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ANALYSIS

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Senate Bill 750 (Substitute S-1 as reported)
Senate Bill 751 (Substitute S-1 as reported)
Senate Bill 752 (Substitute S-1 as reported)
Senate Bill 753 (as reported without amendment)
Senate Bill 754 (Substitute S-2 as reported)
Senate Bill 803 (Substitute S-1 as reported)
Sponsor: Senator Dave Robertson (S.B. 750 & 751)
Senator Goeff Hansen (S.B. 752)
Senator Jack Brandenburg (S.B. 753)
Senator Mark C. Jansen (S.B. 754)
Senator Darwin L. Booher (S.B. 803)
Committee: Local Government and Elections

Date Completed: 1-9-12

RATIONALE

In October 2011, Secretary of State (SOS) Ruth Johnson announced the Secure and Fair Elections (SAFE) initiative, a set of proposed reforms to Michigan's campaign finance and election laws aimed at closing loopholes and preventing voter fraud and other practices that might compromise the integrity of the elections process. The proposal includes increased penalties for campaign finance statement violations, measures to enhance the accuracy of the qualified voter file (QVF), a requirement that certain political parties notify the SOS before holding a caucus or convention, photo ID requirements, registration and training provisions for third-party voter registration organizations, and a statement of citizenship on an application to vote. It has been suggested that enactment of the SAFE initiative would increase transparency and accountability in Michigan's electoral process.

CONTENT

Senate Bill 750 (S-1) would amend the Michigan Campaign Finance Act to do the following:

- Increase the penalty for knowingly filing an incomplete or inaccurate campaign finance statement or

report from a civil fine to a misdemeanor fine and/or imprisonment, and include a candidate among the individuals subject to the penalty.

- Designate failure to file required campaign statements for a candidate committee with an account balance of at least \$20,000 for two consecutive years as a felony, and provide that money in the account would be subject to seizure and forfeiture by the State.
- Establish procedures for the seizure and forfeiture, including a candidate's opportunity for an administrative hearing and an appeal to the circuit court.

Senate Bill 753 would amend the Code of Criminal Procedure to add to the sentencing guidelines the failure to file required campaign statements for a candidate committee. The violation would be a Class H felony against the public trust with a statutory maximum of three years' imprisonment.

Senate Bill 751 (S-1) would amend the Michigan Election Law to do the following:

- Require the Secretary of State to create an inactive voter file of registered electors who did not vote for six consecutive years, or who received a notice to confirm residence information from the SOS.
- Require the absent voter ballot of a person whose registration record was in the inactive file to be prepared 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 did not respond or vote for a period of time.
- Require a person to present picture ID in order to obtain an absent voter ballot in person.
- Allow a person who did not present picture ID to sign an affidavit in order to obtain an absent voter ballot, and require the ballot to be prepared as a challenged ballot.
- Refer to active registered electors, rather than registered electors, in requirements pertaining to the consolidation of election precincts.
- Allow the use of either active registered voters, or both active and inactive voters, in determining the number of registered voters for precinct division purposes.
- Require a clerk to use the State's ballot tracker program, if possible, to allow voters to track their absent voter ballots online.
- Require a person who applied in person to register to vote to present a picture ID.
- Require the application of a person who did not present a picture ID to be considered a mail registration application.
- Allow a voter registration applicant to submit a mail registration application to a "third-party voter registration organization".
- Require a third-party voter registration organization to register with the Department of State, and require the Department to maintain a database of registered organizations.
- Require the SOS to develop a training program for third-party voter registration organizations, and require an organization to participate in the program before its agents could engage in voter registration activities.
- Authorize a county clerk to provide the training.
- Require a third-party voter registration organization to deliver a registration application to the applicable clerk by specific deadlines.

Senate Bill 803 (S-1) would amend the Michigan Election Law to do the following:

- Require an application to vote to include an affirmative statement by the elector that he or she was a citizen of the United States.
- Require an elector who did not affirmatively state that he or she was a U.S. citizen to be challenged, and prohibit issuance of a ballot to an elector who did not make the statement under oath.
- Require an application for an absent voter ballot to question whether the applicant was a U.S. citizen.
- Prohibit a clerk from issuing an absent voter ballot to a person who indicated that he or she was not a U.S. citizen.
- Require a clerk to issue an absent voter ballot to a person who did not answer the citizenship question, and include a prominent notice that the ballot would not be counted unless

Senate Bill 752 (S-1) would amend 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 754 (S-2) would amend the Michigan Election Law to do the following:

he or she answered it before the polls closed on election day.

Senate Bills 750 (S-1) and 753 are tie-barred to each other. Senate Bill 752 (S-1) would take effect on March 1, 2012. All of the bills except Senate Bill 753 are described below in further detail.

Senate Bill 750 (S-1)

Incomplete/Inaccurate Statement

The Campaign Finance 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.

("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 either contributions received or expenditures made total at least \$500 in a calendar year. An individual, other than a candidate, does not constitute a committee. "Person" means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of people acting jointly.)

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 person would be guilty of a misdemeanor punishable by a maximum fine of \$1,000 or the amount of the undisclosed contribution or expenditure, whichever was greater, and/or imprisonment for up to 90 days. The penalty also would apply to a candidate.

Candidate Committee: Failure to File

Under the bill, if a candidate committee's account had a balance of at least \$20,000 and, following a general election, a candidate, treasurer, or other designated individual failed to file the required campaign statements for two consecutive years, he or she would be 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 would be subject to seizure by, and forfeiture to, the State.

Within five business days after seizure of the money, the SOS would have to 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 would have to contain notice that unless a demand for a hearing were made within 10 business days, the money would be forfeited to the State.

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

The SOS or his or her designee would have to render a written decision within 10 business days after the hearing and, by order, would have to declare the money either subject to seizure and forfeiture or returnable to the candidate.

If the candidate did not file a demand for a hearing by the deadline, the seized money would be forfeited to the State by operation of law. If the SOS or his or her designee determined after a hearing that the money was lawfully subject to seizure and forfeiture and the candidate did not appeal to the circuit court of the county in which the seizure was made (as described below), the

money also would be forfeited to the State by operation of law.

If a candidate were aggrieved by the SOS's or designee's decision, he or she could appeal to the circuit court to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action would have to be commenced within 20 days after notice of the determination was sent to the candidate. The court would have to 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.)

Senate Bill 751 (S-1)

Inactive Voter File

Under the Law, a statewide qualified voter file 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 would have to create an inactive voter file. If a voter were sent a notice under Section 509aa to confirm his or her residence information, or if a voter did not vote for six consecutive years, the SOS would have to place that person's registration record in the inactive voter file, where it would have to remain until one of the following occurred:

- The voter voted at an election.
- The voter responded to a notice to confirm his or her residence information.
- Another voter registration transaction involving that voter occurred.

(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 was in the inactive voter file, the person would remain eligible to vote and his or her name would have to appear on the precinct voter registration list.

If a voter's registration record were in the inactive voter file and the person voted at an election by absent voter ballot, that ballot would have to be prepared as a challenged ballot as provided in Section 727 (described below, under **BACKGROUND**).

Registered Voter Moving out of State

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

- A notice that the SOS had received information indicating that the voter had moved his or her residence to another state.
- A postage prepaid and preaddressed return card on which the voter could verify or correct the address information.
- A notice that if the address information were incorrect and the voter had not moved to another state and wished 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 were not completed and returned with the specified postmark, the voter could be required to affirm his or her current address before being permitted to vote. Also, if the voter did 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 would have to be canceled and his or her name would have to be removed from the QVF.

Absent Voter Ballot: ID Requirement

Under the Law, if a clerk receives an absent voter ballot application from a person registered to vote in that city, township, or village and the signature on the application

agrees with the signature for the person contained in the QVF or on the registration card, the clerk must forward the ballot to the applicant by mail or deliver it personally. In addition, a person qualified to vote as an absent voter may apply in person at the clerk's office before 4 p.m. on a day before the election, except Sunday or a legal holiday, to vote as an absent voter. The applicant must receive his or her absent voter ballot and vote in the clerk's office. Under the bill, these provisions would apply subject to the following picture ID requirement.

Under the bill, if an elector obtained his or her absent voter ballot in person from the clerk of the city, township, or village in which he or she was registered, the clerk could not give that person an absent voter ballot until the elector identified himself or herself by presenting an official State ID card, an operator's or chauffeur's license, or another generally recognized picture ID card. If an elector did not have any of those documents, he or she could sign an affidavit to that effect before the clerk and be allowed to obtain his or her absent voter ballot in person. If an elector obtained his or her absent voter ballot in person from the clerk and voted without providing the required identification, however, his or her ballot would have to be prepared as a challenged ballot.

Precinct Consolidation

Under the Law, 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 400 registered electors in that political subdivision using paper ballots, or not more than 2,999 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. The bill would eliminate the reference to registered electors in a political subdivision using paper ballots. In addition, the bill would refer to active registered voters using voting machines.

Also, 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 would refer 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, could 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 had access to the ballot tracker program provided by the State, the clerk would have to use it and allow voters to track their absent voter ballots online.

Senate Bill 752 (S-1)

Absent Voter Counting Boards

Counting by Absent Voter Counting Boards. Currently, except as otherwise provided, the absent voter ballots in a city, township, or village that uses voting machines must be counted by absent voter counting boards. The board of election commissioners of a city, township, or village that has a maximum of two precincts or of a city with a population of at least 500,000 may decide

that the absent voter ballots must be counted in the manner provided in Section 791 (described below). In a city, township, or village that does not use voting machines, the absent voter ballots may be counted by absent voter counting boards, or in the same manner as otherwise provided for precincts in which voting is not done on voting machines.

The bill would delete these provisions. Instead, if a city, township, or village decided to use absent voter counting boards, the applicable board of election commissioners would have to establish an absent voter counting board for each election day precinct. The ballot form of an absent voter counting board would have to correspond to the ballot form of the election day precinct for which it was established. After the polls closed 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 would have to 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.

Where absent voter counting boards are used, each ballot form that contains identical offices and names must be considered a separate precinct for these purposes. Under the bill, instead, if a municipality had 250 or more precincts and absent voter counting boards were used, each ballot form that

contained identical offices and names could be considered a separate precinct for these purposes. For the purposes of the entire Law, except as otherwise provided, an absent voter counting board would be 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 would apply 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. Such a 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; the secretary of a school board; or a school district employee designated to conduct a school election. The bill would eliminate the references to a school board secretary and school district employee.

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, village, school

district, or any other jurisdiction empowered to conduct an election under the Law. The bill would delete the references to a school district or other jurisdiction.

Board of Canvassers: Recount

Paper Ballots. Currently, in a precinct using paper ballots, the board of canvassers conducting a recount must do so subject to all of the following conditions.

The ballots in packages or ballot bags that are secured and sealed so that a ballot cannot be removed or inserted unless it corresponds in number with the poll list delivered by the board of election inspectors, must be recounted even though the ballot box or other container is not securely sealed with the seal of record.

If the ballot box or other container is securely sealed with the seal of record, only the ballots that correspond in number with the poll list must be recounted, even though the ballots are not secured and sealed in packages or ballot bags.

If the ballot box or other container is not securely sealed, or if the seal is not the seal of record, and the ballots in packages or ballot bags are not secured and sealed so that a ballot cannot be removed or inserted, the ballots must not be recounted and the original count of the ballots as reported by the board of election inspectors must stand as the correct count.

The bill would delete all of these provisions.

Voting Machines. Currently, in a precinct in which voting machines are used, the board of canvassers conducting a recount must recount all voting machines used in the precinct unless one or more of the circumstances described below exist.

All voting machines may not be recounted if the sum of the numbers appearing on the public counters of all machines used in the precinct exceeds the total number of voters who voted in the precinct as shown by the poll book, plus the number of times the machine was operated by the inspectors of election and custodians, and the excess is not explained to the satisfaction of the board of canvassers by the election inspectors of that precinct.

A voting machine used in a precinct may not be recounted if it is not sealed with the seal of record in a manner that makes it impossible to vote on the machine or change the totals appearing on the individual candidate or ballot question counters.

A voting machine may not be recounted if the number appearing on the protective counter at the time of the recount does not equal the sum of the number appearing on the protective counter at the opening of the polls and the number appearing on the public counter at the time of the recount.

If a precinct in which voting machines are used cannot be recounted as required under these provisions, absent voter ballots tallied in that precinct may not be recounted unless recorded separately.

The bill would delete all of these provisions.

Political Party County Caucus/State Convention

Under the bill, a political party that was not a major political party and that was required to nominate candidates at a county caucus or State convention would have to 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 754 (S-2)

Voter Registration: Picture ID

Beginning on the bill's effective date, a person who applied 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 resided, would have to identify himself or herself by presenting an official State ID card, driver license, or other generally recognized picture ID card. If the person did not present any of those forms of identification, his or her voter registration

application would have to be considered a mail registration application.

(A designated voter registration agency is an executive department, State agency, or other office designated by the Governor to perform voter registration activities in Michigan.)

Third-Party Voter Registration Organization

Under the Law, a person who is not registered to vote at the address where he or she resides may apply to register to vote by submitting an application in person at any of the following locations: the office of the clerk of a county, city, or township in which the applicant resides; a Department of State office; or a designated voter registration agency.

A person also may apply by submitting a completed mail registration application to any of the following:

- The SOS.
- The clerk of the county, city, or township in which he or she resides.
- A designated voter registration agency.

Under the bill, an applicant also could submit a mail registration application to a third-party voter registration organization. ("Third-party voter registration organization" would mean an organization that distributes and collects voter registration applications by two or more individuals for delivery to the clerk of the county, city, or township where the applicant resides. The term would not include the SOS; a county, city, township, or village clerk or assistant clerk; a designated voter registration agency; or a person who registers voters or who collects applications as an employee or agent of any of those entities.)

Before engaging in any voter registration activities, a third-party organization would have to register with the Department of State, on a form prescribed by the Department, and give the Department all of the following information:

- The organization's name and permanent address.
- The name of each officer of the organization.

- The name and address of the organization's registered agent in Michigan.

If any of this information changed, the organization promptly would have to give the Department updated information. The Department would have to maintain a database containing the name and address of each registered third-party voter registration organization.

The SOS would have to develop a voter registration training program for third-party voter registration organizations that taught the proper procedure for taking a voter registration application. The SOS would have to provide training to organizations that was consistent with the program. In addition, a county clerk could provide the training.

Each organization would have to designate one person to participate in the training program. That person would have to provide training to the organization's registration agents before they conducted voter registration activities in Michigan.

Each registration agent employed by or volunteering for a third-party registration organization would have to sign a statement, as prescribed by the Department, certifying that the agent would comply with all State laws and rules concerning the registration of electors. The statement would have to include a provision indicating that the registration agent had received voter registration training, as well as a notice of applicable penalties for false registration of electors under the Law.

A third-party voter registration organization would have to keep the signed statements on file for at least two years. The statements would have to be made available to the Department upon request.

The bill provides that an organization would serve as a fiduciary to the voter registration applicant, ensuring that the person's application was delivered promptly to the clerk of the county, city, or township where he or she lived within 15 days after receiving it.

If a third-party voter registration organization received an application within seven days before the close of registration

for a Federal election, the organization would have to transmit it to the clerk of the county, city, or township where the applicant resided within one business day.

If an organization wanted to withdraw as a registered third-party voter registration organization, it would have to submit to the Department a withdrawal form, as prescribed by the Department.

Senate Bill 803 (S-1)

Elector Application

Under the Law, at each election, before being given a ballot, a registered elector offering to vote must present a photo ID and execute an application showing his or her signature or mark and address of residence in the presence of an election official.

Under the bill, the application would have to be on a form prescribed by the Secretary of State. In addition to the information currently required, the form would have to include the elector's name and date of birth, as well as an affirmative statement by the elector that he or she was a U.S. citizen.

If an elector did not affirmatively state on the application that he or she was a U.S. citizen, an election inspector would have to challenge him or her. If the elector failed to state under oath that he or she was a U.S. citizen, the elector could not be issued a ballot.

Under the Law, if an elector's signature contained in the qualified voter file is available in the polling place, the election official must compare the signature on the application with the digitized signature in the QVF. If the elector's signature is not in the QVF, the official must process the application in the same manner as applications are processed when a voter registration list is used in the polling place. If the name appears on the list, the elector must give his or her date of birth or other information stated on the list. The bill would delete the reference to the elector's date of birth.

Currently, in precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. The bill would delete this provision.

If the signature or an item of information does not correspond, the person's vote must be challenged, and the Law's procedures for the challenging of an elector must be followed. The bill would refer to an item of information other than citizenship.

If the person offering to vote has signed the registration card or application by making a mark, the person must identify himself or herself by giving his or her date of birth, which must be compared with the date of birth stated on the registration card or voter registration list, or must give other identification referred to on the card or list. The bill would delete this provision.

Absent Voter Ballot Application

The bill would require an absent voter ballot application to include the following text: "Are you a citizen of the United States? [] Yes [] No". In addition, the application would have to include the following warning: "If you answer that you are not a citizen of the United States, you will not be issued an absent voter ballot. If you do not answer the citizenship question on this application, an absent voter ballot will be issued to you, but the ballot will not be counted unless you answer the citizenship question in writing to the clerk before the polls close on election day."

If a city, township, or village clerk received an absent voter ballot application from a registered voter who indicated that he or she was not a U.S. citizen, the clerk could not issue an absent voter ballot to that person.

If the clerk received an absent voter ballot application from a registered voter who did not answer the citizenship question, the clerk would have to issue a ballot to the person, but the ballot could not be counted on election day unless the person answered the question in writing before the polls closed. The clerk would have to include with the absent voter ballot a notice that stated prominently that the person did not answer the question and that his or her ballot would not be counted on election day unless he or she answered it in writing before the polls closed. The SOS would have to prepare and provide copies of the required notice to each clerk.

If an election were contested in a court, an absent voter ballot that was not counted because the voter did not answer the citizenship question before the polls closed on election day could be counted if the court determined that the voter was a citizen at the time of the election in question.

MCL 169.233 & 169.235 (S.B. 750)
168.509r et al. (S.B. 751)
168.569a et al. (S.B. 752)
777.11e (S.B. 753)
168.509v et al. (S.B. 754)
168.523 et al. (S.B. 803)

BACKGROUND

Section 727 of the Michigan Election Law requires an election inspector to challenge an applicant for a ballot if the inspector knows or has good reason to suspect that the applicant is not a qualified and registered elector of the precinct, or if a challenge appears in connection with the applicant's name in the registration book. A registered elector of the precinct present in the polling place may challenge the right of anyone attempting to vote if the elector knows or has good reason to suspect that individual is not a registered elector in that precinct. An election inspector or other qualified challenger also may challenge the right of an individual attempting to vote if the individual previously applied for an absent voter ballot and on election day claims that he or she never received the ballot or lost or destroyed it.

Upon a challenge, an election inspector immediately must identify a ballot voted by the challenged individual, if any. In addition, the inspector must make a written report including all of the following information:

- All election disparities or infractions complained of or believed to have occurred.
- The name of the individual making the challenge and the time of the challenge.
- The name, telephone number, and address of the challenged individual.
- Other information the election inspector considers appropriate.

The inspector must retain the report as part of the election record, and inform a challenged elector of his or her rights under Section 729. (Under that section, if a

person attempting to vote is challenged as unqualified, an election inspector or a qualified elector may question the person under oath about his or her qualifications as an elector. If the answers show that the person is a qualified elector in the precinct, he or she is entitled to receive a ballot and vote.)

A challenger may not do any of the following: make a challenge indiscriminately and without cause; handle poll books while observing election procedures or the ballots during counting; or interfere with or unduly delay the work of the election inspectors. An individual who challenges a qualified and registered elector of a voting precinct for the purpose of annoying or delaying voters is guilty of a misdemeanor.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Several improprieties in recent years demonstrate the need for additional measures to safeguard the integrity of Michigan's elections. For example, the 2010 general election was marked by attempts to place fake Tea Party candidates on the ballot. While the Michigan Supreme Court ultimately disqualified all of the illegitimate candidates and several people were convicted of felonies for their involvement, the situation highlights the need to counteract such deception. In another matter, according to a December 2008 Pew Center on the States report, 102.54% of Michigan's eligible population was registered to vote in the 2008 general election. The State's QVF reportedly includes noncitizens, multiple registrations for the same person, people who have moved away or died, and bogus names. While some people who are ineligible to vote register inadvertently, some of the improper registrations are connected with deliberate efforts to commit fraud. Third-party voter registration organizations, in particular, have come under scrutiny for the practice some use of paying workers for each signature they collect. In addition to eroding reliability, inaccurate voter rolls create a number of inefficiencies for the State and local governments in administering elections. The reforms proposed by the bills would ensure

the most effective use of taxpayer dollars and maintenance of public confidence.

Senate Bills 750 (S-1) and 753 would increase penalties for campaign finance violations, which would provide for adequate punishment of the worst offenders, promote transparency, and mitigate public cynicism over the influence of money in the electoral process.

Through the creation of the inactive voter file, Senate Bill 751 (S-1) would help separate the QVF's regular voters from the "dead wood": people who have passed away or are no longer eligible to vote in Michigan due to a change in residency, as well as those who simply choose not to vote on a consistent basis. Precincts are determined based upon the number of registered voters, and local clerks must ensure that they order enough ballots for every election. Given that a substantial number of registered voters will not turn out, this is an inefficient use of resources. Allowing local governments to consider only *active* registered voters in making these determinations would save taxpayer money. The bill's requirement that an inactive voter's ballot be challenged would further safeguard the election process against fraud.

Evidently, there are several examples of people who have moved to other states without canceling their Michigan voter registration, and have voted in Michigan and their new state in the same election. Senate Bill 751 (S-1) would help prevent this by requiring the SOS to confirm a person's residence information when the person's Michigan driver license was surrendered to the SOS, and requiring the person's voter registration to be canceled if he or she did not respond to the confirmation request in a timely fashion.

Senate Bill 751 (S-1) would further counteract voter fraud efforts by requiring an applicant who wished to obtain an absent voter ballot in person to show a picture ID.

Senate Bill 752 (S-1) would save taxpayer dollars, as well as ensure the fairness of elections, through the absent voter counting board revisions. It is believed that being listed first on the ballot confers an advantage on a candidate; thus, ballots are printed differently across a jurisdiction's precincts so names are rotated and each

candidate for each office is listed first an equal number of times. All absent voters in a jurisdiction, however, are considered a separate, virtual precinct, regardless of each individual's address. Only one ballot format is printed for the absentee precinct, precluding the rotation of candidate names. Also, because the number of people who will vote absentee in any given election is unpredictable, local clerks do not know how many absentee ballots to order. They risk ordering too many, or not ordering enough and having to pay a premium to obtain more at the last minute. In either case, taxpayer dollars are wasted. Under the bill, absent voter ballots would be in the same format as and tabulated with ballots cast in person in their respective precincts. This would ensure that no candidate enjoyed an unfair advantage from being listed first, and would enable local clerks to determine accurately the number of ballots needed. Reportedly, Oakland County saved \$160,000 by handling absent voter ballots in this manner. In addition, the bill's requirement that a political party, other than a major political party, notify the SOS before holding a county caucus or State convention would obstruct efforts to deceive voters in situations such as the one involving the fake Tea Party candidates.

Senate Bill 754 (S-2) would help prevent voter registration fraud by requiring applicants for registration to present photo ID, and also by requiring third-party voter registration organizations to be registered with and trained by the SOS or a local clerk. Some of these organizations pay their workers per registration, which provides an incentive to engage in unscrupulous tactics such as registering the same person more than once or registering false names. The submission of thousands of illegitimate registrations clogs the system for local clerks, who must engage in the time-consuming process of weeding them out. The bill would help ensure that the people running all third-party registration organizations knew Michigan's laws and each organization had workers trained to follow them.

Senate Bill 803 (S-1) would further help clean up Michigan's voter rolls by requiring an applicant to vote, whether in person or absentee, to affirm that he or she was a U.S. citizen. A number of noncitizens have registered to vote in Michigan, many of

them by accident. Upon moving to the United States, people are presented with a considerable amount of paperwork, and sometimes register to vote in error. A noncitizen who registers to vote can face harsh penalties, such as roadblocks in obtaining citizenship, or deportation. In addition to enhancing the integrity of the elections process, the bill's citizenship question requirement would prevent people from making a serious mistake.

By cleaning up the State's voter rolls, strengthening campaign finance laws, and hindering unethical electioneers, the bills would promote secure and fair elections, which form the cornerstone of the democratic process.

Response: The problems related to illegitimate voter registrations collected by third-party organizations typically have been attributed to those that pay their workers for each registration. Perhaps Senate Bill 754 (S-2) should distinguish between groups that provide this type of compensation and those that operate on a volunteer basis, to avoid placing unnecessary burdens on organizations that act in good faith. Also, the bill's proposed training program requirements are somewhat vague. The bill should ensure that the training was accessible frequently and widely, including via the internet, and should include specific details of the program to prevent the imposition of arbitrary standards for third-party registration organizations.

Opposing Argument

While safeguarding the integrity of elections is a worthwhile goal, the bills could result in unnecessary costs and disenfranchise people without having a significant impact on voter fraud.

Senate Bill 751 (S-1) would create confusion over the absentee voting process through the creation of the inactive voter file, photo ID requirement, and automatic challenge requirements. As a rule, a person's ballot may be challenged if there is good cause to believe that the person is ineligible to vote. Failure to vote for six years, by itself, should not constitute evidence of ineligibility. Rather than creating an unnecessary barrier to the ballot box, legislation should encourage lapsed voters to renew their participation in civic life.

In addition, Senate Bill 751 (S-1) would create two classes of absentee voters by requiring a person who wished to obtain his or her ballot in person to show a photo ID, and requiring the ballot of a person who did not show a photo ID to be challenged. A person who obtained an absentee ballot by mail, however, would not be subject to these requirements. This discrepancy could violate the Equal Protection Clause. Furthermore, while a voter whose ballot is challenged at the polling site is informed of the challenge and the procedures for overcoming it, whether an absentee voter would receive similar information and an opportunity to respond under the bill is questionable. The bill could result in the rejection of ballots cast legitimately.

Senate Bill 754 (S-2) also contains a problematic photo ID requirement for a person applying to register in person to vote. The Law already requires a person to show photo ID in order to cast a ballot at the polls. For a number of reasons, however, many people do not have the necessary ID, and are unaware that they can still vote if they sign an affidavit, so they stay home from the polls on election day. Instituting a photo ID requirement for in-person voter registration simply would further disenfranchise people who might not be able to afford an ID or who lack transportation to the appropriate agency to obtain one. Photo ID requirements aim to prevent voter impersonation; reportedly, however, this type of voter fraud is rare, and often could not have been thwarted by such requirements. Thus, Senate Bills 751 (S-1) and 754 (S-2) would complicate the voting process without having any meaningful effect on the integrity of Michigan elections. Also, the photo ID requirement would be contrary to the spirit of the National Voter Registration Act (NVRA), which was enacted to increase voter participation by streamlining the registration process and providing for additional registration venues. The NVRA specifies adequate registration eligibility criteria; a photo ID requirement would be superfluous.

In addition, Senate Bill 754 (S-2) would place onerous requirements on third-party voter registration organizations, which generally are nonprofit groups that rely on volunteers. These groups have been critical to making the political process more

accessible to voters and increasing civic participation through registration drives. Such organizations have a tradition of outreach to underserved communities, facilitating the registration of low-income and minority voters, as well as people who have mobility or transportation issues that impede their ability to register at a clerk's office. The bill's requirements would deplete these entities' scarce resources and establish impractical timeframes. Registration volunteers sometimes must be deployed with little warning; an organization might not have enough volunteers who met the bill's training requirements available on short notice. Furthermore, the bill's one-day turnaround time for a registration received within one week before registration closed for a Federal election essentially would eliminate a third-party organization's ability to run quality control checks, further taxing local election administrators during a demanding time.

Also, by providing that a third-party organization would be the fiduciary to a voter registration applicant, Senate Bill 754 (S-2) would subject third-party voter registration organizations to a higher standard than other authorized voter registration entities are subject to. The Law does not designate other voter registration entities as "fiduciaries" or require them to return an application to the SOS within a prescribed time period, or process an application at all. Applications have been mishandled or lost, some of them by public employees involved with the registration process. The same rules should apply to all authorized voter registration entities.

The requirement under Senate Bill 803 (S-1) that a voter affirm his or her citizenship on an application to vote would be duplicative. A person already must declare that he or she is a U.S. citizen in order to register to vote. A similar requirement at the polling site could create confusion for those whose primary language is not English, and could be considered an illegal literacy requirement. In addition, a person who hesitated before marking his or her answer to the citizenship question could be exposed to wrongful discrimination or harassment. Overall, the bill would create uncertainty and longer lines at polling sites, and an applicant for an absentee ballot could be disenfranchised merely for making a mistake.

The costs of educating voters, training election officials, and defending legal challenges under the bills could be significant. These expenses, along with the bills' potential negative impact on voter rights, outweigh what little benefit they would achieve in terms of election integrity. Reforms aimed at enhancing trust in the elections process should include consideration for maximizing voter access and participation.

Response: Photo ID requirements would not present an undue burden to voters. Many routine transactions require a person to show a photo ID; it would not be unreasonable to include a photo ID among the minimum voter qualifications.

With regard to the creation of the inactive voter file, Senate Bill 751 (S-1) prescribes several mechanisms by which a person could be reinstated in the active file and avoid having his or her ballot challenged in the future.

Under Senate Bill 803 (S-1), a person who did not answer the citizenship question on an absentee ballot application still would be issued a ballot and given an opportunity to answer the question and have his or her ballot counted before the polls closed. A person would not be disenfranchised simply for missing the question.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 750 (S-1) and 753

The Department of State would have additional responsibilities under Senate Bill 750 (S-1) related to the potential seizure of candidate committee accounts for failure to file certain reports. If the Secretary of State acted under the proposed authority, the Department would incur costs related to seizure, notification, and inventory requirements, and the subsequent hearing process. The Department would be required to meet timelines for a hearing on the matter and issuing a decision. These responsibilities would increase the costs of the Department by an unknown amount. Funds lawfully seized under the authority provided by the bill would be deposited in the General Fund and available upon appropriation. The amount of the costs and revenue would depend on the number of

violations and the size of any accounts seized. An account that was seized would be required to have a balance of least \$20,000.

There are no data to indicate how many offenders would be convicted of the proposed criminal offenses. An offender convicted of the Class H offense under the bills would receive a sentencing guidelines minimum sentence range of 0-1 month to 5-17 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Senate Bill 751 (S-1)

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

Senate Bill 752 (S-1)

The bill would have no fiscal impact on State or local government.

Senate Bill 754 (S-2)

There would be a minimal cost to the Department of State to maintain a database of registered third-party voter registration organizations. The number of these organizations is unknown; however, these costs should be absorbed by the Department's annual appropriations. Additionally, there would be some staffing costs associated with the requirement for the Secretary of State or a county clerk to develop or conduct a training program for third-party voter registration organizations. That cost estimate is currently unknown and

is being determined by the Department of State.

Senate Bill 803 (S-1)

The bill could result in a minimal cost to the Department of State due to a requirement that the Secretary of State prepare and provide to each city, township, and village clerk copies of the notice stating that if a person did not answer the citizenship question on his or her absent voter ballot application, his or her ballot would not be counted. The cost would be absorbed by current Department appropriations.

Fiscal Analyst: Joe Carrasco
Elizabeth Pratt

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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.