ELECTRONIC VOTING SYSTEMS

House Bill 4442 (Substitute H RECEIVED
First Analysis (2-27-90)

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Sponsor: Rep. Nick Ciaramitaro
Committee: Elections

Mich. State Law Library

H.B. 4442 (2-27-90)

THE APPARENT PROBLEM:

Under the Michigan Election Law, an electronic voting system cannot be used in an election until it has been approved by the Board of State Canvassers. (An electronic voting system is one in which ballots are counted and tabulated by automatic tabulating equipment. The punch card system, for example, is an electronic voting system.) The secretary of state's office, which serves as staff to the state canvassers, says it is interested in evaluating several new kinds of electronic voting systems, namely the marksense-optical scan systems and the direct recording electronic systems. (See **Background Information**.) These systems, however, do not conform to current election law requirements, which election officials say were written with the punch card system in mind. For example, the systems request voters to make different kinds of marks from those permitted currently in law to indicate their preferences or require voters to push buttons. One of the systems anticipates the voter feeding the ballot into special scanning equipment rather than handing it to an election inspector who then deposits it in a ballot box. In some new systems on the market, votes are tabulated at the precinct level while the polls are open rather than at a central location after the polls have closed. Some new systems need to be modified if they are to provide an "audit trail" that allows for a recount of votes, and the law should require such modification. Different testing procedures are necessary from those now specified in election law to make sure new systems operate properly on election day. For these and other reasons, the election law needs to be updated so that new voting technology can be tested and, if found acceptable, approved for use. The adoption of a voting system, once approved, is a local decision.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law's provisions on electronic voting systems in several ways. Generally speaking, the bill would make the provisions less restrictive, meaning that more systems would be eligible for approval by the Board of State Canvassers for use in elections. Safeguards required by new voting technology would be added. The following are among the bill's provisions.

- Language requiring the voter to indicate a preference by means of a "mark or punch" would be replaced by provisions requiring the voter to make a "single selection." Language that requires various information to be "printed" would be replaced by provisions requiring them to be "printed or displayed."
- An electronic voting system would have to provide an audit trail, defined as "a record of the votes cast by each voter that can be printed, recorded, or visually reviewed after the polls are closed." Such a record could not allow for the identification of the voter.
- Electronic tabulating equipment that counts votes at the precinct before the close of the polls must provide a

method of rendering the equipment inoperable if vote totals are revealed before the close of the polls.
- There would be two ways for a ballot to be deposited in the ballot box or container, depending on the equipment in use. The current method would remain in law, whereby the voter delivers the ballot to an election inspector who, once the ballot is determined acceptable, deposits it in the ballot container. If a precinct used tabulating equipment that deposits the ballot into a container, the voter would take the ballot to an inspector, who would verify the ballot and return it to the voter. The voter would then deposit the ballot into the electronic tabulating equipment.
- A person or company providing a computer program that examines, counts, tabulates, and prints results of votes cast on an electronic voting system would have to place in an escrow account a copy of the "source code" of the program and any subsequent revisions or modifications to the source code. The term "source code" refers to the assembly language or high level language used to program the electronic voting system. The term "escrow account" refers to a third party approved by the secretary of state for the purpose of taking custody of all source codes. The secretary of state would use the information solely for the purpose of analyzing and testing the software and could not disclose proprietary information for anyone without the vendor's prior written consent.
- The secretary of state would have to promulgate rules governing tabulation of ballots, certification of results, delivery of ballots and certified results, and sealing of devices and ballot boxes after the polls are closed. Specific language in the election law dealing with these concerns would be deleted.
- Rules would also have to be promulgated dealing with the testing of tabulating equipment before and after elections.
- During a recount when the voting system in use requires the voter to mark or stamp a predefined area on the ballot, the vote would not be considered valid unless it was clearly evident that the intent of the voter was to cast a vote. In determining intent of the voter, the board of canvassers would compare the mark or stamp subject to recount with other marks or stamps appearing on the ballot. For punch cards, a vote would not be considered valid unless the portion of the ballot designated as a voting position was completely removed or was hanging by one or two corners (or the equivalent).
- Beginning with the effective date of the bill, electronic voting systems would also have to be designed to accommodate the needs of an elderly or handicapped voter.

MCL 168.794 et al.

BACKGROUND INFORMATION:

The Department of State, in an analysis of this legislation dated 2-22-90, described the two principal kinds of voting systems it wants to evaluate as follows.

"The marksense systems require the voter to mark a ballot with a specific type of pen or pencil. The ballot is inserted into the precinct ballot scanner by the voter and tabulated at that time. When the polls close the ballot scanner prints a paper tape of the results for the precinct. The results are also recorded on a memory pack that is run on a central system for jurisdiction wide totals."

"The direct recording electronic systems are essentially electronic voting machines. The voter casts his or her choices by depressing buttons rather than mechanic levers found on AVM and Shoup mechanical lever machines. Each vote is recorded on cassette tapes contained in the equipment. When the polls close the results are printed from the tapes. The tapes are then run on a central system for precinct and jurisdiction wide totals."

FISCAL IMPLICATIONS:

A bill with a similar intent introduced in the 1987-88 session was said by the House Fiscal Agency to have no fiscal implications. (See HLAS analysis of House Bill 5559 of 1987-88 dated 5-4-88.)

ARGUMENTS:

For:

The bill would make changes in the election law necessary to allow the Board of State Canvassers to evaluate new voting technologies available on the market. The bill does not approve any new voting systems or require that any be approved. It simply permits state election officials to evaluate new electronic voting systems and approve those considered acceptable. Local election officials would still decide which systems to use from the list of those approved by the state canvassers. The election law as currently written would not allow the use of new optical scan systems or direct recording systems because the language of the law envisioned the use of punch cards. The law needs to be updated so that new technologies can be evaluated and if suitable employed in elections with appropriate safeguards.

POSITIONS:

The Department of State supports the bill. (2-22-90)

The Michigan Townships Association supports the bill. (2-22-90)