

Legislative Analysis



ELECTRONIC SUBMISSION OF VOTER REGISTRATION APPLICATIONS

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House Bill 4539 (Substitute H-1)
House Bill 4540 as introduced
Sponsor: Rep. Lesia Liss
Committee: Ethics and Elections

First Analysis (12-16-09)

BRIEF SUMMARY: The bills would allow citizens to submit electronically their voter registration applications to the Secretary of State and local clerks.

FISCAL IMPACT: House Bills 4539 and 4540 would have an indeterminate fiscal impact on the Secretary of State. The Secretary of State would face increased costs in developing and implementing a system that would allow a person to submit a voter registration application electronically on the Secretary of State's website. However, those costs would be offset, to some degree, by the savings realized from electronically processing the applications.

THE APPARENT PROBLEM:

Under Michigan law, citizens register to vote by completing a paper application form, and submitting that form to their local election clerk. This kind of paper application process is customary in all but three states: Arizona, Wisconsin, and California.

Since 2003, voters in Arizona have been able to register to vote online. Now, fully 70 percent of Arizona voters use the online registration process, and its ease and efficiency have had the effect of increasing voter registrations nearly 10 percent in its first two years of operation.

According to committee testimony, the paper voter registration process used in Michigan is slower and more costly than an online process. What's more, registration fraud is easier to perpetrate, and more difficult to detect.

Michigan citizens can already pay their taxes online, and register for the U. S. Selective Service online. Legislation has been introduced to also allow citizens to register to vote online.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Election Law to allow citizens to submit electronically their voter registration applications to the Secretary of State and local clerks. The bills are tie-barred so that neither could go into effect without the enactment of the other. A more detailed description of each bill follows.

House Bill 4539 (H-1) requires that not later than June 30, 2010, the Secretary of State develop and implement a system to allow an applicant to submit a voter registration application electronically on the Secretary of State's website.

Then, beginning July 1, 2010, a person who was not registered to vote at the address where he or she was residing could submit a voter registration application electronically on the website. A person who submitted an application electronically would have to do all of the following:

- Attest to the truth of the information provided on the voter registration application by affirmatively accepting the information as true.
- Affirmatively assent to the use of his or her most recent digitized signature if captured or reproduced by the Secretary of State under Section 307 of the Michigan Vehicle Code, or the Personal Identification Card Act.
- Sign the voter registration application with an electronic signature. (As used in this provision, "electronic signature" means that term as defined in Section 2 of the Uniform Electronic Transactions Act, MCL 450.832. There, the term is defined to mean an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign a record.)

Under the bill, an electronic mail address provided by an applicant who submitted a voter registration application electronically would be confidential and exempt from disclosure under the Freedom of Information Act.

The bill specifies that if a person who submitted a voter registration application electronically did not have an official state identification card or an operator's or chauffeur's license, then the voter registration application submitted electronically would be considered a registration by mail, and the voter would have to comply with the requirements of Section 509t of the law. (That section of the Michigan Election Law requires that a person who registers to vote in a jurisdiction in Michigan by mail must vote in person and provide identification as required under the federal Help America Vote Act, if that person has not previously voted in person in Michigan. However, this section of the law also specifies that this requirement does not apply to any of the following registered voters: a person entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act; a person who has a disability as defined in the Persons With Disabilities Civil Rights Act; and, for purposes of voting in person only, a person who is 60 years of age or older; and a person who is entitled to vote other than in person under any other federal law.)

Finally, the bill requires the Secretary of State to implement security measures to ensure the accuracy and integrity of the voter registrations submitted electronically, and to promulgate rules under the Administrative Procedures Act to implement these provisions.

House Bill 4540 requires that a person processing an application submitted electronically validate the application and issue a receipt to the applicant in a manner prescribed by the

Secretary of State. (These requirements are identical to those a person follows who processes applications submitted in person at a Department of State office, a designated voter registration agency, or the office of a county clerk.)

Currently, the law specifies that an application for registration is considered received on or before the close of registration, if one of the following requirements is met:

- An application is received at a Department of State 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.

House Bill 4540 would retain these provisions and add a fourth:

- ***An application is received electronically pursuant to Section 509v on or before the close of registration.*** (Section 509v is addressed in House Bill 4539.)

MCL 168.509v, 168.509w, and 168.509x

BACKGROUND INFORMATION:

To see a five-minute video demonstration on one way online voter registration could work, click <http://www.macombcountymi.gov/clerksoffice/VoterReg/index.html>

ARGUMENTS:

For:

Proponents of the bill note that a Michigan citizen can pay taxes online and register for the Selective Service online. They argue that citizens should also be able to register to vote online.

Proponents also note that online registration is already, or will soon be, possible in three states--Arizona (since 2003), Wisconsin (enacted in 2007), and California (enacted in 2008); six more states have online registration under consideration. The secretary of state in pioneering Arizona reports that 70 percent of voter registration is now done online, and that the availability of the online voter registration service increased voter registration between by 9.5 percent in its first two years of operation.

Online voter registration will save money and time. For example, online registration will be a benefit to those in the military who serve overseas, because it will speed the absentee

applications to them, once they have registered. Further, an online voter registration system will be less subject to fraud than the current paper voter registration system, and could reduce the influence of third-party groups who undertake voter registration drives before every election. Finally, an online voter registration system would reduce the postage costs now paid by the secretary of state and county clerks who must routinely mail paper voter registration forms filed in their offices to the appropriate local clerk.

Against:

Some opponents of this legislation argue that it is unnecessary, because election officials already have the legal authority to accept online voter registrations. Under the Michigan Uniform Electronic Transactions Act, "if a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if it is provided, sent, or delivered in an electronic record." Further, county clerks already accept binding transactions entirely electronically; the Michigan Attorney General has issued an opinion giving counties the authority to "send and accept...electronic signatures;" and the Michigan Court of Appeals has interpreted the Uniform Electronic Transactions Act to uphold email correspondence as legally binding. Finally, according to testimony offered by the Bureau of Elections in the Department of State, electronic voter registration should be available in Michigan during 2010, a part of the Business Automated Management System that will allow thousands of new electronic online transactions each year.

Response:

Online voter registration should be undertaken systematically by *all* local clerks in every Michigan county and municipality at the same time, rather than haphazardly. A systemic, statewide change to online voter registration can best be accomplished by a state statute that amends the Michigan Election Law. These bills would provide the necessary legal framework for a smooth transition to electronic voter registration.

Against:

The Michigan Election Reform Alliance argues that the most effective solution to voter registration--one that protects the integrity of the election process and assures comprehensive voter access--is for Michigan to join the growing number of states that permit Election Day registration. Election Day registration guarantees that voters will be registered before a sworn official without incurring any delay in their ability to cast a ballot. Anything less than Election Day registration raises the possibility of unintended voter registration errors, outright voter registration fraud, and the inability of many citizens to participate in the election process.

POSITIONS:

The Macomb County Clerk and Register of Deeds supports the bills. (12-7-09)

The Oakland County Clerk and Register of Deeds supports the bills. (12-8-09)

The Michigan Association of County Clerks supports the bills in concept. (12-16-09)

The Michigan Association of Municipal Clerks supports the bills in concept. (12-16-09)

The Council of Voter Registration Officials supports the bills. (12-9-09)

The Michigan Townships Association supports the bills. (12-9-09)

The Michigan Election Reform Alliance is neutral on the bills. (12-9-09)

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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.