
Nebraska	48	37	44
Nevada	18	22	35
New Hampshire	11	8	6
New Jersey	13	11	10
New Mexico	22	24	20
New York	6	10	8
North Carolina	41	49	38
North Dakota	34	20	15
Ohio	29	29	33
Oklahoma	26	25	32
Oregon	3	12	24
Pennsylvania	23	35	34
Rhode Island	5	3	3
South Carolina	20	27	26
South Dakota	9	9	12
Tennessee	37	45	50
Texas	44	48	45
Utah	30	28	28
Vermont	7	13	9
Virginia	31	32	30
Washington	28	26	21
West Virginia	12	19	19
Wisconsin	24	23	18
Wyoming	16	14	14

**Source:** United States Bureau of the Census, State Government Finances

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#### **The Board of State Canvassers: An Introduction** **By Suzanne Lowe, Bill Analysis Coordinator**

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The Board of State Canvassers is an entity mandated by the State Constitution and established by statute. Although it usually receives little attention, the Board recently was in the spotlight due to its role in certifying petitions for the November general election ballot. In particular, two petitions proposing constitutional amendments were the subject of controversy before the Board, as well as subsequent litigation. One of them, concerning the distribution of tobacco settlement revenue, was certified as Proposal 02-4 on the November 5, 2002, ballot. The other, concerning the sentencing or treatment of drug offenders, was not placed on the ballot.

This article describes the creation of the Board and provides an overview of its responsibilities, with a focus on the Board's role in certifying petitions for Statewide ballot proposals. The article does not attempt to describe in-depth the issues that recently were raised, or to analyze Michigan courts' decisions related to the certification of petitions.

#### **Creation and Operation of the Board**

Article 2, Section 7 of the State Constitution requires a Board of State Canvassers to be formed, and governs the membership of this Board as well as local boards of canvassers. The section states: "A board of state canvassers of four members shall be established by law. No candidate for an office to be canvassed nor any inspector of elections shall be eligible to serve as a member of a board of canvassers. A majority of any board of canvassers shall not be composed of members of the same political party."

The Michigan Election Law sets forth procedures for the appointment of the Board of State Canvassers. The four members are appointed by the Governor with the advice and consent of the Senate. The Board must consist of two members from each major political party, selected by the Governor from a list of three names submitted by each party's State central committee (either in January of an odd-numbered year for a position that is up for reappointment, or when a vacancy occurs during a member's term). If a party's State central committee fails to submit names within the time allowed, the Governor must appoint an individual who was formerly elected as a State officer of the party and is presently affiliated with it.

A Board member's term of office is four years, beginning on February 1 following his or her appointment. (An individual who fills a vacancy during an unexpired term serves for the remainder of that term.) A Board member must be a qualified and registered elector of the State, and must take the constitutional oath required of public officers. Board members also are considered State officers for the purpose of constitutional and statutory conflict-of-interest proscriptions.

Three members of the Board constitute a quorum, and an action of the Board is effective only if at least one member of each major political party concurs in the action. In other words, all decisions must be bipartisan, and at least three Board members must be in agreement, for the Board to take action. The Board is subject to the Open Meetings Act.

Members are entitled to \$75 for each day's actual physical attendance at Board meetings, as well as actual and necessary expenses incurred in the performance of their duties. Otherwise, individuals may not receive compensation for functioning as Board members. The Bureau of Elections, in the Secretary of State's office, serves as staff to the Board.



### **Canvassing and Other Responsibilities**

Chapter 31 of the Michigan Election Law sets forth the Board's overall canvassing responsibilities: "The board of state canvassers shall canvass the returns and determine the result of all elections for electors of president and vice-president of the United States, state officers, United States senators, representatives in congress, circuit judges, state senators and representatives elected by a district that is located in more than 1 county, and other officers as required by law. The board of state canvassers shall also determine the result of an election on a proposed amendment to the constitution or on any other ballot question that has been submitted, pursuant to law, to the qualified and registered electors of this state at large for ratification or rejection" (MCL 168.841).

The Election Law also details the procedures of the Board in canvassing returns and performing responsibilities related to the certification of election results, including the recount of votes. In addition, the Board has various duties in regard to determining clarifying designations for candidates' names on a ballot, deciding the sufficiency of petitions for new political party candidates, and approving an electronic voting system.

### **Ballot Proposal Responsibilities**

The function of the Board that tends to be the subject of attention, as well as litigation, involves the certification of petitions for ballot proposals to be voted on Statewide. This role originates from Section 9 of Article 2 and Section 2 of Article 12 of the State Constitution. While neither section refers to the Board itself, both sections mandate responsibilities for "the state officer authorized by law" or "the person authorized by law". The Michigan Election Law states that those terms, as used in the constitutional sections in question, "...mean and have reference to the board of state canvassers and such board shall exercise the duties prescribed in such constitutional provisions" (MCL 168.474).

Article 12, Section 2 establishes the right of the electors to propose amendments to the Constitution by petition. The Board's responsibilities stem from the following provisions:

Such petitions shall be filed with the person authorized by law to receive the same... Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Such proposed amendment, existing provisions of the constitution that would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment... Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

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Article 2, Section 9 provides for the power of the people to propose laws and to enact and reject laws (called the “initiative”) and the power to approve or reject laws enacted by the Legislature (called the “referendum”). In either case, petitions containing a sufficient number of signatures must be filed. The power of referendum “must be invoked in the manner prescribed by law...”. If a law is proposed by initiative petition, the Legislature must enact or reject it. If the Legislature does not enact the law, “the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election”.

Chapter 22 of the Michigan Election Law details the responsibilities of the Board of State Canvassers in carrying out these constitutional mandates. Among others, the Board’s duties include preparing a statement of purpose of a proposed amendment or question; assigning a number designation to appear on the ballot for each question to be submitted on a Statewide basis; and, upon receiving notice from the Secretary of State that petitions have been filed, canvassing the petitions to determine whether they contain the required number of signatures.

The Election Law authorizes the Board to hold hearings upon any complaints filed or for any purpose it considers necessary to conduct investigations of the petitions. To conduct a hearing, the Board may issue subpoenas and administer oaths. At least two days before the Board meets to make a final determination on challenges to and sufficiency of a petition, the Bureau of Elections must make public its staff report concerning the disposition of challenges filed against the petition. The Board is required to complete its canvass at least two months before the election at which the proposal is to be submitted to the voters.

The Election Law further requires the Board to make “an official declaration of the sufficiency or insufficiency of a petition” (MCL 168.477). This provision is significant to the issue of the Board’s authority, because the Election Law also prescribes the form and wording of a petition to amend the Constitution (or to initiate legislation or invoke a referendum). In addition to containing the full text of an amendment, “[i]f the proposal would alter or abrogate an existing provision of the constitution, the petition shall so state and the provisions to be altered or abrogated shall be inserted, preceded by the words: ‘Provisions of existing constitution altered or abrogated by the proposal if adopted’ [emphasis added]” (MCL 168.482).

These requirements have played a large part in recent and past debates surrounding petitions to place constitutional amendments on the ballot. Specifically, the question involves the extent of the Board’s authority to decide whether a petition meets the Election Law’s requirement to set forth the constitutional provisions that would be altered or abrogated.

This issue was at the heart of hearings before the Board, and subsequent litigation, over the proposals to allocate the distribution of tobacco settlement revenue and to control the sentencing or treatment of drug offenders. In each case, opponents of the proposal claimed that the petition was defective because it did not list all of the existing constitutional provisions that the proposal would alter or abrogate. In regard to the drug offender proposal, at a hearing on September 3, 2002, the Board concluded that the petition was fatally defective. Regarding the tobacco revenue proposal, the Board was unable to come to a consensus on the sufficiency or insufficiency of the petition. Since decisions of the Board require both a majority vote and bipartisan support, the petition was not certified at the Board’s September 3rd meeting.

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After the Board decided that the drug sentencing petition was insufficient, and deadlocked on the tobacco revenue petition, the interested parties immediately filed actions in the Court of Appeals, which issued an order in each case. The Court agreed with the Board that the drug offender petition was insufficient, but ordered the Board to certify the tobacco revenue petition for the ballot. The Michigan Supreme Court then denied leave to appeal in both cases. Therefore, the drug offender proposal was not certified for the November 5th ballot, and the tobacco revenue proposal was certified as Proposal 02-4.

While the Board's role was vigorously debated by the proposals' supporters and opponents, discussed among Board members, and addressed at length in legal briefs, the issue itself is not new to Michigan courts. The integral questions involve the extent to which a petition must identify existing constitutional provisions that a proposal would alter or abrogate; the responsibility of the Board of State Canvassers (or its lack of authority) to determine whether a petition satisfies this requirement; and the related responsibility of the State to publish a proposed amendment and the existing provisions that would be altered or abrogated.

In the tobacco revenue case, the Court of Appeals acknowledged that the Election Law authorizes the Board to make a determination with regard to the sufficiency or insufficiency of a petition, "including a determination of the 'sufficiency' of the petition's compliance with MCL 168.482" (the section prescribing a petition's form and wording). "However, the Board of Canvassers' authority does not extend to conducting a complex legal analysis of constitutional issues." The Court also stated, "The proponents of the petition are not required to list every provision of the constitution that might indirectly or contingently be affected by the proposed amendment."

The drug offender petition, on the other hand, stated that it would add a new Section 24 to Article 1, although that section already exists. The Court held, "There was no legal analysis necessary to conclude that the petition, on its face, purported to replace Const 1963, art 1, § 24, and did not publish the existing art 1, § 24, in violation of MCL 168.482(3)." Regarding the contention that the petition's "numbering error" could be corrected, the Court said, "the proponents...have not shown that they have a clear legal right to certification of a defective petition".

In making these statements, the Court of Appeals cited past decisions of the Michigan Supreme Court that also dealt with ballot petition issues. The recent controversy shows that the previous opinions did not definitively clarify the Board's role in determining the sufficiency of petitions. Although the prevailing principle appears to be that the Board may not engage in "complex legal analysis", whether the Board actually is doing so in any given case is likely to be litigated in the future. The recent Court of Appeals rulings, however, might provide additional clues as to the responsibilities of both the Board of State Canvassers and people seeking to amend the Constitution.