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BILL ANALYSIS

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Senate Bills 1238 through 1242 (as introduced 11-29-18)
Sponsor: Senator Mike Kowall
Committee: Elections and Government Reform

Date Completed: 12-5-18

CONTENT

Senate Bill 1238 would amend the Michigan Election Law to do the following:

-- **Require the Secretary of State (SOS) to automatically register to vote an individual who submitted an application, renewal application, or change of address application for an operator's or chauffeur's license, an official State personal identification (ID) card, an enhanced driver license, or an enhanced State personal ID card.**
-- **Prohibit the SOS from automatically registering to vote an individual who indicated on his application, renewal application, or change of address application that he or she declined to use the application as a voter registration application.**
-- **Allow an individual to register to vote in person, by mail, or online until the fifteenth day before an election,**
-- **Allow an individual to register in person from the fourteenth day before an election until election day, and require him or her to provide proof of residency.**
-- **Require the SOS to notify an individual who registered to vote by mail, online, or automatically during the 14 days before an election that he or she would not be allowed to vote unless he or she applied in person.**
-- **Require each township or city clerk to post or publish at least 30 days before election day that he or she would be available at the clerk's office or other designated place for the purpose of receiving voter registration applications.**
-- **Require a clerk or assistant clerk be present at the clerk's office at all times a polling place was open on election day to receive and process voter registration applications.**
-- **Delete a provision allowing a qualified elector to obtain an absent voter ballot if he or she met certain requirements, and allow a qualified absent voter to obtain an absent voter ballot for any reason.**
-- **Allow a qualified absent voter to apply for an absent voter ballot in person beginning 75 days before an election, primary, or special election until 8 p.m. on the day of the election.**
-- **Require each city or township clerk to be available at his or her office during certain specified times to issue and receive absent voter ballots.**
-- **Require absent voter ballots received from a post office or from voters who voted absentee in person be delivered to the board of election inspectors before the close of polls.**
-- **Require a city or township clerk to transmit to the county clerk, within seven days after an election, a voter registration application containing certain information.**

-- **Require a county clerk to transmit to the SOS, within 14 days after an election, a county voter registration report containing certain information.**
-- **Delete a provision requiring the SOS to develop an election audit program and, instead, require the SOS to conduct certain election audits.**

The bill also would repeal Section 524 and 758 of the Law. Section 524 requires each township, village, and city clerk to report to the county clerk, within 15 days after the close of voter registration prior to all primary and general elections, the total numbers of people eligible to vote in the respective primary or general election. Section 758 defines "absent voter".

Senate Bill 1239 would amend the Michigan Vehicle Code to require a driver license application, renewal application, or change of address application to contain a space for an applicant to indicate whether he or she was a United States citizen, and a space to allow the applicant to indicate that he or she declined to use the application as a voter registration application.

Senate Bill 1240 would amend Public Act 222 of 1927, which governs official personal ID cards, to do the following:

-- **Require an applicant for an official State personal ID card to indicate on an application, renewal application, or change of address application whether he or she was a United States citizen.**
-- **Require an application to allow the applicant to indicate that he or she declined to use the application as a voter registration application.**

Senate Bill 1241 would amend the Enhanced Driver License and Enhanced Official State Personal Identification Card Act to require that an application for an enhanced driver license or enhanced State personal ID card would have to allow the applicant to indicate that he or she declined to use the application as a voter registration application.

Senate Bill 1242 would amend the Michigan Campaign Finance Act to change a citation to the Michigan Compiled Law section that Senate Bill 1238 would amend.

Senate Bills 1239 through 1242 are to tie-barred Senate Bill 1238.

The bill, except Senate Bill 1242, are described in greater detail below.

Senate Bill 1238

Automatic Voter Registration Application

The bill would require the Secretary of State to automatically register to vote each individual who met the qualifications of an elector and who submitted an application or a change of address application for an operator's or chauffeur's license issued under the Michigan Vehicle Code, an official State personal ID card, or an enhanced driver license or enhanced official State personal ID card.

(Under the Law, to be eligible to register as an elector, an individual must be at least 18 years old, a Michigan resident for at least 30 days, and a resident of a township, city, or village on or before the 30th day before the next regular or special election or primary election. Public Act 125 of 2018, which takes effect on December 31, 2018, provides that to be eligible, an

individual must be at least 17 and one-half years old, a resident of the State, and a resident of the township or city in which he or she was registering.)

The SOS could automatically register to vote only an individual who indicated on his or her application, renewal application, or change of address application that he or she was a United States citizen. The SOS could not automatically register to vote an individual who indicated on his or her application, renewal application, or change of address application that he or she declined to use the application as a voter registration application.

The SOS would have to add any information required under Section 509q (which requires a qualified voter file to contain certain information for each qualified voter) to the qualified voter file for each elector automatically registered to vote, and would have to forward the name of each elector automatically registered to the clerk of the city, township, or village in which each elector registered resided.

Voter Registration Application

A voter registration application must contain, among other things, a statement that the applicant, if qualified, may vote at an election occurring not less than 30 days after the date of completing the application.

Instead of not less than 30 days after the date of completing an application, the bill would refer to *on or* after the date of the application.

Voter Registration Deadline

The Law allows an individual who is not registered to vote, but possesses the qualifications of an elector to apply for registration to the clerk of the county, township, or city in which he or she resides on a day other than Saturday, Sunday, a legal holiday, or the day of a regular, primary, school, or special election. Registrations accepted between the 30th day before and election and the day of the election, unless the 30th day falls on a Saturday, Sunday, or legal holiday, in which event registration must be accepted during the following day, are not valid for that election, but are valid for subsequent regular, primary, school, or special elections that are held so that at least 30 days intervene between the date the individual registered and the date of the election.

The bill, instead, would allow an individual who was not registered to vote, but possessed the qualifications of an elector to apply for registration in person, during a county, township, or city clerk's regular business hours, or by mail or online until the 15th day before an election.

An individual who was not registered to vote but possessed the qualifications of an elector could apply for registration in person from the 14th day before an election and continuing through the day of the election. An individual who applied to register to vote in person between the 14th day before the election and election day would have to provide to the city or township clerk proof of residency in that city or township. "Proof of residency" would include either of the following:

-- An operator's or chauffeur's license or an enhanced driver license.
-- An official State personal ID card or an enhanced official State personal ID card.

If an applicant did not have proof of residency, he or she could provide as his or her proof of residency any other form of identification for election purposes as that term would be defined, and one of the following documents that contained the applicant's name and current residence address:

--   A current utility bill.
--   A current bank statement.
--   A current paycheck, government check, or other government document.

(Under the bill, "identification for election purposes" means, if issued to the individual presenting the card or document and if presented for voting purposes the name on the card or document sufficiently matches the individual's name in his or her voter registration record so as to accurately identify the individual as the registered elector, or if issued to the individual presenting the card or document if presented for voter registration purposes, any of the following:

--   An operator's or chauffeur's license or an enhanced driver license.
--   An official State personal identification card or an enhanced official State personal identification card.
--   A current operator's or chauffeur's license issued by another state.
--   A current state personal identification card issued by another state.
--   A current state government issued photo identification card.
--   A current United States passport or Federal government issued photo identification card.
--   A current military photo identification card.
--   A current tribal photo identification card.
--   A current student photo identification card issued by a Michigan high school; Michigan institution of higher education; a junior college or community college; or another accredited degree- or certificate-granting college or university, junior college, or community college located in the State.)

Immediately after approving a voter registration application, a city or township clerk would have to provide to the individual registering to vote a voter registration receipt that was in a form approved by the SOS. If an individual registered to vote in person 14 or fewer days before an election, or registered to vote on election day, and he or she used for proof of residency any other form of identification other than an operator's or chauffeur's license, an enhanced driver license, a State personal ID card, or an enhanced State personal ID card, the elector's ballot would have to be prepared as a challenged ballot as provided in Section 727, and would have to be counted as any other ballot would be counted unless determined otherwise by a court of law under Section 747 or 748 (those sections generally pertain to contested elections for challenged voters' ballots and contested elections for unchallenging whether an elector is unqualified to vote in an election, respectively), or any other applicable law.

(Section 727 requires an election inspector to challenge an applicant applying 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 may challenge the right of an individual attempting to vote who has previously applied for an absent voter ballot and who on election day is claiming to have never received the absent voter ballot or to have lost or destroyed the absent voter ballot.)

The Law provides that voter registrations taken after the time of closing registrations before an election need not be processed until the day immediately following that election. A registration must not be placed in a precinct registration file until the date immediately following the election. If an individual registers at a time that registrations are closed for an election, he or she must give a notice, signed by the clerk, on a form developed by the SOS,

informing him or her that he or she was not eligible to vote in the election and indicating the first date on which he or she was eligible to vote. The bill would delete this provisions.

Instead, under the bill, if an individual registered to vote during the 14 days before the day of an election by mail, online, or by automatic voter registration, he or she would have to be given a notice on a form developed by the SOS informing the individual that he or she would not be eligible to vote in the next election unless he or she applied in person at his or her city or township clerk's office.

Clerk Hours, Availability

The Law authorizes the governing board of a township or city to provide by resolution that in that township or city the clerk must be at his or her office, or in some other convenient place designated by the clerk, during the hours designated by the governing body on the 30th day before an election or primary election in the township or city unless the 30th day falls on a Saturday, Sunday, or legal holiday, in which event registration must be accepted during the same hours on the following day. The bill would delete this provision.

Under the Law, in a township or city in which the clerk does not maintain regular daily office hours, the township board or the legislative body of the city may require that the clerk must be at his or her office or other designated place for the purpose of receiving applications for voter registration on the days that the board or legislative body designates, but not more than five days before the last day for registration. The bill would delete the language pertaining to not more than five days before the last day for registration.

The Law also requires the each township or city clerk to give public notice of the days that the clerk will be at his or her office or other designated place for the purpose of receiving applications before an election or primary election by publishing the notice in a newspaper published or of general circulation in the township or city and, if considered advisable by the township or city clerk, by posting written or printed notices in at least two conspicuous places in each election precinct. The publication or posting must be made at least seven days before the last day for receiving registration. The bill, instead, would require the publication or posting to be made at *least 30 days before election day*.

Same-Day Voter Registration Applications

The bill would require a city or township clerk to be present or have an assistant clerk be present at the clerk's office at all times a polling place was open on election day to receive and process voter registration applications.

Immediately after approving a same-day voter registration application, the clerk or assistant clerk would have to prepare a registration card or an insert to a registration list in a form prescribed by the SOS. In addition, the clerk or assistant clerk would have to provide to the individual registering to vote a voter registration receipt that was in a form approved by the SOS.

The clerk would have to prepare and send a voter identification card in the manner prescribed for corrected voter identification cards in Section 499 as soon as practical after the election. (That section requires a township, city, or village clerk to prepare and send a corrected voter identification card to an elector affected by a change in United States Representative, State Senator, State Representative, or county commissioner district or precinct. The clerk must forward by first-class mail the voter identification card to the elector at the elector's registration address.)

Voter Registration Application Processing

The Law requires that a person processing a voter registration application submitted in person at a SOS office, a designated voter registration agency, or the office of a county clerk do all of the following:

-- Validate the application in a manner prescribed by the SOS.
-- Issue a receipt to the applicant verifying the acceptance of the application.

If an application is made within seven days before the close of registration for a Federal election, the SOS office, designated voter registration agency, or the county clerk must transmit the application not later than one business day to the clerk of the county, city, or township where the applicant resides.

An application for registration is considered to be received on or before the close of registration if one of the following requirements is met:

-- An application is received at a SOS office, a designated voter registration agency, or the office of a county, city, or township clerk on or before the close of registration.
-- An application is received through the mail that is postmarked on or before the close of registration.
-- An application is received through the mail on or before the seventh day immediately following the close of registration, if the postmark is missing or is unclear and the application, on its face, is dated by the applicant on or before the close of registration.

The clerk must consider an application described above as received before the close of registration.

Instead of on or before the close of registration, the bill would refer to on or before the close of *mail-in* registration. Also, the bill would delete the reference to a Federal election.

Voter Identification

The Law specifies that if an individual who has applied to register to vote on or before the close of registration appears at a polling place on election day and completes an application under Section 523 is not listed on the voter registration list, an election inspector must issue a ballot to the individual. (Section 523 requires that at each election, before giving a ballot, each registered elector to vote must identify himself or herself by presenting identification for election purpose, and by executing an application, on a form prescribed by the SOS, in the present of an election official that includes the elector's name, address, date of birth, and an affirmative statement that he or she is a United States citizen.)

For an individual who presents a receipt issued by a SOS office, a designated voter registration agency, or the elector's county, city, or township clerk's office verifying the acceptance of a voter registration application, before the close of registration and completes a new voter registration application, the election inspector must allow the individual to vote a ballot in the same manner as an elector whose name is listed on the voter registration list.

Except for an individual described above, an election inspector must require an individual who is not listed on the voter registration list to execute a sworn statement affirming that the individual submitted a voter registration application before the close of registration and is eligible to vote in the election.

Instead of before the close of registration, the bill would refer to *on or before election day*. The bill also would delete the language pertaining to before the close of registration and complete a new voter registration application.

Absent Voter Ballot Application

Under the Law, at any time during the 75 days before an election, primary, or special election, but not later than 2 p.m. of the Saturday immediately before the election, primary, or special primary, an elector who qualifies to vote as an absent voter may apply for an absent voter ballot. An elector must apply for an absent voter ballot in person or by mail with the clerk of the township, city, or village in which he or she is registered.

The bill would allow, any elector to apply for an absent voter ballot at any time during the 75 days before an election, primary, or special primary, but not later than *8 p.m. on the day of the election, primary, or special primary*. If the application were by mail, it would have to be postmarked not later than 10 days before election day. After that deadline, the elector would have to apply for an absent voter ballot in person.

An individual could submit a voter registration application and an absent voter ballot application at the same time if applying in person with the clerk of the city or township in which he or she resided. Immediately after his or her voter registration application and absent voter ballot application were approved by the clerk, the individual could, subject to the identification requirement in Section 761(6), vote an absent voter ballot at the clerk's office. (Section 761(6) provides that if an elector obtains his or her absent voter ballot in person from the clerk of the city, township, or village in which he or she is registered, the clerk must not provide an absent voter ballot to the elector until he or she identifies himself or herself to the clerk by presenting identification for election purposes.)

The Law allows a registered voter to obtain an absent voter ballot if he or she meets any of the following:

-- Is 60 years old or older.
-- Unable to vote without assistance at the polls.
-- Expecting to be out of town on election day.
-- In jail awaiting arraignment or trial.
-- Unable to attend the polls due to religious reasons.
-- Appointed to work as an election inspector in a precinct outside of his or her precinct of residence.

The bill would delete this provision.

The Law allows a person qualified to vote as an absent voter to apply in person at the city or township 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. Under the bill, a qualified absent voter could apply to vote as an absent voter in person before *8 p.m. on election day*.

Receiving Absent Voter Ballots

Under the bill, beginning January 1, 2019, the clerk of each city or township would have to be available in his or her office to issue and receive absent voter ballots for any combination of at least eight hours on the Saturday or Sunday immediately before the election.

At least 30 days before the election, the clerk of each city or township would have to post the hours his or her office would be open on the Saturday or Sunday, or both, immediately before the election to issue and receive absent voter ballots.

Subject to the requirements for polling places in Section 662 (which prescribes certain requirements for the designation of the place or places of holding an election in a local governmental unit), after the approval by resolution of the governing body of a city or township, the clerk of that city or township could specify additional locations and hours that he or she would be available to issue and receive absent voter ballots. The additional locations would have to allow challengers as described in Section 730. (Section 730 allows a political party, incorporated organization, or organized committee of interested citizens to designate not more than two challengers to serve in a precinct at any one time, and to designate not more than one challenger to serve at each counting board.)

At least 30 days before the date of an election, the clerk of each city or township would have to post, if applicable, the additional locations and hours that he or she would be available to issue and receive absent voter ballots.

Delivery of Absent Voter Ballots

The Law requires a city or township clerk, or his or her authorized designee, to call for and receive absent voter ballots from the post office at which the city or township clerk regularly receives mail address to the city or township clerk on election day in sufficient time to deliver any envelopes containing absent voter ballots to the board of election inspectors before the close of the polls.

Except as otherwise provided, the clerk may not deliver an absent voter ballot to a voter after the opening of the polls on election day.

The bill would delete the language pertaining to in sufficient time to deliver any envelopes containing absent voter ballots, and the provision prohibiting a clerk from delivering an absent voter ballot to a voter after the opening of the polls on election day. Instead, the bill would require that any envelopes containing absent voter ballots that were received from a post office or from voters who voted by absentee ballot in person in the clerk's office on election day be delivered to the board of election inspectors before the close of the polls.

Preservation & Destruction of Voter Applications

The Law requires that all applications executed under Section 523 and all absent voters' application must be carefully preserved and may be destroyed after the expiration of six years following the primary or election at which those applications were executed.

Under the bill, all voter registration applications executed by applicants using proof of residency other than an operator's or chauffeur's license, an official State personal identification card, an enhanced operator's of chauffeur's license, or an enhanced official State personal identification card also would have to be carefully preserved, and could be destroyed after the expiration of six years following the primary or election at which those applications were executed.

Voter Registration Application Report

Under the bill, within seven days after an election, a city or township clerk would have to transmit to the county clerk a voter registration application report that included the number of voter registration applications executed by applicants using proof of residency other than

an operator's or chauffeur's license, an official State personal identification card, an enhanced operator's of chauffeur's license, or an enhanced official State personal identification card. The report would have to be transmitted to the county clerk in a form prescribed by the SOS.

Within 14 days after an election, a county clerk would have to transmit to a county voter registration application report to the SOS. The report would have to include the number of voter registration applications executed by applicants using proof of residency other than an operator's or chauffeur's license, an official State personal identification card, an enhanced operator's of chauffeur's license, or an enhanced official State personal identification card. The report would have to be transmitted in a form prescribed by the SOS. After the SOS received the report from the county clerk, the report would have to be immediately available for public inspection.

Election Audit

The Law requires the SOS to develop an election audit program that details the documents to be inspected and the procedures to be used during an election audit. The Secretary of State must train and certify county clerks and their staffs for the purpose of conducting election audits of precincts randomly selected by the SOS in their counties.

The bill delete the provision requiring the SOS to develop an election audit program. Instead, the SOS would have to conduct election audits, including statewide election audits, that reviewed documents, ballots, and procedures used during an election as prescribed in Article 2, Section 4 of the Michigan Constitution. (Article 2, Section 4 requires the Legislature to enact laws to regulate the time, place, and manner of all nominations and elections, except as otherwise provided in the Michigan Constitution, United States Constitution, or other Federal law. The legislature also must enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting.)

An election audit would have to include an audit of the results of at least one race in each precinct selected for an audit. A statewide election audit would have to include an audit of the results of at least one statewide race or statewide ballot question. An audit described above would not be a recount and would not change any certified election results.

Election Inspectors

Under the Law, election inspectors at an election, primary election, or special election in Michigan may not receive the vote of an individual whose name is not on the voter registration list generated from the qualified voter file for the precinct in which he or she offers to vote unless he or she meets the requirements of Section 523a (which specifies the procedures for allowing an individual who has applied to register to vote on or before the close of registration, but is not listed on the voter registration list to be issued a ballot).

Under the bill, election inspectors also could receive the ballot of an individual whose name was not on the voter registration list if he or she registered to vote in person at the city or township clerk's office in the city or township in which he or she resided during the 14 days before the day of an election or on the day of an election, and the individual presented a voter registration receipt to the election inspectors.

Senate Bill 1239

The Michigan Vehicle Code requires an application for an operator's or chauffeur's license to operate a noncommercial motor vehicle to be made in a manner prescribed by the Secretary of State, and contain certain information specified in the Code.

Under the bill, an application also would have to contain the following information:

-- For automatic voter registration purposes under Section 493a of the Michigan Election Law (which Senate Bill 1238 would amend), a space for the applicant to indicate on the application, renewal application, or change or address application whether he or she was a United States citizen.
-- A space to allow the applicant to indicate that the applicant declined to use the application as a voter registration.

Senate Bill 1240

Public Act 222 allows a Michigan resident to apply to the Department of State for an official State personal ID Card. An application for a State ID card must be made in a manner prescribed by the Secretary of State, and must contain certain information specified in the Code.

Under the bill, for automatic voter registration purposes under Section 493a of the Michigan Election Law (which Senate Bill 1238 would amend), an applicant for a personal ID card would have to indicate on an application, renewal application, or change of address application whether he or she was a United States citizen. An application also would have to allow the applicant to indicate that he or she declined to use the application as a voter registration application.

Senate Bill 1241

The Enhanced Driver License and Enhanced Official State Personal Identification Card Act allows the Secretary of State to issue an enhanced driver's license or enhanced State ID card who provides to the Secretary of State certain information and materials as specified in the Code.

The bill would require an application for an enhanced driver license or enhanced official State personal identification card to allow the applicant to indicate that he or she declined to use the application as a voter registration application.

MCL 168.2 et al. (S.B. 1238)   Legislative Analyst: Stephen Jackson
      257.307 (S.B. 1239)
      28.291 (S.B. 1240)
      28.305 (S.B. 1241)
      169.206 (S.B. 1242)

FISCAL IMPACT

Senate Bill 1238

The bill could have a minimal fiscal impact on the Department of State due to the automatic voter registration requirement. The forms used by the Department would need to be adjusted to comply with the bill's requirements, however; the Department has stated that current appropriations should be sufficient to absorb those costs.

Senate Bills 1239 through 1242

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

Fiscal Analyst: Joe Carrasco