

Legislative Analysis



POST-ELECTION AUDITS & CONTINUING ELECTION EDUCATION PROGRAMS

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House Bill 5062 (Substitute H-2)
Sponsor: Rep. Anthony G. Forlini
Committee: Redistricting and Elections

Complete to 3-19-12

A REVISED SUMMARY OF HOUSE BILL 5062 AS REPORTED FROM COMMITTEE

House Bill 5062 (H-2) would amend the Michigan Election Law (MCL 168.31 et al) to require post-election audits and continuing election education programs, among other things. A more detailed description of the bill follows.

Continuing Education for Election Officials

The Michigan Election Law describes in considerable detail the responsibilities of the secretary of state in conducting elections in Michigan. Among those duties, the secretary of state is required to advise and direct local election officials as to the proper methods of conducting elections, including the creation of a curriculum for the comprehensive training and accreditation of all county, city, township, village, and school election officials. House Bill 5062 (H-2) would retain all of these provisions, and add the requirement that the secretary of state establish a continuing election education program for all county, city, township, and village clerks. Further, the requirement that the secretary of state establish a curriculum for comprehensive training and accreditation of all county, city, and village clerks would be modified to eliminate school election officials.

The Election Law also delineates the duties of the director of elections (located in the Department of State), including training all county, city, and township clerks who are themselves involved in the training of precinct inspectors. House Bill 5062 (H-2) would retain these provisions, and also require that the director of elections conduct continuing election education training courses for county, city, township, and village clerks to attend. Under the bill, each county, city, township, and village clerk would be required to attend and complete continuing election education training at least once every two years, to maintain accreditation as a clerk. The bill specifies that the Department of State would be responsible for providing continuing election education training to the clerks at no charge to the clerks, counties, cities, townships, or villages.

Post-Election Audits

In addition, House Bill 5062 (H-2) would allow the secretary of state to audit election precincts in order to ensure compliance with the Election Law. To that end, the bill would require the secretary of state to develop an election audit program that details the documents to be inspected and the procedures to be using during an election audit, and then allow (but not require) the secretary of state to train and certify county clerks and

their staffs so they could conduct election audits of randomly selected precincts in their counties, under the supervision of the secretary of state.

Under the bill, each county clerk who conducted an election audit would be required to provide the results of the audit to the secretary of state within 20 days after it was conducted.

Original Registration Cards

Now under the law, all copies of canceled voter registration cards must be filed in the office of the clerk. Duplicates of those cards can be destroyed two years after the cancellation, and the original registration cards can be destroyed 10 years after the date of cancellation of the elector's registration. Instead, House Bill 5062 (H-2) would specify that the original registration cards could be destroyed five years (rather than 10 years) after the cancellation.

Receiving Boards

Now under the law, the legislative body of a city, township, or village *may*, by resolution, provide that at an election at which the ballots are counted and certified at the precinct, one or more additional boards of election inspectors be appointed to serve as receiving boards. House Bill 5062 (H-2) would change this provision to specify that the *election commission* (rather than the legislative body) of a city, township, or village *would be required* to follow this procedure. (The "may" appoint is changed to "shall" appoint one or more additional boards.) As is now the case, for a precinct having receiving boards, the board of election commissioners must appoint a board consisting of two or more election inspectors, with an equal number from each major political party.

Preservation of Poll Lists

Now under the law, all election returns, including poll lists, statements, tally sheets, absent voters' applications, absent voters' return envelopes, absent voter records and other returns made by the inspectors of elections must be carefully preserved for two years following the primary or election at which they were used. House Bill 5062 (H-2) would modify this provision to specify, instead, that all applications executed under Section 523 and all absent voters' applications be carefully preserved for six years (rather than two years).

Preservation of Ballots

Further, the law now specifies that all ballots used at a primary or election can be destroyed after seven days following the final determination of the board of canvassers, unless a petition for recount has been filed. House Bill 5062 would require that the ballots be held for 30 days before they are destroyed. Now under the law, the secretary of state may authorize the release of all ballots, ballot boxes, voting machines, and equipment after 10 days following certification of an election by the board of state canvassers, with certain exceptions, including if a petition for recount has been filed. House Bill 5062 would require instead that the secretary of state wait 30 days after the election is certified to release the ballots, ballot boxes, voting machines, and equipment.

Election Inspectors

House Bill 5062 would change, to make uniform, all references to "inspectors" appointed by local boards of election commissioners, to refer instead to "election inspectors."

Prohibited Actions

The law now specifies that a person is guilty of a misdemeanor for violating any of 14 prohibited offences under the election law. House Bill 5062 would retain these prohibitions, and add two additional offences. The bill specifies that a person shall not threaten or intimidate an elector while the elector is entering a polling place, applying to vote, entering a voting compartment, voting, or leaving a polling place. Further, the bill specifies that a person shall not provide misinformation regarding an election to an elector.

Statute of Limitations on Election Offenses

Generally, the law now provides that offenses under the act are not prosecuted unless the prosecution is begun within two years after the date of the relevant registration, primary, or election about which the offence is alleged. However, for the offence of fraudulent registration, the prosecution can be begun within three years after the time the offense is discovered. House Bill 5062 would modify this provision to specify that any and all offenses could be prosecuted as long as the prosecution was begun within three years after the time the offense was discovered.

FISCAL IMPACT:

Collectively speaking, the requirements of House Bill 5062 would increase costs associated with elections for both the Secretary of State (SOS) and local election officials. The bill would require the SOS Director of Elections to establish a continuing education program for all local government election clerks. While the SOS currently provides training to all local election clerks, this would require ongoing educational programs that would increase administrative, personnel, and equipment/supplies costs for both the SOS and the local election clerks. Local election clerks would be required to complete a continuing election education training session at least once every two years to maintain accreditation as a clerk. However, the bill specifies that the continuing education training would be provided at no cost to clerks, counties, cities, townships, or villages.

The bill would also require the SOS to develop an election audit program and train county election clerks. Moreover, the bill would require that the SOS supervise each county clerk in the performance of election audits. This provision would increase costs to both the SOS and county election clerks. SOS costs associated with this provision would include costs associated with development of the audit procedure, SOS training of county clerks, SOS oversight of county election clerk audits, and review of the audits submitted to the SOS upon completion. County election clerk costs associated with this provision include training time, administrative costs associated with conducting audits, and equipment needed to conduct audits.

Additionally, the bill would require that where ballots are counted and certified at the precinct, that one or more additional boards of election inspectors be appointed to serve as receiving boards. This would presumably increase administrative costs of finalizing certain precinct vote counts by an indeterminate amount. Any costs would be realized only by those precincts where this practice was not previously utilized.

The provisions of the bill would also require poll lists to be preserved for six years, as opposed to two years as is now required. This could increase administrative and storage costs associated with the preservation of these lists. Moreover, the bill would require that all ballots be held for 30 days as opposed to the current seven day requirement before they are destroyed. Finally, the bill would require that the SOS wait 30 days, instead of 10, after the election is certified to release the ballots, ballot boxes, voting machines, and equipment. Collectively, these retention provisions could increase administrative and storage costs.

Local courts may face higher costs due to an increased caseload resulting from new causes of action created by this bill. Additionally, extending the deadline for prosecution from two years to three years could allow for additional case filings related to both new and already existing offenses identified in current Michigan Election Law. The exact cost to local courts would depend on the number of new filings that would occur under this proposal. Violations of this statute are classified as misdemeanors with a maximum fine of \$500. Any fine revenue collected would benefit public libraries. To the extent that the bill's provisions result in a greater number of misdemeanor convictions under the new causes of action, it could increase local costs related to local jail incarceration and/or misdemeanor probation supervision. These costs vary by jurisdiction.

POSITIONS:

The Secretary of State supports the bill. (3-13-12)

The Michigan Association of Municipal Clerks supports the bill. (3-13-12)

The Michigan Association of County Clerks supports the bill. (3-13-12)

The Election Reform Alliance opposes the bill. (3-13-12)

The A. Philip Randolph Institute opposes the bill. (3-13-12)

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