Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 21 (Substitute S-1 as passed by the Senate) *(as enrolled)*
Senate Bill 22 (Substitute S-1 as passed by the Senate) *(as enrolled)*
Senate Bill 23 (Substitute S-2 as passed by the Senate) *(as enrolled)*
Senate Bill 24 (Substitute S-1 as passed by the Senate) *(as enrolled)*
Sponsor: Senator Tony Stamas
Committee: Judiciary

Date Completed: 7-20-09

RATIONALE

Under the Michigan Election Law, the required number of signatures on a nominating petition is based on the population of the election district involved. In 2008, a prospective candidate for judge of the 23rd Circuit Court in northeastern Michigan submitted to the Secretary of State's office in Lansing a nominating petition with 158 signatures. He had been informed by Bureau of Elections officials, and learned from the Bureau's website, that he needed 100 to 200 signatures in order to be placed on the ballot to challenge the two incumbent judges who were up for re-election, and that filing more than 200 signatures would be a misdemeanor. Due to changes in the boundaries of the 23rd Judicial Circuit that were enacted in 2002, however, nonincumbent judicial candidates in that circuit actually need between 200 and 400 signatures to qualify for the ballot. The discrepancy was brought to the attention of Bureau officials after the filing deadline had passed, and the would-be candidate was informed that his name would not be on the ballot. After a court case that reached the Michigan Supreme Court, the man's name ultimately was not placed on the ballot. (Please see **BACKGROUND** for more information on the case.)

Should this type of situation recur, some people believe that when elections officials give a potential candidate erroneous information regarding the number of signatures needed on a nominating petition, the candidate should have legal recourse and be allowed to gather the necessary additional signatures after the filing deadline.

CONTENT

The bills would amend the Michigan Election Law to allow a candidate for certain judicial offices to bring an action for equitable relief if he or she received incorrect or inaccurate information from various election officials concerning the number of nominating petition signatures required under the Law; and allow the candidate to obtain additional signatures if the court granted relief.

Senate Bills 21 (S-1), 22 (S-1), 23 (S-2), and 24 (S-1) would apply to candidates for circuit court judge, district court judge, probate judge, and municipal court judge, respectively. Under the bills, a candidate could bring an action in a court of competent jurisdiction for equitable relief if the candidate received incorrect or inaccurate information from the Secretary of State or the Bureau of Elections (for a circuit court, district court, or probate court district race), the county clerk (for a probate court race), or the city clerk (for a municipal court race), concerning the number of nominating petition signatures required under Section 544f of the Law and that official or the Elections Bureau, as applicable, published or distributed the incorrect or inaccurate information. A court could grant relief if all of the following applied:

-- The candidate brought the action within six days after he or she was notified by the appropriate election official or the Bureau that his or her nominating petition contained insufficient signatures.
-- The candidate filed an affidavit certifying that he or she contacted the appropriate election official or the Bureau and

received incorrect or inaccurate information concerning the number of required nominating petition signatures.
-- The election official or the Bureau published or distributed the incorrect or inaccurate written information before the filing deadline.
-- The election official or the Bureau did not inform the candidate at least 14 days before the filing deadline that incorrect or inaccurate written information had been published or distributed.

Senate Bill 23 (S-2) also would require a candidate for probate judge in a probate court district to file nominating petitions (for a nonincumbent) or an affidavit of candidacy (for an incumbent) with the Secretary of State in order to have his or her name printed on the official nonpartisan primary ballot. Currently, the Law requires candidates for probate judge to file their nominating petitions or affidavit of candidacy with the county clerk (but specifies no requirement for candidates in a probate court district, which contains multiple counties).

If a court granted equitable relief to a candidate under any of the bills, the candidate would have to be given the opportunity to obtain additional nominating petition signatures to meet the requirements of Section 544f. The candidate would have to file the additional nominating petition signatures with the Secretary of State, the county clerk, or the city clerk, as applicable, by 4 p.m. on the fifth business day after the date of the court order granting equitable relief was filed.

Nominating petition signatures filed pursuant to the bills would be subject to challenge as provided in the Election Law.

Section 544f specifies the number of signatures of qualified and registered electors necessary for nominating petitions based upon the population of the district involved, according to the most recent Federal census. The numbers of signatures required for a petition for a nonpartisan election are shown in Table 1.

Table 1

Population	Minimum No. of Signatures	Maximum No. of Signatures
Up to 9,999	6	20
10,000-24,999	40	100
25,000-49,999	100	200
50,000-74,999	200	400
75,000-99,999	400	800
100,000-199,999	600	1,000
200,000-499,999	1,000	2,000
500,000-999,999	2,000	4,000
1,000,000-1,999,999	4,000	8,000
2,000,000-4,999,999	6,200	12,000
Over 5,000,000 (statewide)	30,000	60,000

MCL 168.413 (S.B. 21)
168.467b (S.B. 22)
168.433 (S.B. 23)
168.426d (S.B. 24)

BACKGROUND

Public Act 92 of 2002

Among other things, Public Act 92 of 2002 expanded the 23rd Judicial Circuit, which had consisted of two counties (Iosco and Oscoda), by adding two more counties (Alcona and Arenac), effective April 1, 2003. (Alcona was transferred from the 26th circuit and Arenac was transferred from the 34th circuit.) Before the expansion, the 23rd circuit had one judge; since the expansion, it has two judges, as the 34th circuit judge residing in Arenac County became a judge of the 23rd circuit.

Generally, when a new circuit judgeship is created, the boards of commissioners in the affected counties must approve the judgeship by resolution and provide a copy of that resolution to the State Court Administrator. The State Court Administrator then must notify the Bureau of Elections in the Department of State. This action evidently is what typically triggers the Bureau to change its published petition signature requirements. Public Act 92, however, provided that its reformation of judicial circuits did not require the approval of the county boards. Consequently, the State Court Administrator never notified the Elections Bureau of the changes to the 23rd circuit and the Bureau did not change the information published and posted on its website about the number of petition signatures needed for a nonincumbent

judicial candidate to appear on the ballot in that circuit.

The combined 2000 census population of Iosco and Oscoda Counties was 36,757, which, under the Michigan Election Law, would require a nonincumbent judicial candidate to submit a nominating petition with 100 to 200 signatures. Adding Alcona and Arenac Counties to the judicial circuit brought the combined population of the election district up to 65,745, which requires a nominating petition with 200 to 400 signatures.

Martin v *Secretary of State and Myles and Bergeron*

Relying on the oral and published instructions of Bureau of Elections officials, Christopher Martin submitted a petition with 158 signatures in order to be a 2008 candidate for judge of the 23rd Circuit Court. After the filing deadline, one of the sitting judges on that court challenged Martin's candidacy on the basis that he had submitted an insufficient number of signatures. Martin then attempted to file additional signatures, but the Bureau refused to accept them because the deadline had passed. Bureau officials subsequently informed Martin that he was ineligible to be listed as a candidate.

Martin filed suit in the 30th Circuit Court in Ingham County seeking to enjoin elections officials from keeping him off the ballot. The two sitting judges of the 23rd Circuit Court filed a motion to intervene. The trial court denied the motion and ordered the Secretary of State to extend the deadline for filing nominating petitions and to place Martin's name on the ballot if he filed a sufficient number of signatures. Martin did so, and his name was back on the ballot.

The 23rd circuit judges appealed, arguing that they had suffered an injury because they would have to run in a contested election against an opponent who had not met the statutory requirements to qualify for the ballot. In ruling that the judges did not have standing in the case, the Court of Appeals held that "…a candidate for judicial office has not suffered an injury and therefore is not an aggrieved party and does not have standing solely because the candidate is required to run in a contested judicial election" (280 Mich App. 417, 8-21-08). According to the dissenting opinion, however, the 23rd circuit judges were wrongfully denied their opportunity to intervene both as private citizens and as candidates for public office. The dissenting judge reasoned that Martin was not due an equitable remedy because Section 544f clearly indicates the signature requirements for a nominating petition and the candidate had a duty to follow them.

The 23rd circuit judges then filed a motion for immediate consideration by the Supreme Court, which reversed the judgment of the Court of Appeals and the 30th Circuit Court for the reasons stated in the Court of Appeals dissent. The Supreme Court ruled: "A candidate for elective office suffers a cognizable injury in fact if, due to the improper interpretation and enforcement of election law, he or she is prevented from being placed on the ballot or must compete against someone improperly placed on the ballot." The Court reinstated the Secretary of State's decision to remove Martin from the ballot (482 Mich 956, 9-4-08).

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

The Michigan Election Law specifies the number of nominating petition signatures required for certain candidates to be placed on the ballot, but does not provide for relief when elections officials give candidates erroneous information. The 2008 case in which a prospective judicial candidate failed to file the proper number of signatures because he was given inaccurate instructions by the Bureau of Elections illustrates the problem. Since the error was not uncovered until after the filing deadline, the candidate had no opportunity to submit the additional signatures and did not appear on the ballot. By allowing a candidate for circuit, probate, district, or municipal judge to bring an action for equitable relief if he or she received incorrect information from various elections officials, the bills would help to prevent another situation like the one in the 23rd circuit in 2008, and give an aggrieved candidate an opportunity to collect more signatures after the filing deadline if he or she met the proposed criteria.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Joe Carrasco