



**Senate Fiscal Agency**  
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BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bills 751, 752, and 753 (as enacted)  
Senate Bills 810 and 811 (as enacted)  
Senate Bills 823, 824, and 825 (as enacted)  
House Bill 5059 (as enacted)  
House Bill 5062 (as enacted)  
House Bills 5085 and 5086 (as enacted)

**PUBLIC ACTS 270, 272, & 274 of 2012**  
**PUBLIC ACTS 523 & 551 of 2012**  
**PUBLIC ACTS 276, 277, & 278 of 2012**  
**PUBLIC ACT 273 of 2012**  
**PUBLIC ACT 271 of 2012**  
**PUBLIC ACTS 30 & 31 of 2012**

Sponsor: Senator Dave Robertson (S.B. 751, 823, 824, & 825)  
Senator Geoff Hansen (S.B. 752, 810, & 811)  
Senator Jack Brandenburg (S.B. 753)  
Representative Sharon Tyler (H.B. 5059)  
Representative Anthony Forlini (H.B. 5062)  
Representative Mike Shirkey (H.B. 5085)  
Representative Paul Opsommer (H.B. 5086)

Senate Committee: Local Government and Elections  
House Committee: Redistricting and Elections

Date Completed: 7-10-15

**CONTENT**

**Senate Bill 751 amended the Michigan Election Law to do the following:**

- Require the Secretary of State (SOS) to create an inactive voter file of registered electors who do not vote for six consecutive years, or who receive a notice to confirm residence information from the SOS.
- Require the absent voter ballot of a person whose registration record is in the inactive file because he or she received a notice to confirm his or her residence information, to be marked in the same manner as a challenged ballot.
- Establish procedures for the confirmation of residence information of a registered elector who might have moved to another state; and require the voter's registration to be cancelled if the person does not respond or vote for a period of time.
- Require a clerk to use the State's ballot tracker program, if possible, to allow voters to track their absent voter ballots online.

**Senate Bill 752 amended the Michigan Election Law to do the following:**

- Revise procedures applicable to an absent voter counting board.
- Delete certain provisions related to a board of canvassers conducting a recount in a precinct that uses paper ballots or voting machines.
- Require a political party, other than a major political party, to notify the SOS and the Elections Bureau before holding its county caucus or State convention.

**Senate Bill 810 amended the Michigan Election Law to do the following:**

- Require the SOS to develop a poster that explains ballot coaching and indicates that it is prohibited.
- Require the SOS to provide at least one poster to each residential care facility in Michigan.
- Require a person who applies in person to register to vote to present a picture ID.
- Allow a person who does not present a picture ID to sign an affidavit to be allowed to register to vote.

- Require an application to vote to include an affirmative statement by the elector that he or she is a citizen of the United States.
- Require a city or township clerk, within seven days after an election, to transmit to the county clerk a report that includes the number of affidavits signed by voters who do not present a picture ID in order to vote.
- Require the county clerk to transmit a county affidavit report to the SOS within 14 days after the election.
- Require an application for an absent voter ballot to include a statement and certification that the applicant is a U.S. citizen, as well as a notice that a noncitizen will not be issued an absent voter ballot.
- Prohibit a clerk from issuing an absent voter ballot to a person who does not present a picture ID.
- Allow an elector who does not present a picture ID to obtain an absent voter ballot by signing an affidavit, and require the elector's ballot to be prepared as a challenged ballot.
- Require the SOS to order a city, village, or township clerk to extend the ballot receipt deadline for a ballot that was not transmitted to an absent uniformed services or overseas voter as required in the Law.
- Require a village regular election to be held at the general November election.
- Eliminate a provision allowing a city regular primary election to be held in September.
- Allow a city that holds its regular election for city offices annually or in the odd year on the November regular election date to change its regular election schedule to the even year general election and the even year primary election.

**Senate Bill 811** amended the General Law Village Act to eliminate references to a village election held in September with regard to the beginning dates of village officials' terms of office.

**Senate Bill 823** amended the Michigan Election Law to do the following:

- Require the SOS to certify the statement of purpose describing a proposed constitutional amendment or other proposal at least 60 days, rather than 49 days, before the election at which it is submitted to voters.
- Require the sponsor of a petition to amend the Constitution or initiate legislation to file it with the SOS, and prohibit the sponsor from circulating the petition for signatures until it is filed as required.
- Require the SOS to make the most recent submission of filed petition language available to the public on the Department of State's website.
- Make it a felony to compensate an individual based on the number of people he or she registers to vote, or to intentionally misrepresent oneself as an election official in a polling place, and prescribe penalties.
- Require primary ballots to be reprinted with the replacement candidate's name when a vacancy is left by a candidate who dies after the filing deadline.
- Refer to a county executive committee, rather than a city or township committee, or a county committee, in various provisions.
- Move the deadline for a candidate to file the required nominating petitions or affidavit of identity, which was either the 12th or 14th Tuesday before the primary election depending on the office, to the 15th Tuesday before the primary.
- In the case of a city, district, or ward or township office, provide that a candidate vacancy must be filled by the county executive committee members who reside in that unit, if at least three members live there.

The bill also repealed provisions related to a Detroit city ordinance that was subject to a referendum, as well as a section providing for township party committees.

**Senate Bill 825** amended the Code of Criminal Procedure to add to the sentencing guidelines the felonies created by Senate Bill 823. Under Senate Bill 825, providing compensation to a person for registering individuals to vote and intentionally

misrepresenting oneself as an election official in a polling place are Class E felonies against the public trust punishable by a statutory maximum of five years' imprisonment.

**Senate Bill 824** amended the Michigan Campaign Finance Act to do the following:

- Require the SOS to refer a complaint regarding a violation involving the SOS to the Attorney General.
- Require the SOS to post on the SOS's internet website certain documents regarding individual violation complaints, as well as conciliation agreements.
- Require, rather than allow, the SOS to refer a complaint to the Attorney General or commence a hearing if the SOS cannot resolve the matter using informal means.
- Triple the civil fine imposed for an improper contribution or expenditure.
- Require the Attorney General to determine whether to proceed with enforcement of a criminal penalty within 60 days after the matter is referred to him or her.
- Revise the late filing fee for a failure to report a late contribution.
- Revise the definition of "late contribution".
- Require a committee, other than a candidate committee, to report only those late contributions made after the committee filed its preelection campaign statement, effective January 1, 2010.
- Require the State or a county to reimburse or waive any late filing fee imposed between January 1, 2010, and the bill's effective date.
- Require a ballot question committee to file campaign statements in addition to preelection and postelection statements.
- Revise the civil fine for knowingly filing an incomplete or inaccurate statement or report for a ballot question committee.
- Require a committee regarding a nonstatewide ballot question or the recall of a local officeholder to file a required campaign statement with the SOS only.
- Make an exception to requirements regarding printed campaign materials for a separate segregated fund soliciting contributions.
- Allow a separate segregated fund to make contributions to and expenditures on behalf of other separate segregated funds.

**House Bill 5062** amended the Election Law to do the following:

- Require the SOS to establish a continuing election education program for all county, city, township, and village clerks.
- Require a clerk to complete the training every two years to maintain accreditation.
- Authorize the SOS to audit election precincts after each election.
- Require the SOS to develop an election audit program.
- Allow the SOS to train county clerks to conduct audits.
- Revise the retention and release period for certain election records, documents, and equipment.
- Extend from two to three years the statute of limitations on prosecution for an Election Law violation.

**House Bill 5059** amended the Michigan Campaign Finance Act to do the following:

- Include in the definition of "committee" a person who receives contributions or makes expenditures to influence voters regarding the qualification of a new political party.
- Extend certain campaign statement filing requirements to a committee for a political party attempting to qualify as a new party.
- Eliminate separate campaign statement filing schedules for odd- and even-numbered years, and require four annual statements rather than three, for independent committees and certain political committees.
- Include a candidate among the individuals subject to a penalty for knowingly filing an incomplete or inaccurate campaign finance statement or report.
- Prescribe a civil fine for knowingly omitting or underreporting individual contributions or expenditures.

- **Designate failure to file required campaign statements for two years for a candidate committee with an account balance of at least \$20,000 as a felony; prescribe the penalty; and provide that money in the account is subject to seizure by and forfeiture to the State.**

**Senate Bill 753 amended the Code of Criminal Procedure to add to the sentencing guidelines the felony created by House Bill 5059 regarding failure to file required campaign statements for a candidate committee. The violation is a Class H felony against the public trust with a statutory maximum of three years' imprisonment.**

**House Bill 5085 amended Public 390 of 1978, which regulates the payment of wages and fringe benefits, to prohibit a public body from deducting any amount from employees' wages for contributions to a fund set up under the Michigan Campaign Finance Act or a committee established under the Federal Election Campaign Act for political purposes.**

**House Bill 5086 amended the Michigan Campaign Finance Act to do the following:**

- **Prohibit a public body from using public resources to establish or administer a payroll deduction plan to collect or deliver contributions to or make expenditures for a committee.**
- **Allow a person to bring a civil action against a public body that violates this prohibition, if the SOS dismisses a complaint alleging a violation or enters into a conciliation agreement that does not prevent a public body from violating the prohibition.**
- **State a policy requiring public bodies to maintain strict neutrality in elections.**

House Bills 5085 and 5086 took effect on February 28, 2012. Senate Bills 752 and 824 took effect on July 3, 2012. Senate Bills 751 and 825 and House Bill 5062 took effect on August 15, 2012. Senate Bill 823 took effect on August 16, 2012. Senate Bill 753 and House Bill 5059 took effect on December 30, 2012. Senate Bills 810 and 811 took effect on March 28, 2013.

All of the bills, except Senate Bills 753 and 825, are described in detail below.

### **Senate Bill 751**

#### **Inactive Voter File**

Under the Election Law, a statewide qualified voter file (QVF) was established as the official file for the conduct of all elections held in Michigan. The Law requires the SOS to establish and maintain the computer system and programs necessary to the operation of the QVF; and requires the SOS and county, city, township, and village clerks to compile the QVF consisting of all qualified electors.

Under the bill, the SOS must create an inactive voter file. If a voter is sent a notice under Section 509aa to confirm his or her residence information, or if a voter does not vote for six consecutive years, the SOS must place that person's registration record in the inactive voter file, where it must remain until one of the following occurs:

- The voter votes at an election.
- The voter responds to a notice to confirm his or her residence information.
- Another voter registration transaction involving that voter occurs.

(Under Section 509aa, upon receiving reliable information that a registered voter has moved his or her residence, a local clerk must mail all of the following to the voter:

- A notice that the clerk has received information indicating that the voter has moved.
- A postage prepaid and preaddressed return card on which the person may verify or correct the address information.
- A notice explaining the procedures the person must follow to be registered properly and vote in the next election.)

While a voter's registration record is in the inactive voter file, the person will remain eligible to vote and his or her name must appear on the precinct voter registration list.

If a voter's registration record is in the inactive voter file because the person was sent a notice to confirm his or her residence information, and he or she votes at an election by absent voter ballot, that ballot must be marked in the same manner as a challenged ballot as provided in Section 727. (That section establishes procedures under which an election inspector is required or permitted, and a registered voter is permitted, to challenge the right of an individual to vote. An election inspector must comply with certain reporting requirements, and must inform the challenged voter of his or her rights under the Law.)

#### Registered Voter Moving out of State

Under the bill, if the Department of State receives notice that a registered voter has moved to another state by receiving his or her surrendered Michigan driver license, the SOS must send to the voter by forwardable mail all of the following:

- A notice that the SOS has received information indicating that the voter has moved his or her residence to another state.
- A postage prepaid and preaddressed return card on which the voter may verify or correct the address information.
- A notice that if the address information is incorrect and the voter has not moved to another state and wishes to remain registered to vote, he or she should complete the card and return it to the SOS with a postmark of at least 30 days before the next election date.

If the card is not completed and returned with the specified postmark, the voter may be required to affirm his or her current address before being permitted to vote. Also, if the voter does not vote in an election between the date of the notice and the first business day following the second November general election held after the date on the notice, the voter's registration must be canceled and his or her name must be removed from the QVF.

#### Precinct Consolidation

Under the bill, when a city, ward, township, or village is divided into at least two election precincts, and the precinct registration records show that there are not more than 2,999 active registered electors using voting machines, the election commission or other authorized officials may abolish the division or divisions so that the political subdivision constitutes a single election precinct. Previously, the Law contained this provision but referred to registered voters, rather than active registered voters. This provision also applied if the precinct registration records showed that there were not more than 400 registered electors in that political subdivision using paper ballots.

Also, under the Law, if a county, city, ward, township, village, or school district is divided into at least two election precincts, the applicable election commissioners may consolidate the precincts for a particular election that is not a general November election, primary election immediately before a general November election, or other statewide or Federal election. Consolidated precincts may not exceed 5,000 registered electors.

The bill refers to active registered electors in these provisions.

#### Precinct Division

The Law prescribes procedures for the division of precincts in the second year following each Federal census. City and township election commissions must divide precincts, at least 120 days before the primary election preceding the next general November election so that a precinct, as far as practical, is not split between districts and does not exceed 2,999 registered voters, and must immediately notify the county clerk of the number of registered voters in each precinct in each city or township. The clerk must notify the SOS at least 110 days before the primary of any

precincts in the county that have not been divided, and the SOS must make the divisions as necessary, at least 90 days before the primary election.

Under the bill, in determining the number of registered voters for a precinct, a city or township or election commission or the SOS, as applicable, may use only the active registered voters for that city or township, or both the active registered voters and the voters in the inactive voter file for that city or township.

#### Ballot Tracker Program

Under the bill, if a city, township, or village has access to the ballot tracker program provided by the State, the clerk must use it and allow voters to track their absent voter ballots online.

### **Senate Bill 752**

#### Absent Voter Counting Boards

Counting by Absent Voter Counting Boards. Previously, except as otherwise provided, the absent voter ballots in a city, township, or village that used voting machines had to be counted by absent voter counting boards. The board of election commissioners of a city, township, or village that had a maximum of two precincts or of a city with a population of at least 500,000 could decide that the absent voter ballots had to be counted in the manner provided in Section 791 (described below). In a city, township, or village that did not use voting machines, the absent voter ballots had to be counted by absent voter counting boards, or in the same manner as otherwise provided for precincts in which voting was not done on voting machines.

The bill deleted these provisions. Instead, for elections conducted before July 1, 2014, if a city, township, or village decided to use absent voter counting boards, the applicable board of election commissioners was allowed to establish an absent voter counting board for each election day precinct. For elections conducted on or after July 1, 2014, the board of election commissioners *must* establish a counting board for each precinct. The bill requires the ballot form of an absent voter counting board to correspond to the ballot form of the election day precinct for which it is established. After the polls close on election day, the county, city, township, or village clerk responsible for producing the accumulation report of the election results submitted by the boards of precinct election inspectors must format the report to indicate clearly all of the following:

- The election day precinct returns.
- The corresponding absent voter counting board returns.
- A total of each election day precinct return and each corresponding absent voter counting board return.

(Under Section 791, when absent voters' ballots have been returned to the city clerk and delivered to the precinct board of election inspectors, the inspectors must determine the legality of the ballots, and count and tally the votes. The canvass must be performed in the same manner as provided for paper ballot precincts.)

Board as Separate Precinct. In all primary elections, if there are more names under the heading of an office than there are candidates to be nominated, and the same office appears in more than one precinct, the names must be rotated, and appear on the ballot, as prescribed in the Law.

Previously, where absent voter counting boards were used, each ballot form that contained identical offices and names had to be considered a separate precinct for these purposes. Under the bill, instead, if a municipality has 250 or more precincts and absent voter counting boards are used, each ballot form that contains identical offices and names *may* be considered a separate precinct for these purposes. For the purposes of the entire Law, except as otherwise provided, an absent voter counting board is a separate precinct.

(The provisions apply to nonpartisan general elections and to municipal elections.)

Seals Delivered to Absent Voter Counting Board. Under the Law, when the official ballots and other election supplies are delivered to township and city clerks, or wards and precincts, as applicable, a sufficient number of seals for the election inspectors to use in sealing the ballot boxes after the close of the election must be delivered. A record of the number of seals delivered to each voting precinct and absent voter counting board precinct must be recorded and preserved. Under the bill, the record-keeping requirement also applies to seals delivered to each absent voter counting board.

School Districts. Under the Law, a local election official who has established an absent voter counting board, the deputy or employee of that official, or an employee of the State Bureau of Elections may enter and leave an absent voter counting board after the tally has begun but before the polls close. The person may enter only for the purpose of responding to an inquiry from an election inspector or a challenger or to provide instructions on the board's operation. A person who enters an absent voter counting board and discloses an election result or in any manner characterizes how any ballot being counted has been voted before the polls close is guilty of a felony.

As used in these provisions, "local election official" means a county, city, township, or village clerk. Previously, the term also included a school board secretary or a school district employee designated to conduct a school election.

The Law requires the SOS to develop instructions for the conduct of absent voter counting boards. The instructions are binding upon the operation of a counting board used in an election conducted by a county, city, township, or village. Previously, this provision also referred to an election conducted by a school district, or any other jurisdiction empowered to conduct an election under the Law.

#### Board of Canvassers: Recount

Paper Ballots & Voting Machines. Previously, in a precinct using paper ballots, the board of canvassers conducting a recount had to do so subject to specific conditions for securing and seeing the packages or ballot bags.

The bill deleted these provisions.

Previously, in a precinct in which voting machines were used, the board of canvassers conducting a recount had to recount all voting machines used in the precinct unless one or more of the circumstances described in the Law existed.

The bill deleted these provisions.

#### Political Party County Caucus/State Convention

Under the bill, a political party that is not a major political party and that is required to nominate candidates at a county caucus or State convention must notify the Secretary of State and the Bureau of Elections, at least 10 days before holding the caucus or convention to nominate candidates, of the date, time, and location of the caucus or convention.

("Major political party" means each of the two political parties whose candidate for the office of Secretary of State received the highest and second-highest number of votes at the last general election in which an SOS was elected.)

## **Senate Bill 810**

#### Ballot Coaching

The bill requires the SOS to develop a poster that explains ballot coaching and indicates that ballot coaching is prohibited. The SOS must provide at least one poster to each residential care facility in the State.

For the period beginning 45 days before each election and continuing through election day, the owner, operator, or facility director of a residential care facility must display the poster in a public area in the facility.

"Residential care facility" means a home for the aged and a nursing home, as those terms are defined in the Public Health Code.

#### In-Person Voter Registration: ID Requirement

Effective March 28, 2013, the bill requires a person who applies in person to register to vote at a Department of State office, a designated voter registration agency, the office of a county clerk, or the office of the clerk of the city or township in which the applicant resides, to identify himself or herself by presenting an official State ID card, Michigan driver license, or other generally recognized picture identification card. If the person does not have one of the specified forms of ID, he or she may sign an affidavit to that effect and be allowed to register to vote.

#### Application to Vote

Under the Election Law, before being given a ballot, a registered elector offering to vote must identify himself or herself by presenting an official State ID card, Michigan driver license, or other generally recognized picture ID card; and by executing an application in the presence of an election official. Previously, the application had to show the voters signature or mark and address of residence. Under the bill, the application must be on a form prescribed by the SOS and also include the elector's name, date of birth, and an affirmative statement by the elector in the signature statement indicating that he or she is a U.S. citizen. Previously, in precincts using voter registration lists, the elector's date of birth could be required to be placed on the application.

Under the Law, if an elector does not have one of the required forms of identification, he or she must sign an affidavit to that effect and be allowed to vote, subject to challenge as provided in Section 727. Under the bill, within seven days after an election, the city or township clerk must transmit to the county clerk a report that includes the number of affidavits signed by voters, and within 14 days after the election, the county clerk must transmit a county affidavit report to the SOS. Both reports must be transmitted in a form prescribed by the SOS. The county report must be made available for public inspection immediately after the SOS receives it.

#### Absent Voter Ballot Application

A person who is qualified to vote as an absent voter must apply for an absent voter ballot in person or by mail with the clerk of the township, city, or village in which he or she is registered. The Law prescribes the form of the absent voter ballot application, including a statement that the applicant is a qualified and registered elector applying for an official. Under the bill, the statement also must include that the applicant is a U.S. citizen. The bill also requires the application to include the following text: "You must be a United States citizen to vote. If you are not a United States citizen, you will not be issued an absent voter ballot."

Under the bill, if an elector obtains his or her absent voter ballot in person from the applicable clerk, the clerk may not give that elector a ballot until he or she identifies himself or herself by presenting an official State ID card, driver license, or other generally recognized picture ID card. If an elector does not have one of the specified forms of identification, he or she may sign an affidavit to that effect before the clerk and be allowed to obtain his or her absent voter ballot. The clerk must indicate to each elector who obtains his or her absent voter ballot in person that he or she may sign an affidavit indicating that he or she does not have the required identification in order to obtain his or her ballot. If the elector votes by absent voter ballot without providing identification, the ballot must be prepared as a challenged ballot and must be counted as any other ballot is counted unless determined otherwise by a court under Section 747 or 748 of the Election

Law or any other applicable law. (Sections 747 and 748 pertain to the trial of a contested election and provide for the submission of evidence that an unqualified voter cast a ballot.)

When issuing an absent voter ballot, the clerk must enclose with it a return envelope properly addressed to the clerk. The back of the envelope must bear a statement asserting that the voter is a qualified and registered elector of the applicable city, township, or village; that he or she is voting in conformity with State election law; and that he or she personally marked the ballot without showing it to another person. The voter must sign the statement or his or her vote will not be counted. Under the bill, the statement also must include an assertion that the voter is a U.S. citizen.

#### Absent Uniformed Services/Overseas Voter

An absent uniformed services voter or an overseas voter may apply for an absent voter ballot. At least 45 days before an election, a county, city, township, or village clerk must electronically transmit or mail as appropriate an absent voter ballot to each person who applied for one.

The bill requires the SOS to order a city, village, or township clerk to extend the ballot receipt deadline for any ballots that were not transmitted to an absent uniformed services voter or overseas voter as required. The extension must equal the total number of days beyond the deadline that the clerk transmitted the requested ballots. The ballots received during the extension time must be counted and tabulated for the final results of the election, provided that they are executed and sent by the close of the polls on election day. The election may be formally certified before the end of the extension time if the number of outstanding ballots will not alter the outcome of the election.

("Overseas voter" means any of the following:

- An absent uniformed services voter who is absent from the U.S. on the date of an election due to active duty or service.
- A person who resides outside of the U.S. and is qualified to vote in the last place in which he or she was domiciled before leaving the U.S.
- A person who resides outside of the U.S. and who, but for such residence, would be qualified to vote in the last place in which he or she was domiciled before leaving the U.S.

"Absent uniformed services voter" means a member of a uniformed service on activity duty or a member of the merchant marine who is absent from the place of residence where he or she is otherwise qualified to vote due to being on active duty or as a result of service; or the spouse or dependent of either of those people.)

#### Village Elections

As a rule, a village must hold its regular election for a village office at the general election (i.e., the election held in November in an even-numbered year). Previously, however, the Law allowed a village council to make a one-time choice to hold the regular election at the September primary election by adopting a resolution in compliance with the Law. The bill eliminated that option.

Except as otherwise provided in certain sections of the Law, including Section 642a under the bill, the qualifications, nomination, election, appointment, term of office, and removal from office of a village officer is as determined by the charter provisions governing the village.

Section 642a allowed a village council that adopted a resolution so that its regular election was held on the September election date to change its regular election to the November regular election date by adopting another resolution. The bill deleted this provision. Instead, after December 31, 2012, a village that adopted a resolution so that its regular election was held at the September election must hold its regular election at the general November election.

Until December 31, 2013, the bill required nominating petitions for village offices to be filed with the appropriate township clerk by 4 p.m. on the 12th Tuesday before the general November

election. Beginning January 1, 2014, the filing deadline is the 15th Tuesday before the general November election.

The bill also repealed Section 500f, which required a township clerk, under certain circumstances, to transmit registration information to the clerk of a village that held its regular election in September.

### City Elections

Except as otherwise provided, the Law requires a city to hold its regular election for a city office at the odd year general election, and the regular primary election at the odd year primary election. A city that holds its regular election for a city office annually or in the even year on the November regular election date must continue holding elections on that schedule. A city that holds its regular election primary annually or in the even year on the August regular primary election date must continue holding primary elections on that schedule.

Previously, the Law allowed the council of a city that held its regular election primary at the September primary on September 1, 2004, to choose to continue holding its regular election primary at the September primary by adopting a resolution to that effect. The bill eliminated this option.

Under the bill, after December 31, 2011, a city that holds its regular election for city offices annually or in the odd year on the November regular election date may change its regular election schedule to the even year general election and the even year primary election by adopting a resolution in compliance with the Law.

### **Senate Bill 811**

The General Law Village Act specifies the beginning date of the term of office for a president, clerk, treasurer, and trustee elected at a village's regular election. Under the bill, all terms of office begin on November 20. Previously, this date applied if the regular election was held at the general election. If the regular election was held at the September primary election, the start date was October 1.

The Act also required the village council to appoint one of its members president pro tempore on either November 20 or October 1, depending on whether the regular election was held at the general election or the September primary election. The regular election held in September, and requires the president pro tempore to be appointed on November 20. The bill requires the president pro tempore to be appointed on November 20.

### **Senate Bill 823**

#### Constitutional Amendments & Other Ballot Questions

Statement of Purpose. The Election Law requires the Board of State Canvassers to meet to consider and approve a statement of the purpose of a proposed constitutional amendment or other ballot question prepared pursuant to Section 32. That section requires the Director of Elections, with the approval of the Board of State Canvassers, to prepare a statement for designation on the ballot of the purpose of any proposed amendment or question to be submitted to the electors. The statement may not exceed 100 words, exclusive of the caption.

The bill repealed Sections 474 and 707, which also specified that the required statement could not exceed 100 words, exclusive of the caption. Additionally, Section 474 required the statement to consist of a true and impartial statement of the purpose in language that would not create prejudice for or against the proposal. The bill included similar requirements in Section 32.

Section 32 refers to a proposed amendment or question to be submitted to voters as required under Section 2 of Article XII of the State Constitution, which pertains to constitutional amendments proposed by petition. The bill added references to amendments or questions

submitted under Section 1 of Article XII, Section 9 of Article II, and Section 34 of Article IV (which pertain, respectively, to a constitutional amendment proposed in the Legislature, an initiative or referendum proposed by petition, and a referendum required by enacted legislation).

Section 707 and 649, which the bill also repealed, required the SOS, at least 49 days before an election, to certify to the various county clerks the form of ballots to be prepared in connection with a proposed constitutional amendment or other proposal. The bill amended Section 32 to require the SOS to certify the statement of purpose at least 60 days before the date of the election.

Repealed Sections 649 and 707 also required that a city ordinance adopted by the common council or legislative body in a city of more than 500,000 (i.e., Detroit) that was subject to a referendum be submitted to the people of the city at the next general election, unless submitted to a special election by action of the common council or legislative body.

Petition: Constitutional Amendment & Initiated Law. Under the bill, effective January 1, 2013, the sponsor of a petition proposing an amendment to the Constitution or to initiate legislation must file the petition or an amended petition with the SOS. The sponsor may not circulate the petition or amended petition for signatures until it is filed. The SOS must make the most recently filed submission of the petition language available to the public on an internet website maintained by the Department of State.

#### Candidate Filing Deadlines

Political Party Candidates: Deadline for Nominating Petitions. To obtain the printing of the name of a person as a candidate for nomination by a political party for a number of offices under a particular party heading on the official primary ballots, nominating petitions signed by a prescribed number of qualified and registered electors must be filed with the SOS or the county or township clerk, as applicable.

Depending on the office to be filled, the Law required nominating petitions or an affidavit to be filed by 4 p.m. on the 12th Tuesday before a specified primary or election.

Under the bill, the 12th preceding Tuesday deadline applied until December 31, 2013. Beginning January 1, 2014, the deadline is 4 p.m. on the 15th Tuesday before the election.

Judges: Deadline for Nominating Petitions/Affidavit of Candidacy. To obtain the printing of the name of a qualified person as a candidate for nomination for certain judge positions on the official nonpartisan primary ballots, the candidate must file nominating petitions with the SOS or city or county clerk. Previously, petitions had to be received until 4 p.m. on the 14th Tuesday before the primary. Under the bill, this deadline applied until December 31, 2013. Beginning January 1, 2014, the deadline is 4 p.m. on the 15th Tuesday before the primary. (These provisions apply to a candidate for the office of Court of Appeals judge, other than an incumbent; and judge of a circuit, probate, or district court or municipal court of record.)

An incumbent Court of Appeals judge or circuit, probate, or district court judge may become a candidate by filing an affidavit of candidacy at least 134 days before the primary election date. If the incumbent, however, began the duties of office less than 137 days before the primary election but before the 14th Tuesday preceding it, he or she could file the affidavit of candidacy within three days after beginning the duties of the office. Under the bill, beginning January 1, 2014, the three-day window applies to an incumbent judge who was appointed to fill a vacancy and began the duties of the office less than 137 days before the primary but before the 15th Tuesday preceding it.

General Nominating Petition Deadline. The Law required the SOS and the various county, township, and city clerks to receive nominating petitions or filing fees up to 4 p.m. of the 12th Tuesday before the August primary. Under the bill, this provision applied until December 31, 2013. After that, the SOS and clerks must receive petitions and filing fees until 4 p.m. on the 15th Tuesday before the August primary.

Convention Delegate: Affidavit of Identity. Under the Law, a candidate for delegate to the county or district conventions of a political party must file an affidavit of identity with the clerk of the county, or the clerk of the city or township in which the candidate resides. Previously, the clerk had to receive affidavits until 4 p.m. on the 12th Tuesday before the time designated for holding a primary election in the county. Within four days after the filing deadline, the city or township clerk had to forward each qualified candidate's affidavit to the county clerk. Under the bill, these provisions applied until December 31, 2013. Beginning January 1, 2014, the candidate must file the affidavit with the clerk of the county in which he or she resides, and the clerk must receive affidavits until 4 p.m. on the 13th Tuesday before the time designated for holding a primary election in the county.

Odd Year General Election. Under the Law, except as otherwise provided, an officer required to be elected at the odd year general election must be nominated at the odd year primary election.

If a charter provides for nomination by caucus or by filing a petition or affidavit directly for the general election, the filing or certification deadline was 4 p.m. on the 12th Tuesday before the odd year general election. Under the bill, beginning January 1, 2014, under these circumstances the deadline is 4 p.m. on the 15th Tuesday before the odd year general election.

The bill revised the filing or certification deadline in a similar fashion in the case of a charter that provides for the election at the primary of a candidate who receives more than 50% of the votes cast for that office.

Except as otherwise provided, nominating petitions for offices to be filled at the odd year general election had to be filed by 4 p.m. on the 12th Tuesday before the odd year primary election. Under the bill, beginning January 1, 2014, the deadline is the 15th Tuesday before the primary.

#### Blank Space on Ballot

Under the Law, if there is no candidate of a political party for the office of Governor, Lieutenant Governor, U.S. Senator or Representative, county auditor, or county road commissioner, a blank space must be provided on each of the official primary ballots that gives every elector of the party an opportunity to vote for a candidate for those offices by writing in the name of his or her selection. A similar requirement applies if the number of candidates of a political party is less than the total number to be nominated and elected for the office of State Senator or Representative, county clerk, treasurer, register of deeds, prosecuting attorney, sheriff, drain commissioner, surveyor, or coroner; or township office. Previously, an elector also could vote for a candidate by the use of a slip or paster.

The bill also eliminated the option for an elector to use a slip or paster to vote for a candidate to fill a vacancy resulting from a political party candidate's death, moving from the township, or disqualification. Under the bill, an elector may vote only by writing in the name of his or her selection.

Under the bill, if the name of any candidate regularly certified to the board of election commissioners is omitted from the ballots, or if it is found that a mistake has been made in the printing of any candidate's name on the ballot, the board of election commissioners must have the ballots reprinted with the candidate's name. Previously, the board of election commissioners had to furnish pasters containing the candidate's name and place them upon the ballots in the same manner as provided in the case of a candidate selected to fill a vacancy.

#### Political Party Candidate Withdrawal

Chapter X of the Law pertains to the offices of prosecuting attorney, sheriff, county clerk, county treasurer, register of deeds, drain commissioner, coroner, and surveyor. Under Chapter X, if a candidate of a political party files a nominating petition or filing fee for an office and has been nominated for the office by a political party, the candidate may not withdraw unless he or she has moved from the county or has become physically unfit. The bill refers to a "county" office.

A similar provision applicable to a political party candidate for the office of county commissioner bars withdrawal unless the person has moved from the county or district from which he or she was nominated or has become physically unfit. Previously, this provision also applied to a political party candidate for township office.

#### Political Party Candidate Death

Listing Replacement Candidate on Ballot. If a candidate for a particular office dies after the deadline for filing his or her nominating petitions, leaving the party without a candidate for that office, a candidate may be selected to fill the vacancy as prescribed in the Law, and his or her name must be printed on the ballot. Under the bill, if the primary ballots have been printed, they must be reprinted with the candidate's name and distributed to the voting precincts. Previously, gummed labels or stickers bearing the replacement candidate's name could be printed, and the board of election inspectors of each precinct had to place a label or sticker on each ballot over the name of the candidate who had died. (These provisions apply with regard to the offices of Governor; U.S. Senator or Representative; State Senator or Representative; county prosecuting attorney, sheriff, clerk, treasurer, register of deeds, drain commissioner, coroner, surveyor, auditor, and road commissioner; and city or township office.)

Selection of Replacement Candidate. The bill revised provisions regarding selection of a political party candidate for a city office to fill a vacancy left by the death of another candidate. Previously, the members of the city committee could choose a candidate to fill the vacancy. Under the bill, a replacement candidate may be selected by the county executive committee of the candidate's political party residing in the city, if at least three members of the committee reside in the city. If fewer than three members live in the city, the county executive committee may select a candidate. The bill made similar amendments to provisions regarding a township office.

If a person who has been nominated as the candidate of a political party for the office of county commissioner dies before the election date, the county executive committee of the party whose candidate has died must select, by majority vote, a replacement for that person. Previously, similar requirements applied to a political party's candidate for a township office.

Previously, a candidate of a political party for any city or township office, after having qualified as a candidate, died after the last day for qualifying, leaving the party without a candidate for office, the members of the city or township committee of the candidate's political party could select a candidate to fill the vacancy. The bill eliminated the references to the city and township committees and refers instead to the county executive committee of the candidate's political party residing in the city or village, as applicable.

#### Township Party Committee

The bill repealed Section 343a, which required a township party committee for each political party in every organized township in the State, and required the party committee to consist of the members of the county committee from the township.

#### Write-In Candidate: Filing Deadline

Except as otherwise provided, the board of election inspectors may not count a write-in vote for a person unless he or she has filed a declaration of intent to be a write-in candidate. A write-in candidate must file the declaration of intent by 4 p.m. on the second Friday immediately before the election.

Previously, if a candidate whose name was printed on the official ballot for the election died or was otherwise disqualified after the Wednesday immediately before the election, the requirement to file a declaration of intent to be a write-in candidate did not apply. Under the bill, the requirement does not apply if the candidate dies or is disqualified after 4 p.m. on the second Friday immediately before the election, rather than the immediately preceding Wednesday. As previously required,

under these circumstances, the board of election inspectors must count all write-in votes for write-in candidates for the office sought by the deceased or disqualified candidate.

### Recall

The Law provides procedures for the nomination of a candidate to fill a vacancy left as the result of a recall election. Under Section 973, as amended by the bill, candidates must be nominated as follows:

- If the vacancy is in a State office or in the office of U.S. Senator, by the State central committee of each political party.
- If the vacancy is in a county or district office within an electoral district of one county, by the county executive committee of each political party.
- If the vacancy is in a district office within an electoral district less than one county and at least three members of the county executive committee of a political party live in the district, by the members of the county executive committee of that political party living in the district.
- If the vacancy is in a district office having an electoral district in more than one county, by the members of the several county executive committees of each political party living in those parts of the counties that are in the district.
- If the vacancy is in a ward or township office and at least three members of the county executive committee of a political party live in the ward or township, by the members of the county executive committee of that political party living in the ward or township.

If the vacancy is in a district office within an electoral district less than one county, or in a ward or township office, and fewer than three members of the county executive committee of a political party live in the district or in a ward or township, the county executive committee of that party must nominate a candidate.

Previously, if a vacancy was in a district office within an electoral district less than one county, or in a ward or township office, the candidate had to be nominated by the members of the county committee of that political party living in the district or in the ward or township, as applicable.

The bill also added the references to a "county executive committee", rather than a county committee.

### Penalties

Compensation: Voter Registration. The bill prohibits a person from providing compensation to another person for registering individuals to vote if the compensation is based on either of the following:

- The total number of individuals a person registers to vote.
- The total number of individuals a person registers to vote in a particular political party.

A person who violates this prohibition is guilty of a felony punishable by imprisonment for up to five years and/or a maximum fine of \$1,000.

Misrepresentation as Election Official. The bill prohibits, a person from intentionally misrepresenting by word or act in a polling place on election day that he or she is an election official if he or she is not an election official. A person who violates this prohibition is guilty of a felony. (For a felony for which no penalty is specified, the Law prescribes imprisonment for up to five years and/or a maximum fine of \$1,000.)

## **Senate Bill 824**

### Complaint, Investigation, & Enforcement

A person may file with the SOS a complaint that alleges a violation of the Campaign Finance Act. Within five business days, the SOS must give notice to the person against whom the complaint is

filed. Under the bill, that person has 15 business days after the notice is mailed to submit a response to the SOS, and the complainant has 10 business days after a copy of the response is mailed to submit a rebuttal statement. Previously, the subject of the complaint had 15 business days after the notice was provided to submit a response, and the complainant had 10 business days after receiving the copy to submit a rebuttal statement.

Previously, every 60 days after a complaint meeting those statutory requirements was filed and until the matter was terminated, the SOS had to mail to the complainant and to the alleged violator notice of the action taken by the SOS, and the reasons for the action or nonaction. The bill deleted this requirement.

Under the bill, if the violation involves the SOS, his or her immediate family, or a campaign or committee with which the SOS is connected, directly or indirectly, the SOS must refer the matter to the Attorney General to determine whether a violation has occurred.

Also, under the bill, within 60 days after receiving a rebuttal statement from a complainant, or if no response or rebuttal statement is received, the SOS must post on the SOS's internet website whether or not there may be reason to believe that a violation of the Act has occurred. If he or she determines that there is reason to believe that a violation has occurred, the SOS, within 30 days, must post on the website any complaint, response, or rebuttal statement regarding that violation, as well as any related correspondence between the SOS and the complainant or the person against whom the complaint is filed.

Under the Act, if the SOS determines that there may be reason to believe that a violation occurred, he or she must endeavor to correct it or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement is a complete bar to any further action with respect to matters covered in it. The bill specifies that it is a complete bar to any further civil or criminal action. In addition, the bill requires the SOS to post a conciliation agreement on the SOS website within 30 days after it is signed.

Under the bill, if the SOS is unable to correct or prevent further violation by informal methods, he or she must either refer the matter to the Attorney General for the enforcement of any criminal penalty provided by the Act, or commence a hearing to determine whether a civil violation of the Act has occurred. Previously, these actions were permissive. In addition, the bill requires the SOS to refer the matter to the Attorney General or commence a hearing if he or she is unable to correct or prevent further violation by informal methods after 90 business days.

Previously, a hearing could not be commenced during the period beginning 30 days before an election in which a committee had received or spent money and ending the day after that election, except with the consent of the person suspected of committing a civil violation. The bill deleted this provision.

Under the bill, if the SOS determines after a hearing that a violation has occurred, he or she may issue an order requiring the person to pay a civil fine equal to three times the amount of the improper contribution or expenditure, plus up to \$1,000 for each violation. Previously, the fine equaled the amount of the improper contribution or expenditure, plus up to \$1,000 for each violation.

The bill requires the Attorney General to determine whether to proceed with enforcement of a criminal penalty within 60 days after a matter is referred to him or her for enforcement.

The bill states that the criminal penalties provided by the Act may be enforced only by the Attorney General and only upon referral by the SOS.

#### Late Filing Fee

The Act requires a committee, candidate, treasurer, or other individual designated as responsible for the committee's record-keeping, record preparation, or report filing, to report a late

contribution within 48 hours after receiving it. A person who fails to report a late contribution as required must pay a late filing fee as follows:

- \$25 for each business day the report remains unfiled.
- An additional \$25 for each business day after the first three business days the report remains unfiled.
- An additional \$50 for each business day after the first 10 business days the report remains unfiled.

Previously, the total fee could not exceed \$2,000. Under the bill, it may not exceed \$2,000 or the total amount of the contributions omitted from the late reports, whichever is less.

Previously, "late contribution" meant a contribution of at least \$200 received after the closing date of the last campaign statement required to be filed before an election. For contributions made after the bill's effective date of July 3, 2012, for a candidate committee, the bill refers to contributions from the same contributor with a cumulative total of at least \$500; and for a committee other than a candidate committee, the term means contributions from the same contributor with a cumulative total of at least \$2,500.

In addition, the bill requires a committee, other than a candidate committee, to report a late contribution only for an election during which the committee made expenditures for the purpose of influencing the nomination or election of a candidate or for the qualification, passage, or defeat of a ballot question after the committee filed its preelection campaign statement. This provision is retroactive to January 1, 2010.

The bill requires the State by appropriation or a county to reimburse or waive any late filing fee paid or assessed between January 1, 2010, and the bill's effective date. This requirement applies only to committees that filed all other required campaign statements in a timely manner; it does not, however, apply to candidate committees.

#### Ballot Question Committees

General Filing Requirements & Penalties. The Act requires a ballot question committee to file preelection and postelection campaign statements. Under the bill, such a committee also must file campaign statements by the following dates every year:

- February 15 with a closing date of February 10 of that year.
- April 25 with a closing date of April 20 of that year.
- July 25 with a closing date of July 20 of that year.

In addition, in every odd-numbered year, the bill requires a ballot question committee to file a campaign statement by October 25 with a closing date of October 20 of that year.

The Act prescribes a civil fine for a treasurer or other individual designated as responsible for the record-keeping, report preparation, or report filing of a ballot question committee who knowingly files an incomplete or inaccurate statement or report. Previously, the maximum fine was \$1,000. Under the bill, the maximum fine is \$1,000 or the amount of the undisclosed contribution, whichever is greater.

Statewide Ballot Question. The bill requires a ballot question committee supporting or opposing a statewide ballot question to file a campaign statement, with closing date is the 28<sup>th</sup> day after the petition form is filed, within 35 days after the petition form is filed with the SOS (as required by Senate Bill 823). Previously, this statement's closing date was the 28<sup>th</sup> day after qualification of the measure, and the statement had to be filed within 35 days after the question was qualified for the ballot. If the question failed to qualify for the ballot, the committee had to file the statement within 35 days after the final deadline for qualifying, and the statement's closing date was the 28<sup>th</sup> day after that deadline.

Nonstatewide Ballot Question. Under the Act, a ballot question committee supporting or opposing a statewide ballot question must file a copy of the required campaign statement with the SOS and with the clerk of the most populous county in the State. A ballot question committee supporting or opposing a ballot question to be voted upon in more than one county, but not statewide, must file a copy of the statement with the clerk of the county in which the greatest number of registered voters eligible to vote on the question resides. A ballot question committee supporting or opposing a question to be voted upon within a single county must file a copy of the statement only with the clerk of that county.

Under the bill, if a ballot question committee is registered with the SOS and is supporting or opposing a nonstatewide ballot question, the committee must file a copy of a required statement only with the SOS.

#### Local Recall Committee

Under the bill, if any committee is registered with the SOS and is supporting or opposing the recall of a local elective officeholder, that committee must file a statement only with the SOS.

#### Separate Segregated Fund

Under the Act, except as otherwise provided, a billboard, placard, poster, pamphlet, or other printed matter referring to an election, a candidate, or a ballot question, must bear the name and address of the person paying for it. Except as otherwise provided, if the printed matter relating to a candidate is an independent expenditure that is not authorized in writing by that person's candidate committee, the material must contain the following disclaimer: "Not authorized by any candidate committee". An individual other than a candidate is not subject to these requirements if he or she is acting independently and not acting as an agent for a candidate or any committee. Under the bill, these provisions do not apply to communications between a separate segregated fund established under Section 55 and individuals who may be solicited for contributions to that fund.

Section 55 allows corporations, labor organizations, and other entities to make an expenditure for the establishment and administration of, and solicitation of contributions to, a separate segregated fund to be used for political purposes. A separate segregated fund is limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees. Under the bill, a separate segregated fund also may make contributions to and expenditures on behalf of other separate segregated funds.

### **House Bill 5059**

#### New Political Party Committee

Under the Campaign Finance Act, "committee" means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received or expenditures made total at least \$500 in a calendar year. Under the bill, the definition of "committee" also includes a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against the qualification of a new political party, subject to the \$500 threshold.

The Act defines "political party committee" as a State central, district, or county committee of a political party that is a committee. Under the bill, the term also includes a State central, district, or county committee of a party that is attempting to qualify as a new political party under the Michigan Election Law.

The bill also includes references to the qualification of a new political party in the definitions of "contribution", "expenditure", and "political merchandise".

The Act requires a House or Senate political party caucus committee that is required to file with the SOS, to file required campaign statements quarterly, according to a schedule specified in the Act. In addition, the committee must file daily statements for contributions or expenditures that exceed \$1,000 per day during the period beginning 14 days before an election and ending the day after the election.

Under the bill, these filing requirements also apply to a political party committee for a party attempting to qualify as a new political party.

#### Independent or Political Committee

Previously, the Act required an independent committee or a political committee other than a House or Senate political party caucus committee to file campaign statements according a schedule. In an odd-numbered year, a statement had to be filed by January 31 with a closing date of December 31 of the previous year. In an even-numbered year, a statement had to be filed by April 25 with a closing date of April 20. In each year, statements had to be filed by the 25<sup>th</sup> of July and October with closing dates of the 20<sup>th</sup> of July and October, respectively.

The bill eliminated this schedule, and instead requires a committee to file campaign statements by the following dates every year:

- February 15 with a closing date of February 10.
- April 25 with a closing date of April 20.
- July 25 with a closing date of July 20.
- October 25 with a closing date of October 20.

#### Incomplete/Inaccurate Statement

The Act requires a committee to file complete campaign finance statements according to a schedule, depending on the type of committee. In addition, subject to certain exceptions, a committee, other than an independent or political committee, must file by January 31 of each year an annual campaign statement with a closing date of December 31 of the previous year.

If a treasurer or other individual designated as responsible for a committee's record-keeping, report preparation, or report filing knowingly files an incomplete or inaccurate statement or report, he or she is subject to a civil fine of up to \$1,000. Under the bill, the penalty also applies to a candidate.

Also, under the bill, if a candidate, treasurer, or other individual designated as responsible for a committee's record-keeping, report preparation, or report filing knowingly omits or underreports individual contributions or expenditures required to be disclosed, he or she is subject to a maximum civil fine of \$1,000 or the amount of the undisclosed contribution or expenditure, whichever is greater.

#### Candidate Committee: Failure to File

Under the bill, if a candidate committee's account has a balance of at least \$20,000 and a candidate, treasurer, or other designated individual fails to file the required campaign statements for two consecutive years, he or she is guilty of a felony punishable by imprisonment for up to three years and/or a maximum fine of \$5,000. Any money in the candidate committee account is subject to seizure by, and forfeiture to, the State.

Within five business days after seizure of the money, the Department of Treasury must deliver personally or by registered mail to the last known address of the candidate from whom the seizure was made an inventory statement of the money seized. The statement must contain notice that unless a demand for a hearing is made within 10 business days, the money will be forfeited to the State.

Within 10 business days after the notice is served, the candidate may file with the State Treasurer a demand for a hearing before the Treasurer or his or her designee for a determination as to whether the money was lawfully subject to seizure and forfeiture. The candidate is entitled to appear before the State Treasurer or designee, to be represented by counsel, and to present testimony and argument. Upon receiving a request for a hearing, the Department of Treasury or a person designated by the State Treasurer must hold the hearing within 15 business days. The hearing is not a contested case proceeding and is not subject to the Administrative Procedures Act.

The Department or the Treasurer's designee must render a written decision within 10 business days after the hearing and, by order, must declare the money either subject to seizure and forfeiture or returnable to the candidate.

If the candidate does not file a demand for a hearing by the deadline, the seized money will be forfeited to the State by operation of law. If the Department or the Treasurer's designee determines after a hearing that the money was lawfully subject to seizure and forfeiture and the candidate does not appeal to the circuit court of the county in which the seizure was made, the money also will be forfeited to the State by operation of law.

If a candidate is aggrieved by the Department's or designee's decision, he or she may appeal to the circuit court to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action must be commenced within 20 days after notice of the determination is sent to the candidate. The court must hear the action and determine the issues of fact and law in accordance with rules of practice and procedure as in other in rem proceedings. ("In rem" refers to a lawsuit or other legal action directed toward property, rather than toward a particular person.)

## **House Bill 5062**

### Training/Continuing Education

The Election Law requires the SOS to establish a curriculum for comprehensive training and accreditation of all county, city, township, and village officials who are responsible for conducting elections. Previously, this provision also referred to school elections officials.

The bill requires the SOS also to establish a continuing election education program for all county, city, township, and village clerks. The Director of Elections must conduct continuing election education courses for clerks to attend. Each clerk must attend and complete the training at least once every two years to maintain accreditation as a clerk. The Department of State is responsible for providing the training at no charge to the clerks, counties, cities, townships, or villages.

### Postelection Audit

Under the bill, in order to ensure compliance with the Law, the SOS may audit election precincts after each election. The SOS must develop an election audit program that details the documents to be inspected and the procedures to be used during an audit.

The bill authorizes the SOS to train and certify county clerks and their staffs to conduct election audits of precincts randomly selected by the SOS in their counties. The SOS must supervise each county clerk in the performance of election audits. Each county clerk who conducts an election audit must give the results to the SOS within 20 days.

### Receiving Board

The bill requires, the election commission of a city, township, or village to provide by resolution that at an election at which the ballots are counted and certified at the precinct, one or more additional boards of election inspectors will be appointed to serve as boards to receive for review the sealed container containing the voted ballots, poll book, and statement of returns. The Law previously permitted the legislative body to provide for the appointment additional boards of election inspectors to serve as receiving boards.

## Preservation of Records & Documents

Under the Law, all election returns, including poll lists, statements, tally sheets, absent voters' return envelopes, absent voters' records maintained by the clerk, and other returns made by election inspectors must be carefully preserved, and may be destroyed two years after the primary or election. Previously, this requirement also applied to absent voters' applications.

Under the bill, all applications executed under Section 523 and all absent voters' applications must be carefully preserved and may be destroyed after six years. (Section 523 requires a registered elector to execute an application to vote at an election before being given a ballot.)

Under the bill, all ballots used at any primary or election may be destroyed after 30 days following the final determination of the board of canvassers with respect to that primary or election unless a petition for recount has been filed and not completed, or their destruction is stayed by a court order. Previously, the time period was seven days following the final determination.

The bill permits the SOS, subject to certain exceptions, to authorize the release of all ballots, ballot boxes, voting machines, and equipment after 30 days following certification of an election by the Board of State Canvassers. Previously, release could be authorized after 10 days following certification.

The bill also allows a clerk to destroy the original registration cards of an elector five years, rather than 10 years, after the elector's registration is canceled.

## Violations

Previously, an offense other than fraudulent registration could not be prosecuted unless the prosecution was commenced within two years after the date of the registration, primary, or election connected to the alleged offense, and fraudulent registration could not be prosecuted unless the prosecution was commenced within three years after the offense was discovered. Under the bill, the statute of limitations on all violations of the Election Law is three years after the offense is discovered.

## **House Bill 5085**

Under Public Act 390 of 1978, except as required or permitted by law or a collective bargaining agreement, an employer is prohibited from deducting from employee wages any amount, including an employee contribution to a separate segregated fund established under Section 55 of the Michigan Campaign Finance Act, without the full, free, and written consent of the employee.

The bill also prohibits an employer that is a public body, as defined in the Campaign Finance Act, from deducting any amount from an employee's wages for a contribution to a separate segregated fund established under Section 55 of that Act or a contribution or any payment to any committee established under the Federal Election Campaign Act.

(Section 55 of the Michigan Campaign Finance Act allows corporations, labor organizations, and other entities to make an expenditure for the establishment and administration of, and solicitation of contributions to, a separate segregated fund to be used for political purposes. The fund must be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees.)

## **House Bill 5086**

### Payroll Deduction Prohibition

Section 57 of the Michigan Campaign Finance Act prohibits a public body, or a person acting for a public body, from using or authorizing the use of funds, personnel, office space, computer hardware or software, postage, property, vehicles, supplies, equipment, or other public resources to make a contribution or expenditure or provide volunteer personal services.

The bill states that this prohibition includes using or authorizing the use of public resources to establish or administer a payroll deduction plan to directly or indirectly collect or deliver a contribution to, or make an expenditure for, a committee. Advance payment or reimbursement to a public body does not cure a use of public resources otherwise prohibited by these provisions.

(The Act defines "committee" as a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if the contributions received or expenditures made total \$500 or more in a calendar year. An individual, other than a candidate, does not constitute a committee.)

The bill defines "payroll deduction plan" as any system in which an employer deducts any amount of money from the wages, earnings, or compensation of an employee.

The Act's definitions of "contribution" and "expenditure" refer to a payment, donation, etc. made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot proposal. The bill provides that, except for the purposes of Section 57, the terms do not include a contribution to or an expenditure to or for a Federal candidate or a Federal committee.

The bill also amended the definition of "expenditure" to include the cost of establishing and administering a payroll deduction plan to collect and deliver a contribution to a committee, subject to the following exception.

Previously, the term "expenditure" did not include an expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee. Under the bill, instead, the term does not include an expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund if that expenditure is made by the person who established the fund as authorized under Section 55.

(A person who knowingly violates Section 57 is guilty of a misdemeanor. If the violator is an individual, the offense is punishable by a fine of up to \$1,000, imprisonment for up to one year, or both. If the violator is not an individual, the penalty is a maximum fine of \$20,000 or a fine equal to the amount of the improper contribution or expenditure, whichever is greater.)

#### Civil Action for Payroll Plan Violation

The Act allows a person to file with the SOS a complaint alleging a violation of the Act. The SOS must investigate the allegations and may take certain actions if he or she believes that a violation has occurred.

The bill provides that, if the SOS has dismissed a complaint alleging that a public body or person acting for a public body used or authorized the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to, or make an expenditure for, a committee, as the bill prohibits, the complainant may bring a civil action against the public body or person acting for it to seek declaratory, injunctive, mandamus, or other equitable relief and to recover losses that a public body suffered from the violation. Any other person who resides, or has a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred also may bring such an action.

If the complainant or other person prevails in the action, the court must award the complainant or other person necessary expenses, costs, and reasonable attorney fees. Any amount awarded or equitable relief granted may be awarded or granted against the public body or an individual acting for the public body, or both, that violates Section 57, as the court determines.

All of these provisions also apply if the SOS enters into a conciliation agreement that does not prevent a public body or a person acting for a public body from using or authorizing the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to or make an expenditure for, a committee in violation of the prohibition.

## Public Policy of Neutrality

The bill contains the following statement: "It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or a person acting on behalf of a public body shall not attempt to influence the outcome of an election held in the state. If there is a perceived ambiguity in the interpretation of section 57, that section shall be construed to best effectuate the policy of strict neutrality by a public body in an election."

MCL 168.509r et al. (S.B. 751)  
168.569a et al. (S.B. 752)  
777.11e (S.B. 753)  
168.4 et al. (S.B. 810)  
62.4 et al. (S.B. 811)  
168.22e et al. (S.B. 823)  
169.215 et al. (S.B. 824)  
777.11d (S.B. 825)  
169.203 et al. (H.B. 5059)  
168.31 (H.B. 5062)  
408.477 (H.B. 5085)  
169.204 et al. (H.B. 5086)

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## **FISCAL IMPACT**

### **Senate Bill 751**

There may have been costs associated with the requirement for the Secretary of State to create an inactive voter file for registered voters who have not voted for six consecutive years. These costs could have been absorbed by the then-current allocations to maintain the qualified voter file. Also, there might have been a minimal cost to establish procedures for confirming residency information for electors who might have moved out of State, but these costs should have been absorbed through annual appropriations for the Secretary of State.

### **Senate Bill 752**

The bill has no fiscal impact on State or local government.

### **Senate Bill 810 and 811**

Senate Bill 810 has a negligible fiscal impact on the Department of State. The annual appropriations for the Department should absorb the costs of providing the required posters regarding ballot coaching. The bill will result in savings for local units of government by eliminating the September elections. According to the Secretary of State, the average cost of an election is approximately \$2,000 per precinct. The savings will correspond with the number of precincts in a local unit that eliminate a September election. Moving these local elections to the November general election, will result in no additional costs to the local unit as the general election costs are already budgeted.

Senate Bill 811 has no fiscal impact on State or local government.

### **Senate Bill 823 and 825**

To the extent Senate Bill 823 results in any costs to the Department of State, those costs will be absorbed within the Department's annual appropriations. There may be additional costs to local units of government associated with the requirement to reprint ballots; however, the cost is indeterminate.

By creating two new felonies and additional misdemeanors in the Election Law, and adding two new Class E felonies to the sentencing guidelines, Senate Bills 823 and 825 may have an impact on State and local incarceration costs. There are no data to indicate how many individuals will

violate the revised statute, but the number will likely be small and therefore the fiscal impact will likely be negligible.

#### **Senate Bill 824**

The requirement for the payment of a civil fine equal to triple the amount of an improper contribution will result in additional revenue the State's General Fund. The amount of additional revenue is indeterminate and dependent on the number of infractions. There were additional costs to the State associated with the requirement to reimburse entities for late filing fees that were paid between January 1, 2010, and the bill's effective date. In FY 2013-14, the State refunded an estimated \$117,000 in late filing fees. An estimated \$176,000 in late filing fees remained assessed but uncollected. If collected, this revenue would be refunded to entities. Fees collected by the State were and would be refunded from the State's General Fund. The amount of additional costs at the local level is unknown and dependent on the amount of late fees that ultimately reversed.

The remaining provisions of the bill have no fiscal impact on State or local government.

#### **House Bill 5059 and Senate Bill 753**

The Department of State will have additional responsibilities under House Bill 5059 related to the potential seizure of candidate committee accounts for failure to file certain reports. If the Secretary of State acts under this authority, the Department will incur costs related to seizure, notification, and inventory requirements, and the subsequent hearing process. The Department will be required to meet timelines for a hearing on the matter and issuing a decision. These responsibilities will increase the costs of the Department by an unknown amount. Funds lawfully seized under the authority provided by the bill will be deposited in the General Fund and available upon appropriation. The amount of the costs and revenue will depend on the number of violations and the size of any accounts seized. An account that is seized must have a balance of least \$20,000.

There are no data to indicate how many offenders will be convicted of the criminal offense. An offender convicted of the Class H offense under House Bill 5059 and Senate Bill 753 will receive a sentencing guidelines minimum sentence range of 0-1 month to 5-17 months. Local governments will incur the costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation, as well as the cost of incarceration in a State facility at an average annual cost of \$31,000. Additional penal fine revenue will benefit public libraries.

In addition, House Bill 5059 extends an existing civil fine of up to \$1,000 to a candidate, for a particular filing violation.

Further, House Bill 5059 may increase the Secretary of State's administrative costs associated with having to review campaign statements filed by political parties trying to qualify as a party and the proposed required hearings. The additional cost is indeterminate and depends on the number of political parties trying to qualify as a party and the number of elections for which they are trying to qualify, or the number of hearings that will be held. The political parties trying to qualify as a party will incur the costs associated with the filing of the required campaign statements. The costs are indeterminate.

#### **House Bill 5062**

The bill will have resulted in an indeterminate increase in costs to the SOS associated with the requirements to establish a continuing education program for all local government election clerks. The SOS already provided training to local election clerks; however, the bill requires that clerks be trained every two years, thus increasing the costs for these trainings for the SOS. Local governments will receive the trainings at no cost to them.

Also, requiring the SOS to develop an election audit program and train local election clerks, and to supervise each county clerk in the performance of election audits, represents an indeterminate increase in costs for the SOS.

In addition, requiring poll lists to be preserved for six years instead of two years, and requiring ballots to be held for 30 days instead of seven days following an election before they are destroyed, may result in an indeterminate cost to the SOS associated with storing these documents.

There will be an indeterminate cost to local units of government associated with the election audit requirements of the bill. Local election clerks' offices will incur costs associated with training time, administrative costs for conducting the audits, and the purchase of the equipment needed to conduct the audits.

#### **House Bill 5085**

The bill has an unknown but likely negligible fiscal impact on public bodies. The bill has no fiscal impact on the Department of State.

#### **House Bill 5086**

The bill has an indeterminate, but likely negligible, fiscal impact on State and local government. By adding to the actions that constitute a misdemeanor under Section 57, the bill may have a negligible impact on local incarceration costs. Any additional penal fine revenue will benefit public libraries.

Because the bill allows civil actions against public bodies, there are potential indeterminate costs that any public body, State or local, may incur in the event that an action is brought against it. These costs may include legal costs for the public body itself as well as damages, costs, and attorney fees for the complainant if the complainant prevails in court.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.