

## ELECTIONS BY MAIL

### House Bill 4184 (Substitute H-3) First Analysis (11-5-97)

**Sponsor: Rep. Sharon Gire**  
**Committee: Local Government**

#### ***THE APPARENT PROBLEM:***

In January of 1996, Oregon held a statewide election by mail to fill a vacant United States Senate seat. This highly publicized election, which produced a 66 percent turnout, focused national attention on the concept of elections by mail. Reportedly, in that election, ballots were mailed by county clerks to all registered voters between January 10th and 12th and had to be returned by election day, January 30th. About 85 percent of voters mailed their ballots back (paying their own postage) and 15 percent delivered them in person. At the November presidential election in 1996, with its long ballot, some jurisdictions in Michigan reported long lines and delays in voting at polling places even though overall the turnout has been put at 55 percent. Some people believe that voting by mail has the potential of increasing voter turnout while improving voter convenience. Reportedly, nearly 20 states now allow voting by mail for one kind of election or another, and legislation has been introduced that would allow election officials in Michigan that option.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Election Law in the following ways.

-- On or after January 1, 1999, the governing body of a city, township, village, or school district could require that a local election be held by mail (but only in that city, township, village, or school district). If a local election was scheduled in a district comprising more than one local unit of government, the election could not be held by mail unless all participating units decided to conduct the election by mail no later than 60 days before the election. Such a local election by mail could not be held at the August primary, the November general election, an election at which a candidate for state or federal office or for the office of supreme court justice or judge of the court of appeals was nominated or elected, or a statewide special election.

-- On and after January 1, 2004, the secretary of state could conduct the elections cited above (as not available to local elections by mail) as elections by mail.

-- The secretary of state would be required to promulgate rules to provide procedures for the conducting of an election by mail.

-- After each local election by mail, the secretary of state would have to report to the House and Senate committees that handle election issues, with the report to include the cost of the election, the level of voter participation, and other relevant information.

Local Mail Elections. When a local governing body decided to conduct an election by mail, it would notify the local clerk, who would be required to conduct the election by mail. The secretary of state would have to cooperate with the local unit and, whenever possible, assist the local unit in conducting the election. The bill would require the local clerk (or school board secretary) to follow certain procedures, as specified below.

-- The board of election commissioners or local clerk would have to designate one or more places of deposit in the local unit for voters to return voted ballots. The places would have to be open on the date of the election from 7 a.m. to 8 p.m. The board or clerk would have to provide for the security of the ballots.

-- The clerk would have to send to each voter who was registered as of the 30th day before the date of the election, by non-forwardable mail, an official ballot with a pre-addressed, return identification envelope, a secrecy envelope, and instructions. For a local election, the official ballots and envelopes would be mailed during the period beginning on the 20th day before the election date and ending on the 14th day before the election date. For a statewide election, the secretary of state would prescribe in rules the date of mailing; however, the rules would have to provide for all ballots to be mailed by the 14th day before the election date. A local clerk would be required to handle the official ballots and envelopes in the manner prescribed for absent voter ballots for voters residing outside of the United States.

-- The clerk would include with a ballot all applicable instructions and warnings required for absent voter

ballots. For a primary election, the ballot would have to

contain a section for the selection of candidates from each participating political party. The instructions would have to state clearly that a voter could vote for the appropriate number of candidates of one party only and that a primary ballot on which candidates from more than one party were selected would not be counted.

-- A voter could obtain a replacement ballot if the original ballot was destroyed, spoiled, lost, or not received. The voter would have to sign a sworn statement. The clerk would have to keep a record of each replacement ballot. If an original ballot was returned and a replacement ballot was sought by the same voter, the clerk would mark the original ballot "canceled" and place it in the box with other canceled ballots. The clerk would have to designate his or her office or a central location in the local unit as the single place to obtain a replacement ballot. A clerk could mail replacement ballots 5 days or more before the date of the election. The clerk could issue a replacement ballot to a voter up until and including the date of the election.

-- For a voter who registered before the close of registration but was not listed on the registration records, the clerk would allow the person to vote following the procedure prescribed for such cases in the election law at Section 509y for other kinds of elections. If the voter met the requirements of that section, the clerk would make the official ballot, return identification envelope, the secrecy envelope, and instructions available at the clerk's office or other designated place.

-- To vote in an election by mail, the voter would mark the ballot, sign the return identification envelope, and comply with the instructions provided with the ballot. The ballot would have to be returned in the return identification envelope or it would not be counted. A ballot would have to be received at the office of the appropriate clerk or other place of deposit not later than 8 p.m. on the date of the election or the ballot would not be counted.

-- The voter would have to return the ballot by 1) placing the necessary postage on the return envelope and depositing it in the United States mail or with another public postal service, express mail service, parcel post service, or common carrier; or 2) delivering the envelope personally to the office of the clerk, to the clerk, to an authorized assistant of the clerk, or to a place of deposit designated by the clerk. A person authorized by the clerk to accept ballots would have to carry credentials issued by the clerk and the credentials would have to be shown to a voter upon request.

-- A member of the immediate family of the voter, including an in-law, a grandparent, a grandchild, or a

person residing in the voter's household could mail or deliver a ballot to the clerk for the voter.

-- A ballot would only be counted if: 1) the ballot was returned in the return identification envelope; 2) the envelope was signed by the voter to whom the ballot was issued; 3) the signature was verified; 3) the ballot was received on or before 8 p.m. on the date of the election at the appropriate place; and 4) for a primary election, if the voter had voted for the appropriate number of candidates of one party only.

-- The clerk or an authorized designee would be required to verify the signature of each voter on the return identification envelope with the signature of the voter contained in the official voter registration file. The clerk, or an authorized designee, would process election-by-mail ballots in the same manner as is required for absent voter ballots in that precinct under the election law and as prescribed by rules.

-- A person who knowingly voted more than once at an election by mail or a person who attempted to vote more than once would be guilty of a felony. A clerk or other election official who became aware of a person voting or attempting to vote more than once would have to report the information to the county prosecuting attorney and the secretary of state.

-- An election-by-mail ballot or a voter casting a ballot at an election by mail, or both, would be subject to challenge as prescribed in the election law.

MCL 168.726

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would result in indeterminate additional costs to the state and to local units of government. The agency also notes that the bill could have Headlee implications if the secretary of state designated an election by mail that resulted in additional local costs. (11-5-97)

### ***ARGUMENTS:***

#### ***For:***

This bill would provide local units of government in Michigan the opportunity to conduct elections by mail, an idea with considerable potential. Holding elections by mail could greatly increase voter participation while, over time, possibly reducing administrative burdens, lowering costs, and providing greater convenience to voters and election officials. The bill does not mandate elections by mail. It simply permits a local governing body to hold a local election using that method, beginning in 1999. The

bill also would permit -- but not require -- the secretary of state to hold a statewide election by mail beginning in 2004. The bill recognizes the value in giving elections by mail trial runs at the local level before being used statewide. Whenever a local unit held such an election, the secretary of state would have to make a report on the election to the legislature and provide information on election costs and voter turnout.

Although this concept is new to Michigan, it has been tried elsewhere. Proponents cite an October 1996 report by the National Conference of State Legislatures that 17 states allow voting by mail at some kind of election. While in most cases these are local, non-partisan elections, supporters say that a few states have begun using mail ballots in larger partisan elections. They also point to reports from Washington and Minnesota that voting by mail produced significant increases in voter turnout in 1994 elections. And in Oregon, where elections have been held by mail for over a dozen years, a successful statewide special election for a United States Senate seat was held in 1996 with a turnout rate of about 66 percent. A report on that election prepared by professors at the University of Michigan and Oregon State University indicated, generally speaking, a strong preference for voting by mail among voters and an even stronger preference among election officials. Officials said voting by mail was more convenient and less expensive. Moreover, many voters in Michigan already vote by mail in a sense -- by absentee ballot, which while not the same as a true election by mail, contains some of the same features.

The convenience to voters of election by mail is obvious. Voting is held over a longer period of time and voters can fill out a ballot at home. This is particularly useful for many of today's busy voters, who find going to the polling place on election day inconvenient, particularly when there are long lines. While increasing voter participation is desirable, imagine the delays at polling places if turnouts had been a good deal larger at the 1996 presidential election. With mail elections, registered voters are sent the ballots automatically, which itself tends to increase participation.

#### ***Against:***

While voting by mail is an idea with a lot of potential, this bill is too much, too soon. The state needs to proceed cautiously with such a monumental change. There should be no option for a statewide election by mail until there have been some tests of the concept at the local level. Given the relatively few opportunities for trying out this election method locally before the state option comes into play, and given the variety of technological sophistication at the local level, it is not reasonable to contemplate a statewide election by mail,

even at the distant date proposed in this bill. No state, say election officials, is conducting statewide regular primary and general elections by mail. Even if some local jurisdictions enjoy success with mail elections, it is not wise to allow state election officials to order a mail election when there are local units ill equipped to participate. Further, the Department of State has urged that even local vote-by-mail efforts be delayed until after the election of 2000. The secretary of state has noted that the department is currently in the process of implementing the qualified voter file (QVF) system, which once in place will clean up voter registration files throughout the state. This is a significant undertaking and a major election reform. This is not the time to add a new major reform, perhaps even larger in scope, to the burdens of state election officials. The QVF system needs to be put in place and given a chance to operate before an effort like vote by mail is implemented. For one thing, without clean voter registration lists, without "deadwood" removed, mailing out ballots to voters will not go smoothly and will be far more costly.

State election officials also point out that Michigan has the most decentralized, and thus most complex, voter registration system in the country. It has 1,776 local registration jurisdictions! In contrast, the statewide election by mail in Oregon was handled by 36 county clerks. The secretary of state has said, in a letter to the House Local Government Committee, "While the transition to vote-by-mail elections would be a challenge in any state, Michigan faces the greatest challenge given the complexity of our elections systems, the size of the voting age population, the widely varying sizes of our political jurisdictions and the sharply contrasting features of the state's urban and rural zones." State officials also argue that the Oregon experience shows that the availability of digitized signatures is essential to an efficient vote by mail election, and that feature will not be available in Michigan until enabling legislation is enacted and funding is available. Further, they say many of the new voting systems in the state use precinct-base vote tabulation technology (rather than centralized tabulation technology), which are not well suited to vote by mail elections.

Among the other concerns about elections by mail are the problems of ballot storage and security; the role of the Post Office and the possibility of late deliveries of mail; the potential voter confusion from a lack of uniformity in elections, with some jurisdictions holding some elections by mail and some using traditional means; the initial added expense, including the printing and mailing of ballots to all registered voters and additional staffing requirements; the need for additional publicity regarding the election; the effort required in counting ballots; and the effect on political campaigning. Some people think the logical first step would be open absentee ballot voting

(as proposed in House Bill 4448, which has passed the House), which would allow clerks the opportunity to try handling a larger number of ballots delivered by mail or in person.

### **Response:**

Many of hurdles listed above are cited by clerks who nonetheless endorse the concept of voting by mail. Many of the potential difficulties of elections by mail can be worked out by employing that method in small scale elections. The bill offers the opportunity to gain the experience that will be necessary for elections by mail to become routine.

### **POSITIONS:**

The Michigan Municipal League supports the bill. (11-4-97)

The League of Women Voters supports the bill. (11-4-97)

The Michigan Townships Association continues to support the concept of the bill and is in the process of examining the substitute. (11-4-97)

The Michigan Association of County Clerks supports the concept and is examining the substitute. (11-4-97)

The Michigan Association of Clerks supports the concept but has concerns about the mechanics. (11-4-97)

The Department of State has recommended that any vote-by-mail option introduced in Michigan not be effective until sometime after the 2000 presidential election. (Letter to the House Local Government Committee, dated 10-14-97)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.