Legislative Analysis

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MICHIGAN VOTING RIGHTS ACT

Senate Bill 401 (S-3) as reported from House committee
Sponsor: Sen. Darrin Camilleri

Senate Bill 402 (H-2) as reported from House committee
Sponsor: Sen. Jeremy Moss

Senate Bill 403 (H-1) as reported
Sponsor: Sen. Stephanie Chang

Senate Bill 404 (S-2) as reported
Sponsor: Sen. Erika Geiss

House Committee: Elections
Senate Committee: Elections and Ethics
Complete to 12-7-24

BRIEF SUMMARY:

Together, Senate Bills 401 to 404 would create the Michigan Voting Rights Act. Senate Bills 401, 402, and 403 would create three new acts related to voting and elections in Michigan, while Senate Bill 404 would amend the Michigan Election Law.

Senate Bill 401 would create the State Voting Rights Act, which would prohibit disparities in voter participation and impairments of the rights of racial and language minority groups to elect candidates of their choice. Additionally, the act would establish remedies and penalties—including local plans for resolution, court action, and judicial preapproval of local election policies—for violations, and similarly establish remedies—including court-appointed monitors of local elections—for violations of disabled individuals' voting rights.

Senate Bill 402 would create the Voting and Elections Database and Institute Act, which would require the secretary of state (SOS) to enter into an agreement with Michigan universities to create a database and institute that would collect election information and publish related records provided by the SOS and local governments.

Senate Bill 403 would create the Language Assistance for Elections Act, which would require certain local governments to provide election materials in non–English languages and establish a local remedy process for violations and grounds for court action.

Senate Bill 404 would amend the Michigan Election Law to require local governments and the SOS to provide notice of certain election-related decisions and other voting information, expand access to voting assistance for disabled voters and individuals seeking translation services, and allow individuals to provide food and other items to voters in line at a polling place or an early voting site.

Senate Bill 401 is tie-barred to the other three bills. Senate Bills 402 and 404 are tie-barred to SBs 401 and 403. Senate Bill 403 is tie-barred to SBs 401 and 402. A bill cannot take effect unless every bill it is tie-barred to is also enacted.

DETAILED SUMMARY:

Senate Bill 401 would create a new act, the State Voting Rights Act. As further described below, the act would do all of the following:

- Prohibit state and local ***government officials*** from taking actions that would create a disparity in voter participation or impair the right of certain ***protected classes*** to elect candidates of their choice.
- Prohibit ***local governments*** from employing methods of election that dilute the voting power of members of protected classes.
- Provide avenues for local resolution of a violation.
- Prescribe available court-ordered remedies, including the preapproval of any local voting or election policy.
- Establish avenues for local resolution and court-ordered remedies for violations of laws related to the rights of disabled voters, including the appointment of monitors to ensure a local government's compliance with those rights.

Government official would mean any individual who is elected or appointed to a local or state office in Michigan or who is authorized to act in an official capacity on behalf of the state or a local government.

Protected class would mean individuals who are members of a racial, color, or ***language minority group***, or multiple racial, color, or language minority groups. The term would include individuals who are members of a racial, color, or language minority group that has been subject to protection under a consent decree ordered by a federal court in Michigan in a suit alleging a violation of section 2 of the federal Voting Rights Act[1] and individuals who are members of a minimum reporting category that has ever been officially recognized by the United States Census Bureau.

Language minority group would mean, as defined in section 203 of the federal Voting Rights Act (codified at section 10503 of Title 52 of the United States Code), persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

Local government would mean a county, city, township, village, public school (as defined in the Revised School Code), public community college, district library, or any other political subdivision of Michigan, authority, or other public body corporate that has an elected governing body.

Voter protections

The bill would declare that all statutes, rules and regulations, local laws, and ordinances related to the right to ***vote***, including the State Voting Rights Act itself, must be liberally construed in favor of the following:

- Protecting the right to cast a ballot and make that ballot effective.
- Ensuring that qualified registered electors and those who seek to be admitted as registered electors to vote in an election are not impaired in voting or voter registration.

[1] Section 2 of the Voting Rights Act prohibits voting practices and procedures that discriminate on the basis of race, color, or membership in a language minority group (see **Background**, below).

- Ensuring that each registered elector is not impaired in voting, including having their vote counted.
- Making the fundamental right to vote more accessible to qualified electors.
- Ensuring that protected class members have equitable access to opportunities to be admitted as electors and vote and have equitable opportunities to elect candidates of their choice.

  For purposes of the act, ***vote*** (or ***voting***) would include any action necessary to cast a ballot and make that ballot count in any election, such as registering as an elector, applying for an absent voter (AV) ballot, or taking any other action required by law as a prerequisite to casting a ballot and having that ballot counted, canvassed, certified, and included in the appropriate totals of votes cast in an election.

Disparities and impairments

Local governments, state agencies, and state and local officials would be prohibited from taking or failing to take any action that does, will, or is intended to result in either of the following:[2]

- A ***disparity*** between a protected class and other members of the electorate in voter participation, access to voting opportunities, or the equal opportunity or ability to participate in the political process.
- Based on the totality of the circumstances, an ***impairment*** in the equal opportunity or ability of members of a protected class to participate in the political process and nominate or elect candidates of their choice.

  Disparity would mean any statistically significant variance that is supported by validated methodologies.

  The following circumstances could constitute an ***impairment***:
  - A local government closing, moving, or consolidating a precinct or clerk's office in a manner that impairs protected class members' right to vote or results in a disparity in geographic access between a protected class and other voters, unless the changes are necessary to significantly further a compelling governmental interest and no alternative would result in a smaller impairment or disparity.
  - A local government closing, moving, or consolidating a polling place, early voting site, or absentee ballot drop box in a manner that impairs protected class members' right to vote or results in a disparity in geographic access between a protected class and other voters, unless the changes are necessary to significantly further a compelling governmental interest and no alternative would result in a smaller impairment or disparity.
  - A local government changing the time or date of an election in a manner that impairs protected class members' right to vote, including making the change without providing proper notice in accordance with current law or the provisions of SB 404.
  - A local government failing to use voting or election materials in non–English languages that are provided by the SOS, as would be required by SB 403.

[2] This provision would not apply to the Independent Citizens Redistricting Commission.

- Implementing a reorganization of local government that alters which electors are eligible to vote in elections for that local government (such as an annexation, incorporation, dissolution, consolidation, or division), if the reorganization is intended to impair or diminish the equal opportunity or ability of protected class members to nominate or elect candidates of their choice or, based on the totality of the circumstances, results in such an impairment or diminishment.

Covered actions would include imposing qualifications for voter eligibility or other prerequisites to voting; imposing ordinances, regulations, or laws regarding the administration of elections; or imposing other standards, practices, procedures, or policies.

Racially polarized voting and prohibited methods of election

Local governments also would be prohibited from employing or imposing any method of election that has the effect of impairing the equal opportunity or ability of protected class members to nominate or elect candidates of their choice by diluting their vote.[3] A local government would be in violation of this provision if both of the following occur:

- Elections in the local government exhibit ***racially polarized voting*** and the candidates or electoral choices preferred by a protected class would usually be defeated, or protected class members' equal opportunity or ability to nominate or elect candidates of their choice is, based on the totality of the circumstances, impaired.
- A court could order one or more changes to the method of election that would likely mitigate the impairment.[4]

Racially polarized voting would mean voting in which the candidate or electoral choice preferred by a protected class diverges from the candidate or electoral choice preferred by other electors.

In determining whether elections in a local government exhibit racially polarized voting, a court *should* adhere to the following guidelines:

- Statistical evidence using validated methodologies would be more probative than nonstatistical evidence, but nonstatistical evidence could be afforded probative value.[5]
- Statistical evidence based on election results and inferences about racially polarized voting from those election results would be more probative than statistical evidence based on survey data, but statistical evidence based on survey data could be afforded probative value.
- For claims brought on behalf of a protected class consisting of multiple racial, color, or language minority groups that are similarly situated because they are politically cohesive in that local government, members of those groups should be combined to determine whether voting by those protected class members is polarized from other electors. It would not be necessary to demonstrate that voting by members of each minority group is separately polarized from other electors, although empirical evidence

[3] This provision would not apply to the Independent Citizens Redistricting Commission.

[4] If a change to a method of election is a proposed district-based plan that provides protected class members with one or more reasonably configured districts in which they would have an equal opportunity or ability to nominate or elect candidates of their choice, it would not be necessary to show that protected class members constitute a majority of the total population, voting age population, voting eligible population, or registered voter population in any precinct.

[5] Probative means tending to prove or establish proof of something. See: https://www.law.cornell.edu/wex/probative.

could be introduced to show that members of a protected class or multiple protected classes do not vote in a politically cohesive manner.

- Evidence concerning the causes of or reasons for racially polarized voting would be irrelevant to the determination of whether racially polarized voting occurs or whether candidates or electoral choices preferred by a protected class would usually be defeated.
- Evidence concerning alternate explanations for racially polarized voting patterns or election outcomes, including partisan explanations, should not be considered, but evidence concerning those factors could be introduced in considering appropriate remedies or punitive damages.
- Evidence concerning whether a protected class is geographically compact or concentrated or concerning projected changes in population or demographics should not be considered in determining liability but could be considered when determining a remedy for a violation.

Local remedy process, complaints, and court actions

Any individual aggrieved by an alleged violation and any entity whose membership includes individuals aggrieved by the alleged violation, whose mission would be frustrated by a violation, or that would expend resources to fulfill its mission due to a violation could be a prospective plaintiff in an action against a local government.

However, before commencing the action, a prospective plaintiff would generally have to notify the clerk and chief administrative officer of the local government by sending a letter by certified mail that asserts that the local government may be in violation of the act, explains each allegation in detail, and proposes a remedy for each violation. (As described below, certain circumstances would allow a prospective plaintiff to file an action without sending a notification letter.)

Within 30 days after receiving the letter, the clerk and the chief administrative officer or chief executive of the local government, along with their legal counsel or other individuals the local government wishes to have attend, could meet with the prospective plaintiff or their representatives to prepare and agree on a written plan to address the alleged violations. If the local government does not meet with the prospective plaintiff or their representatives, the prospective plaintiff could file a complaint with the SOS or commence a court action as described below. If the local government agrees to the meeting, the prospective plaintiff or their representatives would have to participate.

A plan to address the alleged violations would have to comply with all of the following:

- Be approved by a resolution of the local government's governing body.
- Identify each alleged violation.
- Identify a specific remedy for each alleged violation or state that the parties agree that there is no appropriate remedy for one or more of the alleged violations.
- Affirm the local government's intent to enact and implement the remedy.
- Establish specific measures that the local government must take to facilitate any needed approvals to implement each remedy.
- Provide a schedule for the necessary approvals and the implementation of each remedy that provides enough time for all steps needed to obtain authorization for the remedy.

If a prospective plaintiff and a local government agree on a plan and the plan is approved by the local government's governing body, the prospective plaintiff could not file an action unless the local government fails to comply with the plan.

If a prospective plaintiff and local government are unable to come to an agreement within 60 days after their initial meeting, the prospective plaintiff could file a written complaint with the SOS or file an action as described below. The complaint would have to be in a form required by the SOS and include a copy of the notification letter. The SOS would then have to mail a written request for a response to the local government, and the local government would have to respond within 21 days with a detailed written response to each alleged violation and an explanation of why it was unable to reach an agreement with the prospective plaintiff. After receiving the written response, the SOS would have to investigate the complaint (including conferring with the prospective plaintiff and local government as considered necessary) to determine whether a violation occurred. If the SOS determines that a violation occurred and the local government will not agree to an acceptable plan, the SOS would have to refer the matter to the attorney general and notify the prospective plaintiff. (The SOS could adopt rules under the Administrative Procedures Act to implement these provisions.)

A party could bring an action for a violation under any of the following circumstances:

- The party filed a complaint with the SOS and the SOS determines that there is no violation, the SOS determines that there is a violation and the local government will not agree on an acceptable written plan to remedy each violation, or at least 90 days have passed since the SOS received the local government's response.
- Another party has submitted a notification letter alleging a substantially similar violation and that party is eligible to bring an action.
- The party sent a notification letter and the local government did not meet or approve and implement a written plan.
- The party is seeking preliminary relief with respect to an upcoming primary or general election. (The court would have to grant the relief if it determines that the plaintiffs are more likely than not to succeed on the merits and it is possible to implement an adequate remedy before the upcoming election.)
- The party is seeking preliminary relief with respect to an action requiring notice under SB 404.

A prospective plaintiff or the attorney general could file an action in the circuit court of the county where the local government is located or in the Court of Claims to compel compliance with the act and seek an appropriate remedy. In an action involving a districting or redistricting plan, any individual who has standing to challenge a single district would have standing to challenge the entire districting or redistricting plan.

Factors indicating impairment or racially polarized voting

A court could consider the following factors, among others, in determining whether a government or government official has, based on the totality of the circumstances, impaired protected class members' equal opportunity or ability to participate in the political process and nominate or elect candidates of their choice:

- Whether members of the protected class vote at a lower rate than other electors.
- The history of discrimination affecting members of the protected class.

- The extent to which members of the protected class are disadvantaged or otherwise bear the effects of past public or private discrimination in any areas (such as education, employment, health, criminal justice, housing, transportation, land use, or environmental protection) that may hinder their ability to participate effectively in the political process.
- The use of overt or subtle racial appeals by government officials or in campaigns.
- The extent to which members of the protected class have been elected to office.
- The extent to which members of the protected class have faced barriers with respect to ballot access, receiving financial support, or receiving other support for an election.
- The extent to which members of the protected class contribute to political campaigns at lower rates.
- The extent to which candidates face hostility or barriers while campaigning due to their membership in the protected class.
- Any statute, ordinance, regulation, law, standard, practice, or policy regarding the administration of elections that tends to impair protected class members' right to vote or equal opportunity and ability to participate in the political process and nominate or elect candidates of their choice.
- The presence of racially polarized voting.
- The lack of responsiveness by elected officials to the particularized needs of protected class members or a community of protected class members.
- Whether the challenged method of election or other policy was designed to advance (and does materially advance) a compelling state interest that is substantiated and supported by evidence.
- The extent to which protected class members suffer the effects of historical housing segregation or benefit from housing policies to implement fair housing goals.
- The extent to which officials have undertaken efforts to remedy racial disparities that have yielded improvements for protected class voters, regardless of whether those efforts and improvements are adequate.

The court would have to consider a factor only if and to the extent that evidence pertaining to that factor is introduced. The presence of a particular combination or number of factors would not be necessary for a court to determine that an impairment occurred.

If a claim involves a local government, evidence relates to the local government where the alleged violation occurred would be most probative, but evidence related to the state or to the geographic region where the local government is located would still hold probative value.

In determining whether a local government, state agency, or state or local government official participated in a prohibited practice that did, will, or is intended to result in an impairment or a disparity, a court could *not* consider any of the following:

- The total number or share of members of a protected class on whom a challenged practice does not impose a material burden. (A court could, however, consider evidence showing that a challenged method of election or other policy does not affect qualified electors who are protected class members more than qualified electors who are not protected class members.)
- The degree to which the challenged practice has a long pedigree or was in widespread use at some earlier date. (This factor could, however, be considered to determine a remedy or punitive damages.)

- The use of an identical or similar practice in another local government, unless that local government took such an action to enhance the voting rights of a protected class or to remedy a violation of the act or another law, rule, or regulation affecting voting rights.
- The availability to all members of the electorate, including members of the protected class, of other forms of voting not affected by the challenged practice.
- A prophylactic impact on potential criminal activity by individual electors, if either of the following applies:
    - Those crimes have not occurred in the local government in substantial numbers.
    - The connection between the challenged practice and any claimed prophylactic effect is not supported by substantial evidence.
- Mere invocation of interest in voter confidence or prevention of fraud, unless evidence is introduced to show all of the following:
    - That the challenged practices were implemented to address actual instances of voter fraud in the local government or its vicinity.
    - That those practices were narrowly tailored to prevent a recurrence of those instances of fraud.
    - That the local government considered and took reasonable measures to prevent or minimize the possible adverse impacts on protected classes before implementing the practices.
- A lack of evidence concerning the intent of electors, elected officials, or public officials to discriminate against protected class members. (However, written evidence of those individuals' intent and any oral statements by those individuals that augment the written evidence could be introduced, particularly to address whether punitive damages are appropriate or in evaluating claims of discriminatory intent.)

Evidence that the court determines to not be indicative of the adverse impact of a challenged practice could be introduced in determining appropriate remedies, particularly to address whether punitive damages are appropriate.

Court remedies

In an action brought under the act or under the state constitution, the court would have broad authority to order adequate remedies that are reasonably necessary and tailored to best mitigate the violation. Remedies could include any of the following:

- Drawing new or revised districting or redistricting plans. (The court would have to specify the election at which the new or revised plan takes effect and, if necessary, could shorten or lengthen the terms of current officeholders.)
- Adopting a different method of election, such as a ***district-based method of election*** or ***alternative method of election***, or reasonably increasing the size of the legislative body. As used in these provisions:
    - ***District-based method of election*** would mean a method of electing candidates to the legislative body of a local government that is divided into districts under which a candidate for any district must reside in the district be voted on by only the electors of the district.
    - ***Alternative method of election*** would mean a method of electing candidates to the legislative body of a local government that is not either an ***at-large method of election*** or a district-based method of election, such as proportional ranked-choice voting, cumulative voting, or limited voting that incorporates aspects of at-large and district-based methods of election.

    - ***At-large method of election*** would mean a method of electing candidates to the legislative body of a local government under which candidates are voted on by all the electors of the local government.
- Adding or changing voting days or hours.
- Adding polling places, early voting sites, or absent voter ballot drop boxes.
- Eliminating staggered elections so that all members of the legislative body are elected at the same time. (In a local government where staggered terms exist, a remedy could provide for one election at which all officers are elected at the same time but staggered terms for future elections.)
- Ordering a special election, either on a regular election date or on another date if reasonably required to remedy a violation.
- Restoring or adding individuals to a voter registration list or requiring expanded opportunities for registering electors and enabling them to vote.
- Imposing nominal or compensatory damages.
- Imposing punitive damages in the form of a civil fine, if the court finds any of the following:[6]
    - The violation was intentional.
    - The defendant is a local government and the local government or officials in the local government demonstrated a disregard for the voting rights of qualified electors within its jurisdiction.
    - The defendant is a local government that failed to take any required action after receiving a notification letter alleging a violation (such as meeting with the prospective plaintiff, developing a plan to remedy the potential violation, and implementing the plan).
    - The defendant violated the act, Article II (Elections) of the state constitution, or another law applicable to or affecting voting rights after addressing a previous violation of any of those laws.
    - The defendant violated a court order issued under the act, Article II of the state constitution, or another law applicable to or affecting voting rights.
    - Punitive damages are reasonably necessary to ensure compliance with the act.
- Any other form of declaratory relief or injunctive relief (e.g., a court order to stop the violation) tailored to address the violation.
- Retaining jurisdiction for a period of time the court considers appropriate.

When choosing between various potential remedies, the court could consider the following:

- Protecting the right to vote, ensuring that registered electors and those seeking to become registered electors are not impaired in voting or registration, ensuring that registered electors' votes are counted, making the fundamental right to vote more accessible to qualified electors, and ensuring that protected class members have equitable access to opportunities to vote and elect candidates of their choice.
- How disruptive the remedies will be to the local government's leadership, the services provided within the local government, home rule, any local charter or ordinances, state

[6] The fine would be deposited into the Michigan Voting Rights Assistance Fund created under the bill. When imposing the fine, the court would have to consider the severity and number of the violations, whether the defendant has previous violations, and any other factors considered appropriate. If the defendant is a local government, the court would also have to consider the number of registered electors in the local government and its ability to pay the fine. In any order requiring the payment of punitive damages, the court would have to provide an explanation of why the payment was required and how the amount to be paid was determined.

law, the local government's electors, and other aspects of the local government's operations.

- The extent to which the remedy is inconsistent with any local or state law.

In an action brought under the act or under Article II of the state constitution,[7] the court could not order a remedy that would impair the equal opportunity or ability of protected class members to participate in the political process and nominate or elect their preferred candidates. The court would have to consider remedies proposed by any parties and interested nonparties and could not give deference or priority to a proposed remedy offered by the defendant or local government simply because the remedy was proposed by the defendant or local government. A court could order remedies that may be inconsistent with other provisions of state or local law if those inconsistent provisions of law would otherwise prevent the court from ordering an adequate remedy.

In an action brought under the act, the court could order the parties to enter mediation (in accordance with Michigan Court Rule 2.411[8]) at any time during the proceedings.

Judicial preapproval

In addition to the remedies described above, a court could generally require a local government that violated the act, the federal Voting Rights Act, or applicable provisions of the state or federal constitution or other state or federal law concerning the right to vote for protected class members to obtain a court order ("preapproval") before enacting any ***voting-related policy*** for up to 10 years. When considering preapproval, the court would have to consider the severity and intentionality of the violation, the number of violations, and whether the local government has any previous violations. A court would have to require preapproval if it finds that a violation is susceptible to repetition, that a remedy is susceptible to circumvention, that there is evidence of intentional discrimination by the local government, or that the local government failed to adopt broad prophylactic measures that prevent future violations.

> ***Voting-related policy*** would include enacting or seeking to administer any voting qualification, prerequisite, standard, practice, or procedure.

The local government would bear the burden of proof in a proceeding involving judicial preapproval. A request for the preapproval of a proposed voting-related policy could be granted only if the court concludes that the enactment or implementation of the policy would not diminish the equal opportunity or ability of affected members of a protected class and that the proposed policy is unlikely to violate the act.

In its request, the local government would have to indicate the position of each involved party on whether the proposed policy complies with the preapproval standards. The parties could

[7] Article II allows Michigan citizens to bring an action for declaratory, injunctive, and/or monetary relief in the circuit court for the county where they reside to enforce the right to vote (including the right to vote a secret ballot) at any election.

[8] Rule 2.411: https://www.courts.michigan.gov/siteassets/rules-instructions-administrative-orders/michigan-court-rules/michigan-court-rules-responsive-html5.zip/index.html#t=Michigan_Court_Rules%2FCourt_Rules_Chapter_2%2FCourt_Rules_Chapter_2.htm%231006654bc-70&rhtocid=_3_4_9

submit a stipulated order (which would make the terms of the agreement legally binding as an official court order) for the court's consideration for judicial preapproval.

A local government would not have to obtain preapproval for necessary emergency changes to the locations of polling places, early voting sites, or absentee ballot drop boxes within seven days before an election due to exigent circumstances outside its control as long as the local government notifies the court and all parties in writing before implementation to explain in detail the exigent circumstances. A party to the action could, however, request the court to subject the emergency changes to the judicial preapproval process. If the local government intends to maintain any of the changes beyond that election, it would have to obtain preapproval.

Disabled voters

A ***disabled elector*** or an organization whose mission includes advocating on behalf of disabled electors could be a prospective plaintiff in an action against a local government to seek the appointment of a monitor of compliance for the local government's future elections or to seek another appropriate remedy for a violation of the rights of disabled electors.

> ***Disabled elector*** would mean an elector who has a disability as that term is defined in section 103 of the Persons with Disabilities Civil Rights Act.[9]

Before commencing the action, however, a prospective plaintiff would generally have to notify the clerk and chief administrative officer of the local government by sending a letter that asserts that the local government may be in violation of a state or federal law partially or wholly involving the rights of disabled electors,[10] explains each allegation in detail, and proposes a remedy for each violation.

Within 30 days after receiving the letter, the clerk and the chief administrative officer or chief executive of the local government, along with their legal counsel or other individuals the local government wishes to have attend, could meet with the prospective plaintiff or their representatives to prepare and agree on a written plan to address the alleged violations. If the local government does not meet with the prospective plaintiff, the prospective plaintiff could immediately file an action to appoint a monitor as described below. If the local government agrees to the meeting, the prospective plaintiff or their representatives would have to participate.

A plan to address the alleged violations would have to comply with all of the following:

- Be approved by a resolution of the local government's governing body.
- Identify each alleged violation.

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[9] https://legislature.mi.gov/Laws/MCL?objectName=MCL-37-1103. Generally, "disability" is defined as a determinable physical or mental characteristic that is unrelated to an individual's ability to utilize and benefit from public accommodations or educational opportunities or that substantially limits one or more major life activities and is unrelated to an individual's qualifications for employment or ability to acquire or rent property.

[10] The bill would provide that such laws include, at a minimum, section 726a of the Michigan Election Law (as proposed by SB 404, which would require election inspectors to assist an elector who is unable to enter a polling place or early voting site), the Persons with Disabilities Civil Rights Act, the Americans with Disabilities Act (ADA), the Voting Rights Act, the Voting Accessibility for the Elderly and Handicapped Act, the National Voter Registration Act (NVRA), and the Help America Vote Act (HAVA).

- Identify a specific remedy for each alleged violation or state that the parties agree that there is no appropriate remedy for one or more of the alleged violations.
- Affirm the local government's intent to enact and implement the remedy.
- Establish specific measures that the local government must take to facilitate any needed approvals to implement each remedy.
- Provide a schedule for the necessary approvals and the implementation of each remedy that provides enough time for all needed steps to obtain authorization for the remedy.
- Provide an alternate plan if any necessary amendments to a state statute or local charter are not approved.

If a prospective plaintiff and a local government agree on a plan and the plan is approved by the local government's governing body, the prospective plaintiff could not file an action unless the local government fails to comply with the plan.

If a prospective plaintiff and local government are unable to come to an agreement within 60 days after their initial meeting, the prospective plaintiff could file an action in the circuit court of the county where the local government is located to seek the appointment of a monitor for future elections. A prospective plaintiff also could file an action if another party has already submitted a letter alleging a substantially similar violation and is eligible to bring an action.

(The attorney general also could file an action if the local government fails to meet with the plaintiff, the local government fails to approve or implement a plan to address the violations, or another party has submitted a notification letter alleging a substantially similar violation.)

The court would have to determine whether the local government did either of the following:

- Violated a state or federal law involving the rights of disabled electors in a way that adversely affected the ability of one or more disabled electors to vote safely, securely, privately, and in a legal manner.[11]
- Failed to fully remedy a previous violation of a state or federal law involving the rights of disabled electors.

If the court determines that either condition has been met, it could order the appointment of a monitor at the local government's expense for up to 110 years. When considering this remedy, the court would have to consider the severity of the violation, whether the violation was intentional, the number of violations, and whether the local government has any previous violations.

A court would have to appoint a monitor if it finds that the violation is susceptible to repetition, the remedy is susceptible to circumvention, that there is evidence of intentional discrimination by the local government, or that the local government failed to adopt broad prophylactic measures to prevent future violations.

[11] It would be an affirmative defense to an alleged violation that there are no appropriately located polling places that are reasonably available to the local government and in full compliance with federal and state laws, rules, and regulations affecting the accessibility of disabled electors, despite the local government's reasonable best efforts to provide fully compliant polling places, as long as the local government implemented other measures that enable disabled electors to vote in a safe, secure, and private manner.

A monitor would have to be an individual with extensive knowledge of and experience with the rights of disabled individuals, an established history of advocating on behalf of disabled individuals, and significant knowledge of election law. Monitors would bill the local government for their time on an hourly basis at a court-approved rate that is customary in Michigan for an individual with the required experience and qualifications.

An appointed monitor's duties would include all of the following:

- Investigating all complaints submitted to the court or the monitor regarding the local government's compliance with state and federal laws involving the rights of disabled electors.
- Informing the court upon determining that a complaint indicates that the local government has violated or will likely violate a state or federal law involving the rights of disabled electors.
- Upon receiving a report of an alleged violation within 40 days before an election indicating that a disabled elector is unable to vote because of the violation, bringing the issue to the court's immediate attention.
- Undertaking reasonably necessary investigations or inspections during the 180 days before an election administered by the local government to ensure that it fully complies with state and federal laws involving the rights of disabled electors.
- At least 90 days before an election administered by the local government, producing a report to the court regarding the local government's compliance, anticipated compliance, or lack of compliance with any state or federal law involving the rights of disabled electors.
- During early voting and on election day, being available to receive reports by disabled electors or any organization representing disabled electors of any violations of a state or federal law involving the rights of disabled electors and bringing meritorious reports of violations to the court's immediate attention.

If the monitor informs the court that the local government has violated or is likely to violate a state or federal law involving the rights of disabled electors, the court would have to order any and all relief necessary to remedy the violation. If the violation has already occurred and the elector whose rights were violated reported the violation to the monitor, the court would also have to order the local government to pay a $1,000 penalty to the elector.

If the monitor informs the court of a report of an alleged violation during the 40 days before an election that indicates that a disabled elector is unable to vote because of the alleged violation, the court would have to order an emergency hearing to ensure that the elector is not disenfranchised. (This provision would not prohibit the elector from filing a separate lawsuit to enforce the applicable law if that law provides the elector with a cause of action.)

If the monitor's report (required at least 90 days before an election, as described above) indicates any concerns that the local government will not comply with a state or federal law involving the rights of disabled electors, the court would have to hold a hearing to address those concerns and order any relief it determines necessary to ensure the local government's full compliance. The hearing and any resulting orders would have to occur with enough time before the election to ensure that the electors are not disenfranchised.

If the court receives any meritorious reports of a violation of a state or federal law involving the rights of disabled electors from the monitor, a disabled elector, or any organization on behalf of a disabled elector during early voting or on election day, and it finds that the violation likely has occurred or is occurring, it would have to issue emergency relief (on that same day, if necessary) to ensure that the elector is not disenfranchised.

If the court determines that a violation has occurred and orders any of the above remedies, it would have to extend the term of the appointed monitor through at least the next election administered by the local government.

Court costs

If a plaintiff prevails in any action brought under the act, the court would have to award reasonable attorney fees and litigation costs (including expert witness fees and expenses).[12] A court could award costs to the defendant only if they prevail in an action that the court finds frivolous.

Expedited proceedings and preliminary relief

Actions brought under the act, Article II of the state constitution, or any other law concerning voting rights or elections would be subject to expedited pretrial and trial proceedings and would have to receive an automatic calendar preference. If a plaintiff seeks preliminary relief with respect to an upcoming primary or general election, the court would have to grant the relief if it determines that the plaintiff is more likely than not to succeed on the merits and that it is possible to implement an adequate remedy before the upcoming election.

Michigan Voting Rights Assistance Fund

The act would create the Michigan Voting Rights Assistance Fund (MVRAF) in the Department of Treasury. The state treasurer would be responsible for directing the fund's investments. The fund could receive money and other assets from any source, including charitable contributions and interest and earnings from the fund's investments. Money in the fund at the close of a fiscal year would remain in the fund and would not lapse to the general fund. The Department of State (DOS) would be considered the administrator of the fund for auditing purposes. DOS could expend money from the fund only to reimburse prospective plaintiffs and local governments in accordance with the act and section 8 of the Language Assistance for Elections Act (SB 403).

Reimbursements

A prospective plaintiff could request reimbursement from DOS for the reasonable costs of generating a notification letter (alleging a violation of the act or of a state or federal law involving the rights of disabled electors) if the local government enacts or implements a remedy to the potential violation.[13]

[12] The plaintiff would be considered to have prevailed if, as a result of the action, some or all of the relief sought has been yielded by the defendant or ordered by the court.

[13] While this provision would apply if a local government enacts or implements a remedy to a potential violation of section 13 (violations of the act) *or* section 24 (disabled voters) in response to a notification letter sent under either section, it would require DOS to reimburse the prospective plaintiff only for the reasonable costs of generating a letter under section 13.

A local government could request reimbursement for either, but not both, of the following:

- Reasonable costs of evaluating whether an implemented remedy was necessary to prevent a potential violation of the act or of a state or federal law involving the rights of disabled electors, regardless of whether the local government implemented the remedy in response to a notification letter or on its own volition.
- Reasonable costs of evaluating whether a remedy is necessary to prevent a possible violation of the act or another state or federal law involving the rights of disabled electors, if the local government incurred those costs in response to a notification letter and DOS determines, upon the local government's request, that the plaintiff should have reasonably known that the allegations in the letter lack legal or factual merit.

A local government would have to submit reimbursement requests within 90 days after either of the following, as applicable:

- Enacting or implementing a remedy.
- Receiving a DOS determination that the allegations in a notification letter lack merit.

Reimbursements would be made from the MVRAF or, if there is not enough money in the fund, from other money appropriated to DOS for reimbursements under the act. The reimbursements generally could not exceed $50,000 (annually adjusted for inflation and rounded to the nearest $100). All requests would have to be substantiated with applicable financial documentation, including detailed invoices for expert analysis and reasonable attorney fees calculated by multiplying a reasonable number of hours worked by a reasonable hourly rate.

DOS could deny a request for reimbursement if a remedy was not necessary to prevent a potential violation. A prospective plaintiff or local government that does not receive satisfactory reimbursement within 120 days after their request could file a declaratory judgment action to obtain a clarification of rights.

SOS guidance

The bill would require the SOS to provide guidance to county, city, and township election officials, and any other local government officials who would have obligations under the act, regarding the process for implementation. (Guidance would include clarifying which local government is providing the notices required under sections 653c and 653d of the Michigan Election Law, as proposed by SB 404.) Local officials also could request SOS guidance on their obligations and responsibilities under the act, such as those that would apply after receiving a notification letter for an alleged violation.

Any requests and guidance would have to be promptly posted on the DOS website, and the SOS would have to update the guidance as necessary to reflect amendments to the act, updates to voting technology or equipment, or other changes.

Timing under the act

Anything required by the act to be done on a date that falls on a weekend or legal holiday could be done within the same time limits on the next business day.

1969 PA 161 repeal

Finally, the bill would repeal 1969 PA 161, which applies to certain election-related civil actions filed before an election takes place. The act provides a rebuttable presumption that a claim brought within 28 days before the election it relates to was unreasonably delayed and should be denied by the court.[14] (A rebuttable presumption can be overcome with evidence to the contrary.) The act exempts actions brought based upon acts of the state legislature or of a local legislature that take effect during the 28 days before the election.

Senate Bill 402 would create the Voting and Elections Database and Institute Act, which would require the SOS to enter into an agreement with one or more public research universities in Michigan to create a database and institute that would collect information on voting and elections, support related research, and publish election records provided by the SOS and local governments.

Michigan Voting and Elections Database and Institute

The Michigan Voting and Elections Database and Institute would be required to do all of the following:

- Maintain and administer a central repository of public elections and voting data from all local governments in Michigan (counties, cities, townships, or other political subdivisions that conduct an election).
- Foster, pursue, and sponsor research on existing laws and best practices in voting and elections.
- Provide a center for research, training, and information on voting systems and election administration.

The Michigan Voting and Elections Database and Institute could do any of the following:

- Conduct classes, both for credit and noncredit.
- Organize interdisciplinary groups of scholars to research voting and elections in Michigan.
- Conduct seminars on voting and elections.
- Establish a nonpartisan centralized database to collect, publish, and archive data related to elections, voter registration, and ballot access in Michigan.
- Assist in the dissemination of election data to the public.
- Publish appropriate books and periodicals on voting and elections in Michigan.
- Provide nonpartisan technical assistance to local governments, scholars, and members of the general public seeking to use its resources.

The SOS and any participating universities would have to enter into a memorandum of understanding, with an initial term of at least 25 years, that grants the university or universities the authority to select the director of the database and institute and provides that the SOS is responsible only for the costs of entering into the memorandum of understanding and for the transfer of election and voting data and records. The university or universities would be responsible for any other operating costs.

[14] House Bill 6053 of the current legislative session would extend this deadline to 45 days before an election. See: https://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-6053-08396122.pdf.

Records

The Michigan Voting and Elections Database and Institute would have to maintain the following data and records from at least the previous 12 years in an electronic format:

- Annual precinct-level estimates of the total population, voting age population, and citizen voting age population by racial, color, or language minority group and disability status for each local government, based on U.S. Census Bureau data (including the American Community Survey) collected by a public office.[15]
- Election results at the precinct level for every federal, state, and local election held in every local government in Michigan.
- The most recent general election voter registration lists, voter history data, election day polling places, early voting sites, and absentee ballot drop box locations for every election in every local government in Michigan.
- The most recent general election maps or other documentation of precinct configurations.
- Election day polling places and early voting sites (including lists of precincts assigned to each election day polling place and early voting site, as applicable).
- Adopted districting or redistricting plans for every election in every local government in Michigan.
- Any other data the director of the database and institute considers necessary to maintain to further the purposes of the database and institute.

All data and records, except for data, information, and estimates that identify individual electors, would have to be posted on the institute's website and made available to the public at no cost. Maps, election day polling places, early voting sites, and absentee ballot drop box locations would have to be made available in a geospatial file format.

The database and institute would have to implement rigorous cybersecurity standards for the records that are comparable to those implemented by the Michigan Department of Technology, Management, and Budget (DTMB). After the required 12-year period described above, the database and institute would have to permanently maintain all relevant data and records in an electronic format for archival purposes.

Data transmission

Within 180 days after an election, the SOS would have to transmit copies of the following information to the Michigan Voting and Elections Database and Institute:

- Precinct-level election results.
- The most recent general election voter registration lists.
- Voter history data.
- Maps, descriptions, and shapefiles for election districts.
- Lists of election day polling places and early voting sites, shapefiles, or descriptions of the precincts assigned to each election day polling place and early voting site.

The SOS would have to consult with the director of the database and institute, the Michigan Association of County Clerks, and the Michigan Association of Municipal Clerks before requesting data and records from state agencies and local governments. State agencies and local

[15] The database and institute would have to use the most advanced, peer-reviewed, and validated methodologies available to prepare the estimates.

governments would have to provide the SOS with any reasonably requested and publicly available election and voting data and records in a timely manner, and, upon receipt, the SOS would have to transfer them in a timely manner to the Michigan Voting and Elections Database and Institute.

The SOS would have to reimburse each local government for the cost of providing any requested data and records. The reimbursement could not exceed the total allowable costs to the local government as provided in section 4 of the Freedom of Information Act (FOIA).[16] To qualify for reimbursement, a local government would have to submit a verified account of its allowable costs to the SOS within 90 days after providing the requested data and records. The SOS would have to pay or disapprove the amount within 90 days.

Additional provisions

Once election and voting data and records provided by a local government have been posted on the Michigan Voting and Elections Database and Institute's website, the local government would no longer be obligated to provide those data and records in response to a FOIA request. A local government that receives a FOIA request for the data and records would have to notify the requesting person within 10 business days that the request must be submitted to the database and institute.

Data, information, and estimates maintained by the Michigan Voting and Elections Database and Institute could be relied on as evidence in court, at the court's discretion.

Within 90 days after the end of each state fiscal year, the database and institute would have to publish a report on its priorities and finances.

The attorney general (or their designee) or the director of the database and institute could file a court action to compel compliance with the act.

The SOS and public research university or universities would have to enter into the agreement to establish the Michigan Voting and Elections Database and Institute by November 5, 2025. Other provisions of the bill would take effect May 5, 2026.

Senate Bill 403 would create the Language Assistance for Elections Act. The act would require certain local governments (in addition to those currently covered under the federal Voting Rights Act) to do all of the following:

- Provide election materials in non–English languages.
- Establish a local remedy process for violations and grounds for court action.
- Create an advisory council to assist the SOS with implementation.

[16] Section 4 of FOIA allows a public body to charge a fee for a public records search. The fee must be limited to mailing costs; the cost for searching for, reviewing, and duplicating the materials; the cost for separating exempt from nonexempt information; and labor costs.

Covered counties, cities, and townships

If local government (county, city, or township) meets any of the following conditions, it would have to provide language assistance when conducting elections:

- Before January 1, 2030, either of the following:
  - More than 5% of the ***voting-eligible population*** in the local government speak a single shared language other than English and have ***limited English proficiency***.
  - The local government has a voting-eligible population of more than 10,000 individuals who speak a single shared language other than English and have limited English proficiency.
- Beginning January 1, 2030, either of the following:
  - The local government has a voting-eligible population of more than 100 individuals who speak a single shared language other than English and have limited English proficiency and who also constitute at least 2.5% of the local government's voting-eligible population.
  - The local government has a voting-eligible population of at least 600 individuals who speak a single shared language other than English and have limited English proficiency.

Voting-eligible population would mean the population of individuals with United States citizenship who are 18 years of age or older.

Limited English proficiency would mean that an individual does not speak English as their primary language and speaks, reads, or understands the English language less than very well.

If a county conducts early voting for a local government that is required to provide language assistance, the county would have to comply with the language assistance requirements during early voting.[17]

By January 31 of each odd-numbered year, the SOS would have to post on the DOS website a list of each local government required to provide language assistance for elections and of each language in which the local governments would have to provide the assistance. (The posting would be based on data made available by the U.S. Census Bureau or the American Community Survey, or, if that data is insufficient, data of a comparable quality collected by a governmental entity or the Michigan Voting and Elections Database and Institute.[18])

At least 10 days before the SOS posts the information, the director of elections would have to provide the same information to every local clerk in the state. The SOS would have to notify any local governments subject to the language assistance requirements, issue implementation guidance to those local governments, and require those local governments to implement the requirements by the next state primary election.

These provisions would take effect January 1, 2026.

[17] Section 720g of the Michigan Election Law allows cities and townships to enter into an agreement with their county for the county to conduct early voting during the constitutionally required nine-day period.

[18] The Michigan Voting and Elections Database and Institute would be created by Senate Bill 402.

Language assistance requirements

For each local government added to the list described above, the SOS would have to provide translations for voter-facing materials in each designated language and related materials in English. Required materials would include registration and voting notices; forms; instructions; assistance; ballots; absentee ballot applications; signage for clerks' offices, polling places, and early voting sites; and other materials designated by the Language Access Advisory Council described below. The local government would have to use all the assistance provided to it.

If the local government requires election language assistance that is not provided by the SOS as described above, the local government would have to submit language to the SOS no later than 82 days before the applicable election. If it does not do so, it would have to provide the language assistance for elections that was provided to it by the SOS as described above.

The SOS would have to ensure that all of the following apply to materials provided in a designated language:

- They are translated by a certified translator.
- They do not rely solely on an automatic translation service.
- They are of an equal quality to the English counterparts.
- They accurately convey the intent and essential meaning of the original text or communication in the most widely used dialect of that language.

The SOS would have to produce electronic copies of election materials published in each designated language.

If the SOS determines that language assistance for elections must be provided in a local government, it would have to provide the local clerk with access to either a live interpreter or a virtual system, along with any necessary equipment, for providing language interpretation to voters. The SOS would also have to provide a virtual system to clerks in any other local government upon request. Live interpreters and virtual systems would have to be provided in the clerk's office during the 45 days before the election and on election day, in early voting sites during the early voting period, and in election day polling places on election day.

The SOS also would have to provide a voting system technology and a voter assist terminal to the local government (and to the applicable county if the county is conducting early voting for that local government) that produces ballots on demand, displays a translated ballot for the voter to mark using the terminal's electronic interface, and prints a translated ballot reflecting the voter's votes for tabulation.

Additionally, the SOS would have to either reimburse a local government for any additional costs incurred in conducting logic and accuracy testing on tabulators or, if approved by the local government's governing body, contract with a vendor for logic and accuracy testing on the local government's tabulators.

The SOS could not prohibit a local clerk or board of election commissioners from using any source to prepare the chart of predetermined results and test decks used for logic and accuracy

testing if the chart and test decks meet the required standards under law.[19] A local clerk or board of election commissioners could use any source to print test ballots that are designed to be scanned properly by voting equipment and could use any source to conduct logic and accuracy testing if the testing is limited to placing test ballots in voting equipment and comparing the results to the chart of predetermined results and does not involve any additional examination of or access to voting equipment.

These provisions would take effect January 1, 2026.

Local remedy process, complaints, and court actions

Any individual aggrieved by an alleged violation and any entity whose membership includes individuals aggrieved by the alleged violation, whose mission would be frustrated by a violation, or that would expend resources to fulfill its mission due to a violation could be a prospective plaintiff in an action against a local government or the SOS.

However, before commencing the action, a prospective plaintiff would generally have to notify the SOS or the clerk and chief administrative officer of the local government by sending a letter by certified mail that asserts that the SOS or the local government may be in violation of the act, explains each allegation in detail, and proposes a remedy for each violation. (As described below, certain circumstances would allow a prospective plaintiff to file an action without sending a notification letter.)

Within 30 days after receiving the letter, the SOS or the clerk and the chief administrative officer or chief executive of the local government, as applicable, along with their legal counsel or other individuals the SOS or local government wishes to have attend, could meet with the prospective plaintiff or their representatives to prepare and agree on a written plan to address the alleged violations. If the SOS or the local government does not meet with the prospective plaintiff or their representatives, the prospective plaintiff could file a cause of action as described below. If the SOS or local government agrees to the meeting, the prospective plaintiff or their representatives would have to participate.

A plan to address the alleged violations would have to meet all of the following:

- Be approved by the SOS or the local government's governing body, as applicable.
- Identify each alleged violation.
- Identify a specific remedy for each alleged violation or state that the parties agree that there is no appropriate remedy for one or more of the alleged violations.
- Establish specific measures that the SOS or local government must take to facilitate any needed approvals to implement each remedy.
- Provide a schedule for the necessary approvals and the implementation of each remedy.

If a prospective plaintiff and a local government agree on a plan and the plan is approved by the SOS or the local government's governing body, the prospective plaintiff could not file an action unless the SOS or local government fails to comply with the plan.

[19] Section 798 of the Michigan Election Law requires boards of election commissioners to publicly test electronic tabulating equipment for accuracy, in accordance with SOS rules, before beginning to count ballots. During an accuracy test, a different number of votes are assigned to each candidate and for or against each ballot question, and the equipment must generate an errorless count.

If a prospective plaintiff and the SOS or local government are unable to come to an agreement or the SOS or local government fails to approve and implement a plan, the prospective plaintiff could file a cause of action to compel compliance and remedy the violation. A prospective plaintiff also could file an action if another party has already submitted a notification letter alleging a substantially similar violation and that party is eligible to bring an action, or if the prospective plaintiff is seeking preliminary relief with respect to an upcoming election.

(The attorney general also could file a cause of action if the SOS or local government fails to meet with the plaintiff, if the SOS or local government fails to approve or implement a plan to address the violations, if another party has submitted a notification letter alleging a substantially similar violation, or to seek preliminary relief for an upcoming election.)

A cause of action against a local government would have to be filed in the circuit court of the county where the local government is located or in the Court of Claims, and a cause of action against the SOS would have to be filed in the Court of Claims.

Reimbursements

A prospective plaintiff could request reimbursement from DOS for the reasonable costs of generating a notification letter alleging a violation of the act if the local government enacts or implements a remedy to the potential violation.

A local government could request reimbursement for either, but not both, of the following with regard to a notification letter:

- Reasonable costs of evaluating whether an implemented remedy was necessary to prevent a violation, regardless of whether the local government implemented the remedy in response to a notification letter or on its own volition.
- Reasonable costs of evaluating whether a remedy is necessary to prevent a possible violation, if the local government incurred those costs in response to a notification letter and the DOS determines, upon the local government's request, that the plaintiff should have reasonably known that the allegations in the letter lack legal or factual merit.

A local government would have to submit reimbursement requests within 90 days after either of the following, as applicable:

- Enacting or implementing a remedy.
- Receiving a DOS determination that the allegations in a notification letter lack merit.

Reimbursements would be made from the MVRAF (proposed by SB 401) or, if there is not enough money in the fund, from other money appropriated to DOS for reimbursements under the act. The reimbursements generally could not exceed $50,000 (annually adjusted for inflation and rounded to the nearest $100). All requests would have to be substantiated with applicable financial documentation, including detailed invoices for expert analysis and reasonable attorney fees calculated by multiplying a reasonable number of hours worked by a reasonable hourly rate.

A prospective plaintiff or local government that does not receive satisfactory reimbursement within 120 days could file a declaratory judgment action to obtain a clarification of rights.

Court remedies

In an action brought under the act against the SOS or a local government, the court would have broad authority to order adequate remedies that are reasonably necessary and tailored to address the violation, such as any of the following:

- Requiring the establishment and conducting of a comprehensive program that ensures an equal opportunity for citizens in the local government who are entitled to language assistance under the act to participate in the electoral process.
- Adding voting days or hours.
- Ordering a special election, either on a regular election date or on another date if necessary to remedy the violation.
- Imposing nominal or compensatory damages.
- Imposing punitive damages in the form of a civil fine, if the court finds any of the following:[20]
    - The violation was intentional.
    - The local government or a local government official demonstrated a disregard for the voting rights of qualified electors in the local government.
    - The local government failed to take any required action after receiving a notification letter alleging a violation (such as meeting with the prospective plaintiff, developing a plan to remedy the potential violation, or implementing the plan).
    - The local government violated a court order issued under the act, Article II of the state constitution, the Voting Rights Act, or any other law applicable to or affecting voting rights.
    - The local government violated the act, Article II of the state constitution, or any other law applicable to or affecting voting rights after addressing a previous violation of any of those laws.
    - Punitive damages are reasonably necessary to ensure compliance with the act.
- Any other form of declaratory or injunctive relief (e.g., a court order to stop the violation) tailored to address the violation.
- Retaining jurisdiction for a period of time the court considers appropriate.

The court would have to consider remedies proposed by any parties and interested nonparties and could not give deference or priority to a proposed remedy offered by the defendant or local government simply because the remedy was proposed by the defendant or local government. A court could order remedies that may be inconsistent with other provisions of state or local law if those inconsistent provisions of law would otherwise prevent the court from ordering an adequate remedy.

If a plaintiff prevails in any action brought under the act, a court would have to award them reasonable attorney fees and litigation costs (including expert witness fees and expenses).[21] The court would have to award fees and costs to a defendant if the local government's written

[20] The fine would be deposited into the MVRAF. When imposing the fine, the court would have to consider the severity and number of the violations, whether the local government has previous violations, the number of registered electors in the local government, the local government's ability to pay the fine, and any other factors considered necessary. In any order requiring the payment of punitive damages, the court would have to provide an explanation of why the payment was required and how the amount to be paid was determined.

[21] The plaintiff would be considered to have prevailed if the defendant has yielded some or all of the relief sought as a result of the action.

response to a notification letter details why no violation occurred and the court finds that no violation occurred for the same or substantially similar reasons.

Expedited proceedings

Actions brought under the act would be subject to expedited pretrial and trial proceedings and would have to receive an automatic calendar preference. If a plaintiff seeks preliminary relief with respect to an upcoming primary or general election, the court would have to grant the relief if it determines that the plaintiff is more likely than not to succeed on the merits and that it is possible to implement an adequate remedy before the upcoming election.

Language Access Advisory Council

The bill would create the Language Access Advisory Council in the Department of State. The council would consist of the following members, appointed by the SOS:

- One clerk from a list of nominees submitted by the Michigan Association of Municipal Clerks.
- One clerk from a list of nominees submitted by the Michigan Association of County Clerks.
- One member from each group eligible for language assistance for elections.

The SOS would have to appoint the members on or before May 1, 2025. Vacancies would be filled in the same manner as the original appointment.

The Language Access Advisory Council would have to meet at least once a year, as directed by the SOS, to advise the SOS on implementing the bill's language assistance requirements. The council would also have to approve an annual list of voter-facing materials that must be translated into each designated language by a certified translator, including the required voter-facing materials described above. The SOS would have to provide the Language Access Advisory Council with an annual list of suggested materials.

Additional provisions

The bill states that nothing in the act could be interpreted to conflict with federal law or suggest that voters have fewer rights than granted under federal law, including under section 203 of the Voting Rights Act.[22]

The bill also would not prohibit a local government from voluntarily providing language assistance for elections beyond what would be required, if the local government determines that language assistance for elections would be beneficial for its limited English proficiency residents.

Senate Bill 404 would amend the Michigan Election Law to do all of the following:

- Require local governments to notify the SOS of election-related determinations.
- Require the SOS to post information about upcoming elections on its website.
- Require election inspectors to assist prospective voters who are unable to enter an election day polling place or early voting site.

[22] Section 203 of the VRA requires certain states and local governments to provide voting materials in languages other than English if number of voting-age citizens in the state or local government meet specified thresholds (see **Background**, below).

- Allow prospective voters to seek language assistance from an individual of their choice.
- Allow individuals to provide food and other items to voters in line at a polling place or early voting site.

SOS and local government notices

If a local government's governing body approves ballot language related to any of the following, the local government would have to notify the SOS within 20 days:

- A change to the method of how the winner of an election is determined.
- A change from an at-large method of election to a district-based method of election (as those terms would be defined by SB 401) or vice versa.
- A governmental reorganization (such as a reorganization under the Home Rule City Act, the Charter Township Act, or the Home Rule Village Act).

Local governments also would have to provide the following notices to the SOS:

- At least 20 days before the clerk of the local government starts a program to remove electors from voter registration records. (This provision would not apply to electors that are removed from registration records because they have died, they have moved, or they authorized the cancellation of their registration.)
- Within five business days after receiving and before complying with an individual's request to view, inspect, take possession of, or copy a tabulator, physical or digital data, a voter assist terminal, an early voting poll book, an electronic poll book, a paper poll book, or any other equipment approved by the SOS or Board of State Canvassers for use at an election.
- Within five business days after receiving and before complying with an individual's request to view, inspect, or copy ballots from more than 25% of the total votes cast in an election held in the local government.
- Within 14 days before an election, any organization or committee that has been approved or denied authorization to appoint challengers.
- Within five business days after receiving and before acting on a challenge to the registration of an elector made by another elector of the local government.

As soon as practicable, but within five days after receiving a notice from a local government, the SOS would have to post the notice on the DOS website and ensure that the posting is accessible to individuals with disabilities or limited English proficiency.[23]

If a state of emergency affecting a local government is declared, the notice requirements would be suspended until the state of emergency is terminated for the local government. On the date that the state of emergency is terminated, the local government would be required to provide any notices that would have been required during the state of emergency.

The SOS would have to post the name of each local government that fails to submit a required notice in alphabetical order on a visible portion of the DOS website and update the posting at least every 30 days with additional information. The posting would also have to include the specific notice that was not submitted, the date of the violation, and the date the local government most recently submitted a notice or an indication that the required notice was never

[23] Senate Bill 404 would require the SOS to prescribe the form of the notice that would be required under section 653c (ballot questions and registration cancellations), but not the notice that would be required under section 653d.

submitted. The information would have to remain on the website for at least one year following the date of the violation. (These provisions would not remove the obligation of a local government to comply with all notice requirements.)

The SOS would have to post a notice on the DOS website as soon as is practicable after the occurrence of any of the following, but within five days after being notified of the occurrence:

- Any change to the location of a polling place, absent voter drop box, or other voting location within a local government.
- Any change to the hours or days available for voting, including early voting, as compared to a previous election for the same or a similar office.
- Any change to the hours or locations that a city or township clerk will be available to issue and receive absent voter ballots.
- Any early voting plan or amendments to an early voting plan.
- The results of any election audit conducted by the SOS and county clerks.[24]
- The selection of a voting system.
- Any agreement to establish an absent voter counting board.
- The governing body of a local government approves a change to a district within that government (such as under 1966 PA 261 [which prescribes the apportionment of county commission districts], section 5 of 1966 PA 293 [which prescribes the apportionment of charter county commission districts], or section 27a of the Home Rule City Act [which prescribes the apportionment of city council wards if a city does not elect members of its legislative body at large]).

The SOS would have to ensure that the posting is made available and accessible to individuals with disabilities and individuals with limited English proficiency.

The notice requirements would take effect January 1, 2026. Before that date, the SOS would have to consult with the Michigan Association of County Clerks, the Michigan Association of Municipal Clerks, and at least two voting rights advocates regarding implementation.

Curbside voting at polling places and early voting sites[25]

Beginning January 1, 2026, the bill would require election inspectors to assist an elector who is unable to enter a polling place or early voting site and asks a clerk or the precinct board of election inspectors for assistance. During the hours that voting is available at a polling place or an early voting site, a sign with a phone number would have to be displayed outside for electors who need voting assistance.

If the election inspectors at the polling place or early voting site become aware that an elector needing assistance is outside and wishes to cast a ballot, two election inspectors from different

[24] The state constitution and section 31a of the Michigan Election Law grant the SOS the authority to audit election precincts and to supervise county clerks during the election audit process.

[25] The Michigan Election Officials Manual currently provides for a similar curbside voting process, in which two election inspectors from different parties must assist a voter who is unable to enter their polling place by verifying the voter's identity, providing them with a ballot and allowing them to fill it out in private, retrieving the completed ballot, and notifying the voter that their ballot has been accepted. https://www.michigan.gov/sos/-/media/Project/Websites/sos/01mcalpine/Election-Day-and-the-Voting-Process.pdf#page=23 Twenty-six other states and the District of Columbia offer curbside voting as of October 2024: https://www.lgbtmap.org/img/maps/citations-curbside-voting.pdf.

political parties would have to deliver the ballot to the elector in a secrecy sleeve. After the elector has marked the ballot, the election inspectors would have to immediately return to the polling place or early voting site and deposit the ballot into a tabulator in a manner that protects the secrecy of the ballot to the greatest extent possible. If the tabulator accepts the ballot, one election inspector (regardless of party affiliation) would have to return to the elector outside and indicate that their ballot was accepted and tabulated. If the ballot is rejected, two election inspectors from different parties would have to return to the elector to provide the elector an opportunity to have the ballot considered a spoiled ballot and vote another ballot.

An elector who is assisted by the election inspectors while voting would otherwise be subject to all of the requirements, and have all of the rights, that apply to electors who vote inside the polling place or early voting site.

Language assistance

Currently, an elector who cannot mark their ballot on their own can be assisted by two election inspectors, and an elector who is disabled on account of blindless can be assisted by an immediate family member or a designated adult.

Under Senate Bill 404, an elector seeking language assistance could be assisted by an individual of their choice.

(The bill states that these provisions should not be interpreted to conflict with federal law or suggest that voters have fewer rights than granted under federal law, including section 208 of the Voting Rights Act.[26])

Food, warmth, and other items provided while in line to vote

Subject to section 744 of the Michigan Election Law, which prohibits electioneering inside polling places,[27] an individual would be allowed to provide food, warmth, or other necessities to electors who are in line to vote inside or outside of the building in which a polling place, early voting site, or a city or township clerk's office is located if they do not interfere with the voting process. A clerk could direct an individual to immediately cease providing food, warmth, or other necessities if they determine that the individual is interfering with the voting process or the clerk's ability to maintain peace, regularity, and order.

Additional provisions

Senate Bill 404 would remove a provision that currently requires all ballots given to an elector applying to vote to bear the same number, beginning with the lowest number for the first elector receiving a ballot, the next higher number for the second such elector, and so on.

Finally, the bill would repeal section 579 of the Michigan Election Law, which generally provides that an elector forfeits the right to vote at a primary election if they expose their

[26] Section 208 of the VRA allows a voter who is blind, disabled, or unable to read or write to be assisted by a person of their choice, other than their employer, an agent of their employer, or an officer or agent of their union.

[27] Specifically, section 744 prohibits individuals from persuading or attempting to persuade electors to vote for or against any candidate, party, or ballot question; placing or distributing stickers other than those lawfully provided by election officials; soliciting donations, gifts, or similar demands; requesting or obtaining petition signatures; and posting, displaying, or distributing unofficial election materials in a polling place or within 100 feet of an entrance to a building in which a polling place is located.

marked ballot to any person in a manner that is likely to reveal the name of any candidate they voted for. (The section does not apply to an elector who exposes their ballot to a child accompanying them in the voting booth.)

MCL 168.726, 168.736, and 168.751 (amended); MCL 168.653c et seq. (proposed); MCL 168.579 (repealed)

BACKGROUND:

FEDERAL VOTING RIGHTS

Federal laws related to the right to vote include the following:[28]

- The Fourteenth and Fifteenth Amendments to the U.S. Constitution, ratified in 1868 and 1870, respectively, which establish equal protection under the law for all citizens and prohibit the denial of the right to vote on the basis of race.
- The Civil Rights Acts of 1870, 1957, 1960, and 1964, which prohibited voter intimidation and discrimination on the basis of race. The Civil Rights Acts are codified at 52 USC 10101 and 20701 to 20706.
- The Voting Rights Act (VRA), enacted in 1965.[29] The VRA is codified at 52 USC 10301 to 10314, 10501 to 10508, and 10701 to 10702. Sections 2, 4(b), 5, and 203 are discussed in greater detail below.
- The Voting Accessibility for the Elderly and Handicapped Act (VAEHA), enacted in 1984. VAEHA is codified at 52 USC 20101 to 20107.
- The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), enacted in 1986.[30] UOCAVA requires states to allow overseas military service members, their families, and other American citizens living abroad to register and vote absentee in federal elections. UOCAVA is codified at 52 USC 20301 to 20311.
- The National Voter Registration Act (NVRA, also known as the Motor Voter Act), enacted in 1993.[31] Among other things, the NVRA requires states to allow eligible individuals to register to vote or update their registration by mail or when receiving government services from a designated voter registration agency, such as when applying for a driver's license. The NVRA is codified at 52 USC 20501to 20511.
- The Help America Vote Act (HAVA), enacted in 2002, which established the Election Assistance Commission and provides election administration standards for states.[32] HAVA is codified at 52 USC 20901 to 21145.

VOTING RIGHTS ACT

Voter discrimination (section 2)

Section 2 of the Voting Rights Act prohibits voting practices and policies in state and local governments that discriminate on the basis of race, color, or membership in a language minority group identified in section 4(f)(2). A practice or policy violates section 2 if, based on the totality of the circumstances, members of a protected class have less opportunity than other members of the electorate to participate in the political process and elect candidates of their choice.

[28] https://www.justice.gov/crt/statutes-enforced-voting-section#vra
[29] For a summary of key VRA provisions, see: https://crsreports.congress.gov/product/pdf/R/R43626/15#page=17.
[30] https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act
[31] https://www.justice.gov/crt/national-voter-registration-act-1993-nvra
[32] https://www.justice.gov/crt/help-america-vote-act-2002

Generally, courts have used three factors to evaluate section 2 claims, as established in the 1986 Supreme Court ruling in *Thornburg v Gingles* (a case involving state legislative maps in North Carolina). The *Gingles* test generally provides that a section 2 violation exists if the minority group is large enough and geographically compact enough to comprise a majority in a reasonably configured district, the minority group is politically cohesive, and the majority group votes as a bloc to defeat the minority group's preferred candidate. (The *Gingles* precedent was recently upheld by the Supreme Court in *Allen v Mulligan*, a 2023 case involving congressional redistricting in Alabama.[33])

Section 12 of the VRA provides sanctions and remedies for violations of certain provisions of the act, including a right of action for the U.S. Attorney General if there are reasonable grounds to believe that a person is about to engage in any act or practice prohibited by section 2. While the federal government has brought several claims to challenge a voting policy enacted or implemented by a state or local government,[34] courts have generally allowed private individuals and entities to also bring lawsuits alleging a section 2 violation.

However, a recent federal court ruling may affect this precedent. In *Arkansas State Conference NAACP v Arkansas Board of Apportionment*, a 2022 redistricting case involving a proposed Arkansas House map, a federal judge ruled that private individuals and groups cannot bring section 2 lawsuits because those entities are not explicitly named in the enforcement provisions of section 12; only the U.S. Attorney General can bring a section 2 court action. The ruling was upheld in November 2023 by a panel of the U.S. Court of Appeals for the Eight Circuit.[35] As a result, there is no private cause of action under section 2 for individuals and entities in states within the Eighth Circuit: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

However, a ruling in a separate redistricting case heard by a panel of the U.S. Court of Appeals for the Fifth Circuit (also from November 2023) affirmed the right of the plaintiffs—private individuals and advocacy organizations—to bring an enforcement action under section 2.[36] Although the plaintiffs in the Arkansas case did not file an appeal with the Supreme Court, the "split" between the two circuits on the question of private enforceability could result in the Court's taking up the issue at a future date.[37]

Federal preclearance (section 5)

Section 5 of the Voting Rights Act requires a state or political subdivision subject to the formula established in section 4(b) of the act to obtain approval ("preclearance") from the U.S. District Court for the District of Columbia or the U.S. Attorney General before enacting or administering any voting-related policy. Preclearance requires state or local officials to demonstrate that the changes they seek do not have a discriminatory purpose or result before the policy can take effect.

[33] https://www.supremecourt.gov/opinions/22pdf/21-1086_1co6.pdf

[34] https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0

[35] The Eight Circuit panel ruling, which was upheld by the full circuit in January 2024, can be found here: https://ecf.ca8.uscourts.gov/opndir/23/11/221395P.pdf.

[36] The Fifth Circuit panel ruling can be found here: https://s3.documentcloud.org/documents/24160384/robinson-2023-11-10-5th-circuit-opinion.pdf. The states covered by the Fifth Circuit are Mississippi, Louisiana, and Texas.

[37] For more information on the Eighth and Fifth Circuits' split rulings, see: https://crsreports.congress.gov/product/pdf/LSB/LSB10954#:~:text=Democratic%20National%20Committee%20that,bring%20claims%20under%20Section%202%2C.

The section 4(b) formula, used to identify areas where voter discrimination was more prevalent, generally applies to states and political subdivisions that historically instituted a literacy test (or other similar prerequisites to voting or voter registration) and have had low levels of voter registration or participation. Since 1975, section 4(b) has also covered states and political subdivisions in which more than 5% of citizens are members of a language minority group (see discussion of section 203, below) and in which voting materials or information were only provided in English.

In 2013, The United States Supreme Court ruled in *Shelby County v Holder* that the section 4(b) formula is unconstitutional because the extent of the remedy—federal oversight over state and local legislation—was no longer necessary due to the federal ban on literacy tests and increasing parity in voter registration and participation rates between racial groups.[38] While the court did not rule on the constitutionality of section 5 itself, the lack of a formula to establish which states and local governments are subject to preclearance has made the section's provisions inoperable. Congress has not since established a replacement formula. (However, preclearance remains available under section 3(c) of the Voting Rights Act as a court-ordered remedy to a state or local violation of the voting guarantees of the Fourteenth or Fifteenth Amendments to the U.S. Constitution.) As a result, many believe that the *Shelby County* decision struck down a key provision of the Voting Rights Act.

Language assistance (section 203)

Section 203 of the Voting Rights Act generally requires covered states and political subdivisions to provide voter registration, ballots, and other materials related to the electoral process in the languages of applicable minority groups.[39] Language minorities are defined under section 203 as persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. A state or local government is generally covered under section 203 if the number of voting-age citizens that are part of a single language minority group within the state or local government is greater than 10,000 or represents more than 5% of all voting-age citizens or residents of an Indian reservation (as applicable), and the illiteracy rate of the group is higher than the national illiteracy rate. (The requirement does not apply to local governments within a covered state where less than 5% of the voting-age citizens in the local government are members of a language minority group with limited English proficiency, unless the local government is covered separately.)

State VRAs

As of October 2024, eight states have enacted provisions similar to the federal Voting Rights Act into state law: California, Connecticut, Illinois, Minnesota, New York, Oregon, Virginia, and Washington.[40]

[38] https://supreme.justia.com/cases/federal/us/570/12-96/case.pdf

[39] For a list of covered jurisdictions, see: https://www.justice.gov/crt/page/file/1460416/dl?inline#page=2. Clyde Township, Covert Township, and Fennville (Spanish), and Hamtramck (Bengali) are required to provide language assistance under Section 203. Hamtramck entered into a consent decree in 2021 that establishes specific requirements for the city's provision of Bengali language assistance, which is in effect until July 13, 2025: https://cdn.sanity.io/files/iroghafc/production/28a2f5a281333325de2130afbd542faed892026d.pdf

[40] https://www.lgbtmap.org/img/maps/citations-state-level-voting-rights-acts.pdf.

BRIEF DISCUSSION:

Supporters of Senate Bills 401 to 404 argue that federal voting rights protections have been significantly weakened by recent court decisions, and this erosion is likely to continue, so Michigan should take action at the state level to codify essential voting rights and liberties and target protections specifically to the state's needs. They argue that the bills would give citizens the appropriate tools and remedies for if a local government makes it difficult to vote, and the pre-litigation provisions of SB 401 would save local governments time and money on lawsuits. Additionally, Senate Bills 401 and 403 would increase representation and ballot language access for Arab Americans, a group that is currently not protected under the Voting Rights Act.

Opponents of the bills raise concerns that the bills presume that local election workers are guilty of voter suppression and would place too much financial and logistical burden on local governments and election administrators. They suggest that changes to the legislation, particularly to SB 403, are necessary to clarify that local governments will not be held responsible for the costs of implementation. Opponents also raised concerns about the codification of curbside voting under SB 404, which they believe would make it too difficult to find enough usable early voting sites and would subject county clerks to extra legal liability. Additionally, opponents highlight that SB 401 would allow courts to order remedies that are currently not permitted under Michigan law, such as ranked choice voting or district-level positions in certain units of government.

FISCAL IMPACT:

Senate Bills 401 to 404 would result in substantial one-time and ongoing costs to the state. Local units of government would also incur substantial ongoing costs. However, actual fiscal impacts to local governments would depend on the extent to which the state covers or reimburses locals' costs. Major costs would include those from implementing language assistance requirements required under SB 403. Costs from SB 403 would increase further beginning in 2030, when eligibility for local language assistance is expanded. Other costs related to remedying violations or potential violations of the rights provided under SBs 401 and 403, along with associated legal and punitive costs, are indeterminate and would depend on the number and type of legal action that is taken against local governments or the state. Litigation ensuing from other state voting rights acts recently enacted in other states has been infrequent up to this point, resulting in no significant costs. It is not clear how closely Michigan's unique election administration structure would follow litigation patterns in other states.

Local governments would be eligible for reimbursements at a standard amount of $50,000 under SB 401 and $50,000 under SB 403. Larger local governments would therefore be more liable to potential costs over $50,000 due to their size and greater expenses.

Additionally, there would be costs to local clerk's offices if they determine that existing staff or other resources are not sufficient to support all additional responsibilities and an additional employee needs to be hired.

Actual costs cannot be fully determined at this time. However, estimates of the various costs of the bills and totals are provided in the table below. State costs before 2030 are estimated to be $6.9 million in one-time costs and $2.7 million in annual ongoing costs, for a total of $9.6

million. One-time costs in 2030 are estimated to be an additional $4.4 million, and annual ongoing costs would increase to $3.5 million. The total annual ongoing costs to all local governments are estimated to be $20.4 million.

Details of the various costs to the state and county, city, and township clerk's offices are provided below.

Michigan Voting Rights Assistance Fund

Senate Bill 401 would create the Michigan Voting Rights Assistance Fund to support costs to local governments to comply with SBs 401 and 403. Reimbursements for costs incurred by local clerk's offices would be supported first from funds in the Michigan Voting Rights Assistance Fund. Any state resources allocated to the fund would be subject to legislative appropriations. The fund could receive revenue from charitable donations as well as potential civil fines charged to local governments for punitive damages.

If there is insufficient money in the fund to support reimbursements to local governments, payments would have to be made from the Department of State budget. The amount of reimbursements the department would be able to pay from its appropriations would depend on the annual appropriations. Funding has fluctuated in recent years due to increased appropriations for implementing Ballot Proposals 22-1 and 22-2, and no additional appropriation would be needed.

Remedial costs – Senate Bills 401 and 403

Both the state and local governments would be subject to remedial costs if they are found to be out of compliance or if they take actions on their own volition to prevent potential violations. Each county, city, and township clerk's office would be eligible to receive reimbursements from the state of up to $50,000 in the first year, adjusted for inflation each year after. Clerk's offices could receive reimbursements for costs of implementing remedies necessary to comply with the requirements of both SB 401 and SB 403, for a total possible combined amount of $100,000 for each local government. A local government would be responsible for covering all costs for remedies that exceed either $50,000 reimbursement cap. Since the reimbursement caps are a standardized flat amount, local governments with greater numbers of electors, and higher election administration costs, would be more susceptible to exceeding the state reimbursement caps and incurring the remaining costs.

Reimbursable costs would include those for remedies identified through an investigation or prosecution initiated by a plaintiff, for remedies undertaken by clerk's offices on their own volition to prevent potential violations of SBs 401 and 403, and for the reasonable costs to evaluate whether the remedy was necessary to prevent a potential violation.

There are 1,520 city and township clerk's offices and 83 county clerk's offices in Michigan. Actual costs would depend on both the number of cases of violations brought against local governments, the number of reimbursement requests for remedies initiated by local governments on their own, and the costs of these remedies.

Since 2018, six state voting rights acts have been enacted, most recently in Minnesota in 2024. According to the American Civil Liberties Union, from these state laws, eight complaint notification letters have been filed (in Washington and New York), resulting in six lawsuits. No significant costs have resulted from these lawsuits. Michigan has an exceptionally

decentralized election system, with greater variation of election policy and administration among its clerk's offices. It is not known if this variation would expose the state and clerk's offices to any more litigation than other states have experienced.

Senate Bill 401

To investigate and resolve complaints sent to the Department of State by plaintiffs, the department reports that it would require three additional FTEs for a total annual cost of $432,000.

Below are examples of remedies provided in SB 401 that would possibly be required for complying with its requirements as well as other costs.

Redistricting – The cost of redistricting local election jurisdictions varies by the number of districts and electors in the jurisdiction and whether redistricting services are contracted out or covered by existing staff. Beyond those for the redistricting process, costs include reprinting and mailing voter information cards to all electors, which costs approximately $0.75 per voter. For the average clerk's office, this would cost approximately $1,800. The cost to the city of Detroit, at the highest end, would be approximately $285,000.

Adding voting days, hours, polling places, early voting sites, or ballot drop boxes – These additions could add costs such as hourly compensation for staff and officials and facility costs. One absent voter ballot drop box costs approximately $3,000.

Holding a special election on a non-regular election date – The average cost to a city or township to hold a special election on a date an election is not otherwise scheduled is approximately $6,000, and the average cost to a county is $44,000. Costs are significantly greater for more highly populated jurisdictions and counties.

Compensatory damages – Punitive damages would be indeterminate but proportionate to the local government's ability to pay the punitive damages, and therefore potentially significant to that local government. Proceeds from punitive damages would be deposited into the Michigan Voters Rights Assistance Fund.

Legal fees – Costs would include the attorney fees and litigation costs of a plaintiff that filed an action in court and prevailed as well as a local government's own defense legal costs. Other legal costs would include the plaintiff's cost to generate the notification letter asserting that a local government may be in violation of the bill and costs of court ordered mediation.

Election monitor – A court may appoint an election monitor for a local government for a period of up to 10 years that must be paid for by the local government.

Senate Bill 402

The Department of State would be responsible for the costs of entering into a memorandum of understanding (MOU) with a public research university to establish the Voting and Elections Database and Institute. The department reports that it would require an additional FTE at a cost of $140,000 to execute the MOU and serve as a point of contact with the institute. The one-time cost to enter into an MOU would be approximately $10,000 and would be able to be absorbed by the department's budget.

The Department of State would have to reimburse each local government for the cost of providing election and voting data to the department. However, these costs are anticipated to be negligible.

Senate Bill 403

Senate Bill 403 would impose several requirements on the Department of State and local governments related to providing language assistance to voters. These requirements would result in additional costs to local governments that could be reimbursed by the state up to $50,000, adjusted annually for inflation. Local governments would be required to provide language assistance for elections if, before 2030, more than 5% of its eligible voting population speak a language other than English and have limited English proficiency. Beginning in 2030, eligibility for assistance would expand to include jurisdictions that have a voting eligible population of at least 100 individuals who speak a language other than English and make up 2.5% or more of the voting eligible population. In initial projections, the department reports that 34 cities and townships would meet the 2030 threshold. Seven of these jurisdictions would require language assistance in more than one language. These jurisdictions include 34 clerk's offices, 1,111 precincts, and 67 early voting sites. Approximately 60% of these jurisdictions would be eligible for assistance before 2030.

The Department of State would also incur costs from having to provide qualifying local governments with various language assistance resources. The department would have to provide local governments meeting the threshold described above with either a live interpreter or a virtual system. Costs of live interpreter and virtual system services differ dramatically. If live interpreters were used at each of the required voting sites, costs would be approximately $12.4 million in a year with two elections. However, if a virtual system were used, the department estimates costs of interpreter services at approximately $50,000. It is not known how many clerk's offices would choose to provide live interpreters. For estimating purposes, it is assumed that eligible election units would use a live interpreter one day each year for the November general election.

To use the virtual systems at a much lower cost, laptop or tablet devices would be provided to all eligible units, for one-time costs of $706,800 before 2030 and $471,200 beginning in 2030, for a total of $1.2 million.

The Department of State would also be responsible for providing certified translation of voter-facing documents, including forms, instructions, registration and voting notices, absent voter applications, and ballots. The costs of providing translated documents are estimated at $500,000 annually.

The bill also requires the department to provide eligible local governments with voting system technology that produces ballots on demand and voter assist terminals (VATs) that display translated ballots. The department recently provided VATs to local governments as required by law, and it does not anticipate the need to provide more. One-time costs to provide ballot-on-demand equipment are estimated to be $5.8 million for jurisdictions that qualify under the pre-2030 criteria, and $3.9 million for jurisdictions that would qualify in 2030 and after.

Due to language changes on ballot tabulators, the department would have to reimburse costs to local governments associated with logic and accuracy testing of those tabulators. Each logic and accuracy test costs approximately $1,700, which is multiplied by the number of tabulators,

languages, and ballot types in each jurisdiction. Costs would therefore be most heavily incurred in the state's largest jurisdictions with the greatest number of covered languages. The Department of State estimates total annual reimbursable costs to be $1.1 million.

Local governments would also be subject to those reimbursable remedial costs described under SB 401 related to additional voting hours and sites, legal costs, holding special elections on non-scheduled election days, and punitive damages.

The Department of State projects that it would require four additional FTEs to implement Senate Bill 403 for a total of $544,000.

Senate Bill 404

Sente Bill 404 would require two election inspectors from different political parties to assist "curbside" voters who are unable to enter a voting site. Section 674 of the Michigan Election Law currently requires "at least 3 election inspectors and as many more as in the [board of election commissioners'] opinion is required for the efficient, speedy, and proper conduct of the election." However, due to the challenge of having inspectors from either party available in all precincts in the state, and the need to fulfill the responsibilities of election inspectors inside the voting site, there may be a need to provide additional election inspectors at certain sites. The average daily cost of an election inspector is $195. The total annual costs to all local governments of attaining a sufficient number of inspectors is $1.5 million. The bill would not require the state to reimburse locals for these costs. However, it is not yet known whether the state would do so.

Local administration costs

It is unknown to what extent the responsibilities collectively required of clerk's offices under the bill package would entail increases in personnel hours, wages, or FTE counts in county, city, and township clerk's offices. The additional responsibilities placed directly on clerk's offices by the bill package would not be highly burdensome. However, the state's election systems and processes have changed dramatically in recent years, adding considerable responsibilities for clerk's offices and their staff. Many offices are working at capacity and may be unable to absorb additional responsibilities with existing staff. The bills could, therefore, result in some offices incurring the expense of hiring additional staff or adding staff hours or, in small, rural jurisdictions, providing for a full-time salaried clerk to be able to fully comply with all election laws. For estimating purposes, it is assumed that 20% of clerk's offices would hire an additional employee at an annual cost of $58,500, for a total statewide cost of $18.7 million.

Information technology

The Department of State would have to implement a platform to track and process the violation notices generated by SBs 401 and 403. Based on previous similar technology projects and the average cost of an information technology project for the state, the one-time cost to create the platform is estimated to be $400,000.

State and Local One-Time and Annual Estimated Costs

Cost	State		Local Governments	
	One-Time	Annual	One-Time	Annual
SB 401				
Violation remedies/prevention – MI Voting Rights Assistance Fund		$250,000		
3.0 FTE positions		$432,000		
Complaint tracking IT costs	$400,000			
SB 402				
1.0 FTE position		$105,200		
SB 403				
Poll site interpreter services				
Before 2030		$30,000		
2030 and after		$50,000		
Live interpreters				
Before 2030		$180,000		
2030 and after		$300,000		
Tabulator logic and accuracy testing				
Before 2030		$638,640		
2030 and after		$1,064,400		
Ballot translation				
Before 2030		$300,000		
2030 and after		$500,000		
Ballot printing				
Before 2030		$30,000		
2030 and after		$50,000		
Laptops and tablets for remote translation				
Before 2030	$706,800			
2030 and after	$471,200			
BOD election equipment				
Before 2030	$5,817,600			
2030 and after	$3,878,400			

Cost	State		Local Governments	
	One-Time	Annual	One-Time	Annual
Election forms translation				
Before 2030	$9,000			
2030 and after	$6,000			
4.0 FTE positions		$544,000		
SB 404				
Election inspectors				$1,500,000
Voting site signage				$181,850
Administrative Costs				
SOS 2.0 FTE positions		$206,500		
Local clerk staffing				$18,720,000
Total				
Before 2030	**$6,933,400**	**$2,716,340**	**$0**	**$20,401,850**
2030 and after	**$4,355,600**	**$3,502,100**	**$0**	**$20,401,850**

Courts

The bills also would have an indeterminate fiscal impact on the state and on local court funding units. Costs would be incurred by local court funding units depending on how many additional court proceedings occur under the bills and on the number of instances of courts having to retain jurisdiction over local governments that violate the rights of voters. Under Senate Bill 401, courts would be authorized to impose punitive damages for violations. Punitive damages would be imposed in the form of civil fines and revenue collected from payment of civil fines would be required to be deposited into the Michigan Voting Rights Assistance Fund. Also, under Senate Bill 401, disabled electors would be authorized to bring actions in circuit courts if local governments violate state or federal law involving the rights of disabled electors. Circuit courts could order penalties of $1,000 payable to electors whose rights were violated. Payments would be made from the Michigan Voting Rights Assistance Fund.

Under Senate Bill 403, certain local governments would be required to provide language assistance for elections. If local governments do not comply, courts would be authorized to impose punitive damages for violations. Punitive damages would be imposed in the form of civil fines and revenue collected from payment of civil fines would be required to be deposited into the Michigan Voting Rights Assistance Fund.

It is difficult to project the actual fiscal impact to courts due to variables such as judicial discretion, case types, and complexity of cases.

POSITIONS:

Representatives of the following entities testified in support of the bills (12-3-24):

- Secretary of State
- American Civil Liberties Union of Michigan
- Campaign Legal Center
- Detroit Disability Power
- National Association for the Advancement of Colored People Legal Defense Fund
- National Network for Arab American Communities
- Promote The Vote

The following entities indicated support for the bills (12-3-24):

- All Voting is Local Action
- Asian American Legal Defense and Education Fund
- Asian Americans Advancing Justice
- Asian & Pacific Islander American Vote
- Brennan Center for Justice
- Chicago Lawyers' Committee for Civil Rights
- Common Cause Michigan
- Delta Sigma Theta Sorority
- Demos
- Disability Rights Michigan
- Fair Elections Center
- Fair Vote Action
- Generation Vote
- League of Women Voters of Michigan
- Michigan League of Conservation Voters
- Michigan League for Public Policy
- Oakland County Board of Commissioners
- Secure Democracy
- Service Employees International Union Michigan
- Stand Up America
- The Arc Michigan
- United Congress of Community and Religious Organizations
- Voters Not Politicians
- Workers Circle

The Michigan Townships Association indicated support for Senate Bill 402. (12-3-24)

Representatives of the Michigan Association of Municipal Clerks testified with a neutral position on Senate Bills 402 and 404. (12-3-24)

The Michigan Municipal League indicated a neutral position on the bills. (12-3-24)

The Michigan Townships Association indicated a neutral position on Senate Bill 403. (12-3-24)

A representative of the Oakland County Clerk testified in opposition to the bills. (12-3-24)

Representatives of the Michigan Association of Municipal Clerks testified in opposition to Senate Bills 401 and 403. (12-3-24)

Pure Integrity for Michigan Elections indicated opposition to the bills. (12-3-24)

The Michigan Townships Association indicated opposition to Senate Bills 401 and 404. (12-3-24)

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