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Senate Bills 823 and 825 (as introduced 11-10-11)  
Sponsor: Senator Dave Robertson  
Committee: Local Government and Elections

Date Completed: 1-25-12

## **CONTENT**

### **Senate Bill 823 would amend the Michigan Election Law to do the following:**

- Require the sponsor of a petition to amend the Constitution or initiate legislation to file it with the Secretary of State (SOS), and prohibit the sponsor from circulating the petition for signatures until it was filed as required.
- Require the SOS to make the filed petitions, as well as a sample petition, available to the public on the Department of State's website.
- Prohibit a city, village, or township clerk from forwarding an absent voter ballot application to a person unless he or she requested it.
- Authorize a city, village, or township clerk to maintain a permanent absent voter list of qualified and registered electors who were at least 60 years old.
- Require an additional recount in a precinct in which a recount did not match the original vote count, and provide that the additional recount would control.
- Make it a misdemeanor for a person paid by a local unit of government or school district for performing election-related duties, to accept valuable consideration for partisan activities.
- Make it a misdemeanor to solicit or receive compensation for endorsing or opposing a candidate.
- Make it a felony to compensate an individual based on the number of individuals he or she registered to vote.
- Make it a felony to intentionally misrepresent oneself as an election official in a polling place.
- Revise provisions related to the withdrawal of a candidate for a county office.
- Refer to a county executive committee, rather than a city or township committee, in provisions regarding the death of a political party's candidate for local office.
- Revise the filing deadline for a candidate for delegate to a county or district convention.
- Refer to a county executive committee, rather than a county committee, in provisions regarding the nomination of a candidate to fill a vacancy left by a recall.

The bill also would repeal a section providing for township party committees.

**Senate Bill 825 would amend the Code of Criminal Procedure to add to the sentencing guidelines the felonies proposed by Senate Bill 823. Providing compensation to a person for registering individuals to vote and intentionally misrepresenting oneself as an election official in a polling place would be Class E felonies against the public trust punishable by a statutory maximum of five years' imprisonment.**

Senate Bill 825 is tie-barred to Senate Bill 823, which is described below in further detail.

#### Petition: Constitutional Amendment & Initiated Law

Under the bill, the sponsor of a petition proposing an amendment to the Constitution or to initiate legislation would have to file the petition with the SOS. The sponsor could not circulate the petition for signatures until it was filed.

The SOS would have to make the filed petitions available to the public on an internet website maintained by the Department of State. Additionally, the SOS would have to prepare a sample petition and make it available to the public on the website.

#### Absent Voter Ballot Application & Permanent List

The Law allows a person who qualifies to vote as an absent voter to apply for an absent voter ballot either in person or by mail. An applicant must sign the application, and may not be issued an absent voter ballot if he or she does not sign.

Under the bill, except as otherwise provided, the clerk of a city, township, or village could not forward an absent voter ballot application to an elector unless he or she requested an application form for the next election. Subject to the limitations and requirements prescribed in the Law, the clerk could maintain a permanent absent voter list. Only a qualified and registered elector who was at least 60 years old could request to be placed on the list. The clerk could send to each person on the list an absent voter ballot application for each election only if, at least 60 days before each election, the clerk reviewed the list and confirmed that each person on it was a qualified and registered elector who was at least 60 years old and, before each election, sent written verification of the review to the SOS on a form prescribed by the SOS. If the clerk failed to comply with the bill's requirements, he or she would be precluded from maintaining and using a permanent absent voter list.

The Law prohibits anyone other than the applicant from being in possession of a signed absent voter ballot application, subject to certain exceptions, which include a registered elector requested by the applicant. Under the bill, a requested registered elector could be in possession of the application only to return it.

#### Recounts

Under the bill, if the recount of any precinct did not match the original return of the votes for that precinct, an addition recount would have to occur and the results of the additional recount would control.

#### Candidate Withdrawal/Death

Under the Law, 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 would refer to a "county" office.

A similar provision applicable to a political party candidate for township office or the office of county commissioner bars withdrawal unless the person has moved from the county or district from which or her she was nominated or has become physically unfit. The bill would eliminate the reference to a township office.

If a person who has been nominated as the candidate of a political party for township office or the officer of county commissioner dies before the election date, the county political committee, or in the case of a township office, the township political committee, of the party

whose candidate has died must select, by majority vote, a replacement for that person. The bill would refer to as candidate for a county office, rather than township office, and would eliminate other references to a township. In addition, the bill would refer to the county executive committee rather than the county political committee.

If a candidate of a political party for any city or township office, after having qualified as a candidate, dies 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 may select a candidate to fill the vacancy. The bill would eliminate the references to the city and township committees and refer instead to the county executive committee of the candidate's political party residing in the city or village, as applicable.

The bill would repeal Section 343a, which requires a township party committee for each political party in every organized township in the State. This section provides that the party committee consists of the members of the county committee from the township.

#### County/District Convention Filing Deadline

Under the Law, a person holding public office in Michigan or a municipal subdivision may become a candidate for delegate to the county or district conventions. A candidate must file an affidavit of identity with the clerk of the county, or the city or township, in which he or she resides. A clerk must receive the affidavits up to 4 p.m. on the 12th Tuesday before the time designated for holding a primary election in the county. The bill would change the deadline to 4 p.m. on the 11th Tuesday before the primary election.

#### Penalties

Compensation: Election-Related Duties. Under the bill, an individual who received compensation from a county, city, township, village, or school district for performing election-related duties could not accept, either directly or indirectly, valuable consideration for performing work to support or oppose the nomination or election of a candidate or the passage or defeat of a ballot proposal.

The bill also would prohibit a person from offering, either directly or indirectly, valuable consideration to an individual for performing work to support or oppose the nomination or election of a candidate or the passage or defeat of a ballot proposal if that individual received compensation from a local unit of government or school district for performing election-related duties.

In addition, a person could not solicit or receive compensation or valuable consideration for endorsing or opposing a candidate for a public office, political committee, or political party.

A person who violated any of these prohibitions would be guilty of a misdemeanor. (For a misdemeanor for which no penalty is specified, the Law prescribes imprisonment for up to 90 days and/or a maximum fine of \$500.)

Under the Law, "valuable consideration" includes money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment. The bill provides that the term would not include a contribution to a candidate committee of a candidate or the reimbursement of expenses incurred by a person.

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

- The total number of individuals a person registered to vote.

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

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

Misrepresentation as Election Official. Under the bill, a person could not intentionally misrepresent by word or act in a polling place on election day that he or she was an election official if he or she were not an election official. A person who violated this prohibition would be guilty of a felony. This provision would not apply to a designated challenger. (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.)

### Recall

The Law provides procedures for the nomination of a candidate to fill a vacancy left as the result of a recall election. If the vacancy is in a county or district office within an electoral district of one county, the county committee or each political party must nominate a candidate for that office. If the vacancy is in a district office within an electoral district less than one county, the members of the county committee of each political party residing in the electoral district must nominate a candidate. If the vacancy is in a district office having an electoral district in more than one county, the members of the several county committees of each political party residing in those parts of the counties that are in the district must nominate a candidate. If the vacancy is in a ward or township office, the committee of each political party of the ward or township must nominate a candidate. The bill would refer to the county *executive* committee in these provisions. With regard to a ward or township office, the members of the county executive committee residing in the ward or township would nominate a candidate.

MCL 168.198 et al. (S.B. 823)  
777.11d (S.B. 825)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

To the extent Senate Bill 823 would result in any costs to the Department of State, those costs would be absorbed within the Department's current annual appropriations.

By creating two new felonies and additional misdemeanors in the election law statute, and adding two new Class E felonies to the sentencing guidelines, Senate Bills 823 and 825 could have an impact on State and local incarceration costs. There are no data to indicate how many individuals would violate the revised statute, but the number would likely be small and therefore the fiscal impact would likely be negligible.

Fiscal Analyst: Joe Carrasco  
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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.