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Senate Bill 173 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Government Operations

Date Completed: 12-3-01

CONTENT

The bill would amend the Michigan Election Law to do the following:

- **Prohibit electors from voting a straight party ticket.**
- **Specify how a candidate's name would have to appear on the ballot.**
- **Allow voters who were not on a registration list to cast a "provisional ballot", which would be subject to procedures for challenged ballots.**
- **Require unlisted voters to present pictured identification in order to cast a provisional vote, if they did not have a registration receipt.**
- **Limit change of address information to that supplied by the U.S. Postal Service.**
- **Require that electronic tabulating equipment be programmed not to accept ballots containing certain types of errors, without the manual operation of a ballot acceptance feature; and require the inspection of a rejected ballot if the voter were not present.**
- **Specify that a stray mark made in a predefined area on a ballot would not be a valid vote; and require election inspectors to determine whether a mark was a stray (rather than determining the voter's intent).**
- **Require an expedited canvass if unofficial results for a U.S. presidential election showed a vote differential under 0.5%; and require a statewide recount if the vote differential for a statewide election were 0.5% or less.**
- **Add misdemeanor offenses concerning yard signs and paid election activity by local employees.**
- **Appropriate up to \$14 million for a statewide uniform voting system if**

Federal money for election system improvements were available in fiscal year 2001-02.

A more detailed description of the bill follows.

Straight Party Ticket

The bill would prohibit an elector from voting a straight political party ticket in an election to choose the officeholders for more than one elective office. The bill states, "...that is, [an elector would be prohibited] from voting for all of the candidates for elective office who are on the ballot representing a single political party by a single selection on the ballot." A ballot that would violate this prohibition could not be produced, printed, or distributed.

The bill would delete language pertaining to straight party voting in sections that deal with the official ballot form, the way voters should mark their ballots, emergency ballots, electronic voting systems, different parts of a ballot, and vote counting.

Candidates' Names on Ballots

The bill would require the Secretary of State to prescribe the manner in which a candidate could specify how his or her name would appear on the ballot, and the form in which a candidate's current name and a former name of the candidate would appear. Both a candidate's given name and surname that he or she was given at birth, and only those names, could appear on the ballot, unless 1) the name in question, whether a given name, a surname, or otherwise, was a name that was formally changed; 2) the Secretary of State required the candidate's current name and a former name to be printed on the ballot, or 3) the name in question, whether a given

name, a surname, or otherwise, was one of the following:

- A name that was changed in a certificate of naturalization issued by a Federal district court when the individual became a naturalized citizen at least 10 years before filing as a candidate.
- A name that was changed because of marriage.
- A name that was changed because of divorce, but only if changed to a legal name by which the individual was previously known.

(The bill would define "name that was formally changed" as a name changed by a proceeding under Chapter XI of the Probate Code of 1939 or former Public Act 314 of 1915, or through a similar, statutorily sanctioned procedure under the law of another state or country.)

A candidate could specify, however, that both his or her given name and middle name, or only a middle name, would appear on the ballot. A candidate also could specify that either an initial or a recognized diminutive for his or her given or middle name, or for both, would appear on the ballot.

A candidate would be prohibited from specifying that a nickname that was not a recognized diminutive of his or her given name or middle name appear on the ballot. A married individual could not specify that his or her spouse's given name, or an alternative for that given name otherwise permitted under the bill, appear on the ballot.

A ballot that would violate these provisions could not be produced, printed, or distributed.

Currently, the Act provides that a candidate's name must be printed showing the given name or abbreviation or initials of the given name of the candidate, and, in the case of a married woman, may not be printed showing the husband's given name. The bill would delete these provisions.

Under the Act, in a primary election, if a candidate for an elective office has the same given name and surname as the person last elected to that office, and if the person last elected is not seeking renomination, the ballot must indicate that the candidate is not the present officeholder. The bill provides that, for the purpose of this requirement, a candidate's and an officeholder's surnames

could not be considered different solely because one or both of them included a generational designation.

Affidavit of Identity

The Act requires candidates for Federal, State, and local offices to file an affidavit of identity when filing a nominating petition, filing fee, or affidavit of candidacy. The bill specifies that this requirement would not apply to a candidate nominated for the office of President or Vice President of the United States.

In addition to the information that currently must be on an affidavit of identity, the bill would require a statement that the candidate either was or was not presently using a name, whether a given name, a surname, or otherwise, that was not a name that he or she had been given at birth. A candidate who was using such a name would have to include his or her full former name on the affidavit.

The bill's requirement to indicate a name change would not apply if the name in question were one of the following:

- Formally changed at least 10 years before the person filed as a candidate.
- Changed in a certificate of naturalization issued by a Federal district court when the individual became a naturalized citizen at least 10 years before filing.
- Changed because of marriage.
- Changed because of divorce, but only if changed to a legal name by which the individual was previously known.

The bill would repeal Section 557 of the Michigan Election Law, which provides that nominating petitions may not be filed unless a candidate also files an affidavit relative to any change that may have been made in his or her name. If the affidavit or the candidate's birth certificate or record discloses that the name used in the nominating petition is other than his or her birth name, the petition may not be filed unless it states both names of the candidate. Section 557 also requires both names to be printed on the ballot. Section 557 does not apply to a candidate whose name was formally changed at least 12 years before a nominating petition is filed, or whose name change was included in a certificate of naturalization and who has lived in this State for at least 10 years after the naturalization.

Unlisted Voters; Provisional Ballots

Unlisted Voters. Under certain conditions, the Law requires election inspectors to allow a person to vote if he or she has applied to register to vote and appears at a polling place on election day, but is not listed in the registration records or precinct voting list. Under the bill, these provisions also would apply to someone not listed in the qualified voter file. Also, if an individual complied with the current and proposed requirements so that the election inspectors were required to allow him or her to vote, the person's ballot would be subject to the procedures applicable to a provisional ballot, under the bill.

Currently, the person must be allowed to vote if he or she presents a receipt verifying the acceptance of an application, completes a new application, and otherwise meets the qualifications to vote in that city or township. If the person cannot present a receipt but otherwise meets the qualifications to vote, the person must be allowed to vote if he or she does all of the following:

- Signs an affidavit affirming that he or she submitted an application.
- Completes a new application.
- Provides proof of identification sufficient to satisfy the clerk as to the voter's identity and residence.

Under the bill, instead of providing proof of identification sufficient to satisfy the clerk, the voter would have to provide picture identification sufficient to verify his or her identity and residence.

Absent Voters. Under the Law, if an absent voter did not receive an absent voter ballot that he or she applied for, or lost or destroyed an absent voter ballot he or she received, and wishes to vote in person in his or her precinct on election day, the absent voter must sign an affidavit to that effect before an election inspector and be allowed to vote. The voter, however, is subject to challenge as provided in the Law. The bill would delete that provision, and would require the ballot to be processed as a provisional ballot.

Voter Challenges. The bill would require a provisional ballot to be dealt with in the same manner as a challenged ballot under the Law.

The Law requires an election inspector to challenge a person applying for ballots 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. Under the bill, an election inspector also would have to challenge an applicant whose name did not appear in the registration book, precinct voting list, or qualified voter file.

Under the Law, when a person has been challenged as an unqualified voter and has taken an oath provided by law, an election inspector must endorse on the ballot, before depositing it in the ballot box, the number corresponding to the number placed after the voter's name on the poll lists. The bill would require the same endorsement on a provisional ballot.

Electronic Voting Systems

Tabulating Equipment. Currently, electronic tabulating equipment that can detect and inform an elector voting in person that he or she has made too many choices, must give the elector an opportunity to correct the error before rejecting the recorded choices. Also, electronic tabulating equipment that can detect and inform an elector voting in person that he or she has voted for candidates of more than one political party, must give the elector an opportunity to correct the error before rejecting the ballot.

Under the bill, instead of giving the elector an opportunity to correct either type of error, the electronic tabulating equipment would have to be programmed to prohibit the tabulator's acceptance of a ballot containing the error without the manual operation of a ballot acceptance feature. If the elector were present, he or she would have to be given the opportunity to correct the error by voting a replacement ballot. If the elector were not present, the rejected ballot would have to be inspected to confirm the presence of the error before the ballot was tabulated.

The bill would delete reference to the ability of equipment to "...inform an elector voting in person...".

Stray Marks. Currently, if an electronic voting system requires an elector to cast a vote by marking or stamping a predefined area on the ballot, the vote may not be considered valid unless there is a mark or stamp within that area, and it is clearly evident that the intent of

the voter was to cast a vote. In determining the voter's intent, the board of canvassers or election official must compare the mark or stamp subject to recount with other marks or stamps appearing on the ballot.

The bill would delete reference to the voter's intent (as well as references to a stamp). The bill specifies that a stray mark made within the predefined area would not be a valid vote. In determining whether a mark was a stray mark, the board of canvassers or election official would have to compare the mark subject to recount with other marks appearing on the ballot.

The bill would make the same changes in the rules that govern counting and recounting votes.

Vote Differential

U.S. President. Under the bill, when the official election results showed that the election of President and Vice President of the United States was determined by a vote differential between the first and second place candidates of less than 0.5% of the total vote cast for all candidates for the office of President and Vice President, the Secretary of State would have to direct the boards of county canvassers to canvass returns on an expedited schedule. The Secretary of State would have to direct the boards to complete the statements required by the Law and certify them by the seventh day after the election or by a date before the 14th day after the election. (After canvassing returns, a board of county canvassers must prepare a statement containing specified information, and the clerk of the board must deliver to the Secretary of State a certified copy of the statement and a certificate of authenticity.)

The Secretary of State would have to appoint the day for the Board of State Canvassers to conduct the expedited canvass of the returns and determine the results of the election. The day appointed would have to be as soon as practicable after the receipt of the returns from the county boards, but not later than the 20th day after the election.

State Candidates. Currently, a recount of all precincts in the State must be conducted when a statewide primary or election is certified by the Board of State Canvassers as having been determined by a vote differential of 2,000 votes or less. The bill would require a recount, instead, when the vote differential

was equal to or less than 0.5% of the votes cast in the election.

Misdemeanors

The bill would make it a misdemeanor to promise or give valuable consideration in exchange for stealing a yard sign or for a stolen yard sign; or to steal, or receive valuable consideration for stealing, a yard sign.

It also would be a misdemeanor to promise or give valuable consideration to a paid full-time employee of a county, city, village, or township clerk for campaign or election-related activity, other than the employee's regular compensation for employment from that governmental unit. In addition, it would be a misdemeanor for a paid full-time employee of a county, city, village, or township to accept valuable consideration for campaign or election-related activity, other than his or her regular compensation for employment from that governmental unit.

Appropriation

Under the bill, if Federal money for election system improvements were available in the fiscal year ending September 30, 2002, up to \$14 million of that money would be appropriated to the Department of State for the same fiscal year. The money would have to be used for the implementation of a statewide uniform voting system.

The money would not be available for expenditure until it was transferred to an appropriation line item in the act making General Government appropriations, Public Act 83 of 2001, as required by the Management and Budget Act.

The bill states that the money appropriated would not be an appropriation for purposes of Article II, Section 9 of the State Constitution. (That section reserves to the people the powers of initiative and referendum--in order to enact and reject laws--and states that the power of referendum does not extend to acts making appropriations for State institutions.)

Other Provisions

Change of Address Information. Currently, a clerk may use change of address information supplied by the U.S. Postal Service or other reliable information received by the clerk that identifies registered voters whose addresses

may have changed, for updating voter registration. Under the bill, a clerk could use only change of address information that the U.S. Postal Service supplied directly to the clerk.

Training. The bill would require the Secretary of State to issue training requirements to local jurisdictions to improve the conduct of their elections. Upon compliance with these requirements, a local jurisdiction would have to forward a report to the Secretary of State detailing the training.

Forwarding Lists. The Law requires officers of the State central committee of each political party, after a party convention, to mail a list of nominees for statewide elections to the Secretary of State and to the board of election commissioners of each county. Under the bill, the committee would have to mail the list to the Secretary of State, who would have to forward a copy of it to the county boards.

MCL 168.2 et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

State. The bill includes a provision designating up to \$14 million of Federal funds for election improvements, to be spent on the implementation of a statewide, uniform voting system. The maximum of \$14 million is the amount the Secretary of State estimated the first year of implementing a statewide, uniform voting system would cost in her report to the Legislature, "Uniform Voting in Michigan", issued in May 2001. The fiscal impact of this section would depend upon the amount of Federal funding made available and any accompanying Federal requirements. The status of Federal funding for election improvements is uncertain.

There would be no fiscal impact on State (or local) government from the enactment of provisions specifying how a candidate's name would appear on petitions or a ballot, and specifying the handling of stray marks on a ballot.

Municipal Jurisdictions. An indeterminate fiscal impact on city, township, and village clerks related to the cost of election workers could be expected from the elimination of straight-ticket voting and the requirement for a voter to provide a picture identification and fill out a provisional ballot if the voter's name did not appear on the registration list. These

changes would lengthen the time electors spend at a voting location on election day. Some jurisdictions could choose to hire additional election workers in order to alleviate increased congestion within precincts. The salary of election workers is determined by the local jurisdictions and varies across the State. Additionally, those municipal jurisdictions that train their own workers could experience a change in costs depending on the new training requirements issued by the Secretary of State under this bill.

County Jurisdictions. An indeterminate fiscal impact on county clerks' offices would result from the implementation of additional training requirements for election workers. While election workers are hired and paid by municipal clerks, the training of election workers for small municipal jurisdictions is handled by the county clerks' offices. The additional costs would depend upon the number of workers being trained, the exact training requirements, the voting systems used, and other factors that vary by county.

Under this bill, the trigger for an expedited canvass of a presidential or statewide election would change from 2,000 votes or less to 0.5% of the votes cast or less. Under this proposed standard, in the 2000 Presidential election, a vote differential of 21,396 votes or less would have triggered an expedited canvass. For the 1998 gubernatorial election, a vote differential of 15,717 votes or less would have triggered an expedited canvass. The 0.5% trigger is much higher than the current trigger and more expedited canvasses could be expected; thus potentially increasing expenditures for county canvassing boards.

Corrections. The bill's misdemeanor provisions would have no fiscal impact on the Department of Corrections and an indeterminate impact on local governments. There are no data to indicate how many individuals would be convicted of a misdemeanor for any of the proposed offenses. Offenders convicted of a misdemeanor are subject to probation or incarceration in a local facility. Local units incur the cost of probation as well as the cost of incarceration, which may vary between \$27 and \$62 per day.

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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.