Legislative Analysis

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RESIGNATIONS & REMOVALS FROM LEGISLATURE IN EFFECT FOR DURATION OF TERM

House Bill 5407 (reported from committee w/o amendment)
Sponsor: Rep. Lisa Posthumus Lyons
Committee: Elections
Complete to 3-22-16

BRIEF SUMMARY: House Bill 5407 would amend two sections of Michigan Election Law concerning removal and resignation of state senators and representatives. It would prohibit a member who resigned or was expelled from competing in the special election to fill out the term of office. This bill would take effect 90 days after enactment.

FISCAL IMPACT: The bill does not appear to have any fiscal impact.

THE APPARENT PROBLEM:

The bill sponsor explained that this bill would patch a hole in election law, so that a member who created the vacancy in the legislature, either by resigning or being expelled, could not run in the special election for that vacant seat.

THE CONTENT OF THE BILL:

Now, a state senator or representative who resigns that office must file a written notice with the effective date of the resignation with the presiding officer of the respective house, who will transmit that notice to the governor.

House Bill 5407 would add a clarification that the resignation will remain in effect for the duration of the unexpired legislative term.

Likewise, the bill would provide that the removal of a senator or representative remains in effect for the duration of the unexpired legislative term.

Removal from office is described in Article IV, Section 16 of the Michigan Constitution, and provides that a senator or representative's house is "the sole judge of the qualifications, elections, and returns of its members." A member may be expelled if two-thirds of the body votes for expulsion.

MCL 168.175 and 168.177

BACKGROUND INFORMATION:

This bill is understood to address the situation faced by the House of Representatives, two of its members, and the districts those members represented, in the summer of 2015. Following a House investigation into the activities of two legislators, one resigned (Rep. Todd Courser) and one was expelled (Rep. Cyndi Gamrat). Special elections to fill their seats took place on November 3, 2015, and each of the two former legislators competed in the special elections

held for their seats. In their reelection bids to fill the seats they vacated, Gamrat received 9% of the vote in her district and Courser received 4%.

ARGUMENTS:

For:

Proponents argued that this bill would ensure that in situations such as the House just faced, members whose wrongdoing led to resignation or expulsion would not be able to run in the special election necessitated by their actions. It is absurd that a member who has voluntarily decided to end a term of office prematurely should then seek to be returned to resume the same term. The decision to resign should be permanent and irrevocable during the same term in which it occurs. In the case of the recent resignation, that decision created the vacancy and forced taxpayers to bear the expense of an otherwise unnecessary election; many townships had no election scheduled other than the filling of the seat.

Also, when a member has been expelled by a house of the legislature as not fit to serve, it makes little sense that he or she should seek to return during that term of office. Should the expelled member win, the same legislators would just be faced with the same decision when deciding whether or not to seat that former member; it is difficult to see why they would not continue to find the member unfit to serve. As noted above, under the constitution, a senator or representative's house is "the sole judge of the qualifications, elections, and returns of its members." Should an expelled member win, and the house refuse to accept the result, yet another special election would be needed.

Against:

A proposed amendment which would have distinguished between a member who resigns and one who is expelled was voted down in committee. Supporters of the amendment argued that, while a person who resigns should not be able to run to fill the vacancy that member created, a person who was expelled should not be held to that standard.

They imagined two scenarios where this bill would frustrate the will of the voters. First, the House or Senate may expel the member for trivial, inadequate, or retaliatory reasons. In that situation, the member's constituents should be allowed the opportunity to reassert their will and elect the representative of their choosing, regardless of the member's personality traits or methods. Second, the chamber may expel a member for what two-thirds of that chamber believe to be good reason, but the member's constituents may disagree. In this case, the will of the people should take precedence over will of the chamber. The third possible scenario, where the expelled member runs in a special election and is defeated, would only serve to reinforce the correctness of the expulsion, but at least voters, and not the legislature, would be able to choose or reject that district's representative.

POSITIONS:

The Michigan Secretary of State indicated neutrality toward this bill. (3-2-16)

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