

Legislative Analysis



ELECTION LAW UPDATES

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Senate Bill 809 as enacted
Public Act 120 of 2018

Analysis available at
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Senate Bill 810 as enacted
Public Act 121 of 2018

Senate Bill 811 as enacted
Public Act 122 of 2018

Senate Bill 813 as enacted
Public Act 124 of 2018

Senate Bill 812 as enacted
Public Act 123 of 2018

Senate Bill 814 as enacted
Public Act 125 of 2018

Sponsor: Sen. David Robertson
House Committee: Elections and Ethics
Senate Committee: Elections and Government Reform
Complete to 6-18-18

BRIEF SUMMARY: Senate Bills 809, 812, and 814 would amend various sections of the Michigan Election Code to remove outdated sections and reorganize others. Senate Bills 810, 811, and 813 would make complementary changes to the Revised Judicature Act, the Revised School Code, and the Code of Criminal Procedure, respectively. Each bill would take effect December 31, 2018.

FISCAL IMPACT: SBs 809 to 812 and 814 would have no fiscal impact on the state or local governments. SB 813 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

According to committee testimony, the bill package is part of a seven-year effort by the offices of the Secretary of State and the bill sponsor to update the Michigan Election Code. Many of the sections targeted for elimination concern elections long passed, boards that no longer exist, and regulations for outdated processes.

THE CONTENT OF THE BILLS:

Senate Bill 809

Senate Bill 809 would amend the Michigan Election Law to remove a provision that individuals convicted of providing or possessing test answers for a county civil service examination are ineligible for certain local, state, and federal offices for a period of 20 years. (This provision was added following a 1982 investigation of allegations to that effect in Wayne County.)

The bill would eliminate certain provisions related to paper ballots, such as requirements that election inspectors must be provided with tally sheets, paper ballot wrappers, and a sufficient supply of black- or blue-lead pencils. It would also remove a number of rules stated to be in effect until a certain date in cases where that date has passed.

The bill would revise the timing of a special primary before a special election called to fill a vacancy in any office. Currently, the special primary must be at least 20 days before the special election. The bill would extend that date so that it would take place at least 45 days before the special election.

The bill would require, rather than allow, a special election for submission of a proposition to be held on a regular election date.

Additionally, the bill would revise the requirements for individuals circulating recall petitions. Currently, the individual must be a qualified and registered *elector* in the official's electoral district. Under the bill, the individual would have to be at least 18 years old and a U.S. citizen.

Section 1 of Article II of the Michigan Constitution of 1963 provides that an *elector* is a citizen of the U.S. who is at least 21 years old, who has resided in Michigan 6 months, and who meets the requirements of local residence provided by law.

Finally, the bill would repeal 58 sections of Michigan statute, with topics ranging from a chapter on county auditors (which no longer exist) to specific provisions regarding elections in 1966, 1981, and 1989.

MCL 168.37 et al.

Senate Bills 810 and 811

The bills would revise citations in the Revised Judicature Act and Revised School Code, respectively, to account for sections that would be repealed by Senate Bill 809. Each bill is tie-barred to SB 809, which means that neither SB 810 nor SB 811 could take effect unless SB 809 were enacted.

MCL 600.9940 (SB 810)

MCL 380.1811 (SB 811)

Senate Bill 812

Senate Bill 812 would repeal Sections 770 to 793 of the Michigan Election Law, which pertain to voting machines. It would then largely replicate the repealed Sections 771a, 770(2), and 792a in new Sections 37a, 37b, and 765a, respectively.

The new sections would make several changes, however. First, the Law currently requires the board of election commissioners to appoint election inspectors to absent voter counting

boards at least 10 days before the applicable election; the bill would require appointment at least 21 days but not more than 40 days before the applicable election.

The bill would also provide that, in cities or townships using absent voter counting boards, a board may conduct its duties outside the city or township if the county provides a tabulator for use at a central location.

Additionally, the bill would remove a requirement that local clerks mark “A.V.” and the date of the election on absentee voters’ records.

The board of election commissioners may currently require absent voter counting boards to record absent voter ballots on voting machines, witnessed by the counting board, party challengers, and others. The bill would remove this provision.

Finally, under current law, in a local unit where challenged voters must vote on absent voter ballots, each challenged voter ballot and application must be placed in an absent voter return envelope, with “challenged” written on the envelope, and the envelope must be sealed and delivered to the absent voter counting place. The bill would also remove these provisions.

The bill would repeal, and not reenact, sections of the Election Law that pertain to the purchase, construction, operation, and location of voting machines; voting machine supplies and instructions; control over voting machines; qualifications of election inspectors to use voting machines; the arrangement of polling places; procedures for a voter to write in more candidates than there are spaces on a voting machine; challenged voter procedures; irregular ballots; instructions to voters; damaging voting machines; sealing voting machines; “printer type voting machines”; and inspectors’ statements.

Proposed MCL 168.37a et al.

Senate Bill 813

Senate Bill 813 would amend the sentencing guidelines in the Code of Criminal Procedure to update the citations for two felonies under the Election Law, reflecting the repeal and reenactment of those sections as proposed by SB 812. The bill is tie-barred to SB 812, which means that it could not take effect unless SB 812 were also enacted.

MCL 777.11d

Senate Bill 814

Senate Bill 814 would amend the qualifications for registration as an elector in the Michigan Election Law. Currently, an individual must be (at the time of application or by the next election or primary election) a U.S. citizen, at least 18 years old, a Michigan resident for at least 30 days, and a resident of the local unit by the thirtieth day before the

applicable election. The bill would lower the age to 17-1/2 years old and remove the 30-day requirements.

In addition to the information already required on a voter registration application, the bill would also require the following:

- The city or township and county of residence of the elector, and the school district, if known.
- A statement that the registration is not effective until processed by the clerk of the city or township in which the applicant resides.
- A statement that the applicant, if qualified, may vote at an election occurring at least 30 days after the date of completing the application.
- A statement authorizing the cancellation of registration at the elector's last place of registration.
- A space for the elector to sign and certify the truth of these statements.

Current law requires a registration officer to determine at the time an elector applies for registration whether the elector is already registered. If so, the elector must sign an authorization to cancel the prior registration and the local clerk must notify the prior clerk of the authorization to cancel. The bill would remove this notification requirement.

Under the bill, if voter registration records were destroyed or mutilated, making them unusable, the clerk of the city or township must request a backup file from the secretary of state (SOS) and the SOS would provide a list of registered electors and their signatures, if available, from the qualified voter file (QVF). If the SOS were unable to provide the backup file, the clerk would require the electors to re-register as prescribed by the SOS.

Finally, the bill would repeal nine sections of the Election Law concerning registration cards; voter ID cards; notification of change of address or death; authorization for the SOS to promulgate rules governing voter registration for an illiterate or disabled person; voting after close of registration; an implementation study of the QVF; transfer of precinct cards; and Freedom of Information Act (FOIA) requests.

MCL 168.491 et al.

HOUSE COMMITTEE ACTION:

The House Committee on Elections and Ethics adopted H-1 substitutes to SBs 809, 810, and 812 and an H-2 substitute to SB 814. The substitutes to SBs 809 and 814 remove references to village elections. The H-1 substitute to SB 810 would remove Section 9941 of the Revised Judicature Act from those being amended (discussed in ***ARGUMENTS***, below). The H-1 substitute to SB 812 would repeal an additional section of the Election Code that deals with the use of voting machines by absentee voters and locking and sealing voting machines. House floor amendments added an enactment date of December 31, 2018 for all six bills.

ARGUMENTS:

For:

Proponents argue that the bills would benefit the Michigan Election Law by eliminating moot sections and contributing to a more relevant, up-to-date document. Unless the Law is culled periodically, they say, it becomes unwieldy and filled with obsolete provisions. The bills are intended to effect those changes.

Against:

As passed by the Senate, some expressed concern that some citation changes to complementary acts to accord with the Law were ill-conceived. SB 810 was intended to update citations in the Revised Judicature Act to match with the sections to be repealed in the Election Law. However, both of the sections included in SB 810 as introduced and passed by the Senate were time-specific to the reorganization of court systems in 1981 and 1982, respectively.

Retaining them in statute protects a historical record of that process, opponents say, and removing references to sections that would be repealed under SB 810 presents an inaccurate picture of that law as enacted. Notably, they argue that reference to MCL 168.467n must be retained in MCL 600.9941—even if Section 467n itself is repealed—as Section 467n is directly related and indispensable to the election process in Section 9941.

These suggestions were incorporated into the H-1 substitute for SB 810, with the compromise that Section 9941 would remain unchanged and Section 9940 (which may conceivably be applicable in the future) would include updated citations.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.