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**BILL ANALYSIS**

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Senate Bills 812 and 813 (as introduced 2-13-18)  
Sponsor: Senator Dave Robertson  
Committee: Elections and Government Reform

Date Completed: 2-21-18

### **CONTENT**

#### **Senate Bill 812 would do the following:**

- **Repeal and re-enact sections of the Michigan Election Law pertaining to the selection of electronic voting systems, absent voter counting boards, the use of emergency ballots, and recanvassing election returns.**
- **Amend a provision of the Law concerning payment for electronic voting systems.**
- **Repeal sections of the Law pertaining to voting machines.**

**Senate Bill 813 would amend the sentencing guidelines in the Code of Criminal Procedures to replace the Michigan Compiled Law citations for two felonies under the Election Law, reflecting the repeal and re-enactment of sections by Senate Bill 812.**

Senate Bill 813 is tie-barred to Senate Bill 812. Each bill would take effect 90 days after the date it was enacted.

Senate Bill 812 is described in more detail below.

#### Voting System Selection

Section 771a of the Law requires the Secretary of State to allow a county clerk, in consultation with the clerk of each city, township, and village located in the county, to determine which electronic voting system will be used in the county, as long as the system selected meets specific criteria.

The bill would repeal Section 771a and re-enact its provisions without reference to a village.

#### Absent Voter Counting Boards

Section 792a of the Law provides for absent voter counting boards. The bill would repeal this section and re-enact it with the changes described below.

Currently, if a city, township, or village decides to use absent voter counting boards, the board of election commissioners of that city, township, or village must establish an absent voter counting board for each election day precinct in that local unit. The bill would re-enact this provision without reference to a village.

The Law requires the board of election commissioners to determine the number of absent voter counting boards to be established and appoint the election inspectors to those boards 10 days or more before the election at which they are to be used. The bill, instead, would require the board of election commissioners to appoint the election inspectors at least 21 days but not more than 40 days before the election at which they were to be used. The bill would omit the requirement that the board of election commissioners determine the number of absent voter counting boards to be established.

Currently, if more than one absent voter counting board is to be used, the city, township, or village clerk must determine the number of voting machines or the number of ballot boxes and the number of election inspectors to be used in each of the absent voter counting boards, and to which board the absent voter ballots for each precinct must be assigned for counting. The bill would re-enact this requirement but refer to electronic voting systems, rather than voting machines, and would omit the reference to a village clerk.

The Law requires the city, township, or village clerk to make the determination described above two days or more before the election, and provides that the clerk may not assign an absent voter counting board more ballots than the maximum number authorized by the board of election commissioners. The Law also states that the clerk is not required to use all of the absent voter counting boards authorized. The bill omits these provisions.

The Law specifies that Section 662 applies to the designation and prescribing of the absent voter counting place or places in which an absent voter counting board performs its duties. The bill would re-enact this provision but would allow the location to be in a different jurisdiction if the county provided a tabulator for use at a central absent voter counting board location in that county. (Section 662 requires the legislative body of each city, village, and township to designate the place or places for holding a city, village, or township election and to provide a suitable polling place in or for each precinct in that local unit.)

The Law allows the board of election commissioners to require absent voter counting boards to record absent voter ballots on voting machines, and prescribes procedures for situations where this occurs. The bill would omit these provisions.

Currently, in a local unit where challenged voters are required to vote on absent voter ballots, each challenged voter ballot and ballot application, after having been voted and identified, must be placed by the voter in an absent voter ballot return envelope. The envelope and application must be sealed and delivered to the absent voter counting place by the local clerk. The bill would omit these provisions.

The Law requires voted absent voter ballots to be placed in a ballot box and requires the ballot bag and box to be sealed in the manner provided by the Law for paper ballot precincts. Under the bill, voted absent voter ballots would have to be placed in an approved ballot container, which would have to be sealed in the manner provided by the Law for paper ballot precincts.

### Emergency Ballots

Under Section 782b of the Law, if there is no reserve machine available, emergency ballots may be provided by the county board of election commissioners. The ballots may be used only in an emergency and upon special permission of the board or official responsible for providing ballots for the election. The board or official must prepare the emergency ballots. If, at any time during the election, the voting machine is disabled and cannot be repaired and no other voting machine is available, an emergency must be declared and the voting must be by emergency ballot.

The bill would repeal Section 782b and re-enact its provisions, but would refer to "electronic voting system" rather than "machine" or "voting machine".

#### Discrepancy in Returns

Section 792 establishes procedures that a board of county canvassers must follow if it appears that there is a discrepancy in the returns of any election district. Among other things, the board must open the counter compartment of the machine, and without relocking it against voting, must recanvass the vote cast on the machine. If it is found that the original canvass was correctly made from the machine, and the discrepancy remains unaccounted for, the clerk must unlock the voting and counting mechanism of the machine and examine and test it to determine the cause of the discrepancy in the return from the machine.

The bill would repeal Section 792 and re-enact its provisions, but would refer to "electronic voting system" rather than "machine".

#### Payment for Electronic Voting Systems

Under the Law, the board of commissioners of a county, the legislative body of a city or village, the township board of a township, or the school board of a school district, upon the adoption and acquisition of an electronic voting system, must provide for the payment of the system in the same manner as provided for the payment for voting machines in Section 774. (That section allows such a body to provide for the payment of voting machines in any manner it deems best for the county, city, township, or village. The board or legislative body may enter into a contract to pay for the machines in annual installments for up to 10 years, pay for the machines in cash, or issue certificates of indebtedness to pay for them.)

Under the bill, instead, if Federal or State funding were not available, the board of commissioners of a county, the legislative body of a city, or the township board of a township, upon adopting and acquiring an electronic voting system, would have to provide for all or the balance of the payment of the system.

#### Additional Repealed Sections

The bill would repeal, and not re-enact, sections of the Election Law that pertain to the purchase, construction, operation, and location of voting machines; voting machine supplies and instructions; control over voting machines; qualifications of election inspectors to use voting machines; the arrangement of polling places; procedures for a voter to write in more candidates than there are spaces on a voting machine; challenged voter procedures; irregular ballots; instructions to voters; damaging voting machines; sealing voting machines; "printer type voting machines"; and inspectors' statements. The sections that would be repealed are Sections 770, 770a, 771, 772 through 782a, 783 through 791a, and 793.

MCL 168.794b et al. (S.B. 812)  
777.11d (S.B. 813)

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

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

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.