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UNIFORM VOTING SYSTEM

House Bill 5216 as enrolled
Public Act 91 of 2002
Second Analysis (7-22-02)

Sponsor: Rep. Bruce Patterson
House Committee: Redistricting and Elections
Senate Committee: Government Operations

THE APPARENT PROBLEM:

The 2000 Presidential election dramatically focused the nation's attention on the mechanics of conducting elections. The closeness of the election, particularly in the pivotal state of Florida, brought extraordinary attention from the press and created a heightened public awareness of the relationship between the apparatus of conducting elections and the perception of legitimacy of the election results. Included among the many stories that came out of the election were those of confused voters who spoiled their ballots for one reason or another and thus ultimately did not have a say in the election outcome. In many minds, the punch card system of voting was discredited. While the punch card system still has vigorous defenders, including among local election officials in Michigan, the imbroglio in Florida left its reputation besmirched.

In the aftermath of the 2000 election, there have been a number of studies and inquiries into the process by which voters cast their ballots in elections, each containing recommendations for improving the current election system. The U.S. Congress has been working on legislation that would provide funding to the states to improve election administration. At the state level, there have been numerous hearings conducted on the condition of voting in Michigan, including regular meetings addressing the subject by the House Redistricting and Elections Committee. While it is fair to say that the consensus has been that Michigan's election system is not in crisis, a number of recommendations for improvement have emerged. Secretary of State Candice Miller issued a report to the legislature in May of 2001, entitled *Uniform Voting in Michigan*, in which the state's chief election official recommended a series of improvements, including the establishment of a statewide uniform voting system. (Other recommendations include early voting, meaning voting for up to two weeks prior to election day; upgraded training for election

workers; and provisional ballots for voters who claim to have registered but are not on the registration rolls at the precinct on election day.)

The recommendation for a statewide voting system had previously appeared in the June 1997 report of the secretary of state's Special Advisory Committee on Elections, but the case for such a system has been strengthened, say state election officials, by the "equal protection" issues that arose after the presidential balloting in 2000. Election officials say that the fact that some voting systems alert voters when a ballot has been spoiled (by voting for too many candidates, for example) and offer them an opportunity to vote again, while some do not, puts some voters at a disadvantage and makes it even more important that out-of-date voting be replaced. The secretary of state's report recommended the adoption of an optical scan system using precinct-based tabulation technology. (See [Background Information](#)). The adoption of a statewide system of the kind recommended carries a high price tag: the report estimated it at \$26.1 million to \$38.7 million for total implementation over several election cycles. Federal grants to the states for new voting systems remain a possibility. Legislation has been crafted that will set the stage for the adoption of a uniform statewide voting system, particularly should federal money become available, without specifying what kind of system is to be adopted.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law to put in place a process for the secretary of state to use in selecting, acquiring, and implementing a uniform voting system should money be appropriated for those purposes. The bill would specify that if federal money becomes available for those purposes, the secretary of state would have to take the steps

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necessary (and the bill says it would be the legislature's intent to take the steps necessary) to qualify for and appropriate that money for those purposes.

By a "uniform voting system", the bill would mean "the voting system that is used at all elections in every election precinct throughout the state".

The bill would require the secretary of state to convene an advisory committee on the selection of the uniform voting system, with the membership to represent county, city, and township election officials and other relevant organizations. In addition the Speaker and Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate could each appoint one advisory committee member.

The secretary of state would be authorized to conduct tests of a voting system in order to select one, but could not consider a system for selection as the uniform system unless it had been approved and certified as is currently required for voting systems by Section 795a of the election law. At the request of the secretary of state, the board of state canvassers would have to perform the approval and certification review as provided by Section 795a of a voting system that the secretary of state wanted to consider for selection. (Section 795a specifies that an electronic voting system cannot be used in an election unless it has been approved by the board of state canvassers and unless certain other requirements have been met.)

When the uniform voting system was selected, or at an earlier time considered advisable, the secretary of state would notify each county, city, village, township, and school district about the selection or impending selection of the uniform voting system. A governmental unit so notified would be prohibited from purchasing or entering into a contract to purchase a voting system. However, a jurisdiction that had acquired a new voting system within eight years before receiving the secretary of state's notice would not be required to acquire and use the uniform voting system for ten years after the original purchase of its existing equipment.

After selection of the uniform voting system, the secretary of state would have to establish a schedule for acquisition and implementation throughout the state. He or she could devise a schedule that instituted the uniform system over several election cycles. The secretary of state would have to publicize widely the schedule and any changes to the

schedule. Training conducted by the state's director of elections would have to include instruction on the uniform voting system.

If the secretary of state later determined that the uniform system selected no longer served the welfare of voters or had become out of date, the selection process could be repeated.

If an appropriation of money for uniform voting system purposes was not signed into law before January 1, 2006, the bill's provisions would be repealed.

Section 795. The bill also would revise provisions regarding electronic voting systems found in Section 795 of the Michigan Election Law. That section spells out the requirements that such voting systems must meet. The bill would specify that electronic tabulating equipment that can detect that a voter's choices have exceeded the number of choices he or she is entitled to make must be located at each polling place and be programmed to reject a ballot containing that kind of error. The bill would add that if a choice on a ballot was rejected in that way, the voter would have to be given the opportunity to have the ballot considered a spoiled ballot and to vote another ballot. Similar language would be added for primary elections (to cover cases where a voter attempted to vote on more than one party ballot).

Fiscal Review Team. The bill would also would prevent a special election from being held to fill a vacancy created by a recall of an elected official in a city, township, or village when the governor appoints a review team for that local unit under the Local Government Fiscal Responsibility Act. (This is understood to apply to a situation in Flint.) The bill would specify that within five days of reporting its findings, the review team would submit to the county election scheduling committee a proposed date for the special election. Under the new provision, if the review team was appointed after a date for a special election had been proposed by the responsible local election official or after the date had been scheduled by the county scheduling committee, the action of the local official or county committee would become void when the review team was appointed.

Tie-Bar. The bill is tie-barred to House Bill 5335 (which became Public Act 163 of 2002). That bill deals with how the names of candidates should appear on the ballot; for example, when two candidates have the same or similar name. It also contains a provision amending Section 971 regarding the holding of a special election in a local unit where

a special review team has been appointed by the governor. (See the paragraph above.) House Bill 5335 would specify that the new subsection added by House Bill 5216 would apply to "any special election scheduled but not yet held before the effective date of [House Bill 5335]". House Bill 5335 took effect on April 9, 2002.

MCL 168.2 et al.

BACKGROUND INFORMATION:

Michigan's election system is said to be the most decentralized of any state, with 2,438 county and local election officials involved. This includes 83 county clerks, 272 city clerks, 1,242 township clerks, 261 village clerks, and 580 school board coordinators. Many different voting systems are in use in the state. In the 2000 election, five different ballot methods were used: the optical scan system, where a voter colors in an oval or connects an arrow on a paper ballot; direct recording electronic (DRE) voting systems, where a voter touches a screen or presses buttons on a machine; punch card systems, where a voter uses a punching tool to punch holes in a card (creating "chad"); mechanical level systems, where a voter turns down levers to indicate candidate choices and then operates a release lever to record the votes; and paper ballots, where a voter puts a check mark or "X" in a square or circle. As of the 2000 election, 55.9 percent of precincts used optical scan systems (3,006 out of 5,376 precincts); 1.8 percent used DRE systems (97 precincts); 26.8 percent used punch card systems (1,443 precincts); 12.9 percent used mechanical lever systems (693 precincts); and 2.6 percent used paper ballots (137 precincts). Currently, purchasing decisions are made at the city or township level (although countywide cooperation is possible). Local units can only purchase electronic voting systems that have been approved the board of state canvassers. The Bureau of Elections within the Department of State tests electronic voting systems. A local unit can only use a newly purchased voting system at a November general election if it was purchased at least six months before that election and the local unit has conducted at least one earlier election with the system.

The information above was derived from *Uniform Voting in Michigan*, the report to the legislature issued in May 2001 by the secretary of state Candice Miller. The report contains useful comparisons of the various voting systems in place, explaining how each system counts and recounts votes and how each system deals with absentee voting, write-in votes, spoiled ballots, and accessibility. The advantages

and disadvantages of each system are offered. The report is available on the web site of the secretary of state at www.sos.state.mi.us/election/index.

Another recent Michigan-based report reaches a different conclusion regarding voting systems. *Voting Reform: A Report of the People* was produced by the Michigan Task Force on Voting Reform, chaired by State Senator Diane Byrum. That report, which recommends an improved "train the trainers" program for educating election workers and increasing the pool of election workers, among other things, prefers the adoption of statewide uniform standards for voting equipment. Standards should include notification of over-voting, cross-voting (in primaries), and non-recordable ballots. Voting systems should make voters aware when a ballot cannot be counted, the report says. However, the report recommends flexibility in voting system and says "no single type of voting equipment is appropriate for every community in Michigan." The report is available at www.senate.state.mi.us/dem/sd25/taskforce.html.

FISCAL IMPLICATIONS:

An analysis of an earlier version of the bill by the House Fiscal Agency cited the secretary of state's estimated cost of the four-year plan to adopt a statewide optical scan voting, which is \$26.1 million to \$38.6 million. (HFA fiscal note dated 10-17-01) The substitute reported by the House Redistricting and Elections Committee does not specify the kind of system to be adopted and makes the implementation of a uniform system contingent upon an appropriation of money for that purpose.

ARGUMENTS:

For:

The bill represents an important first step in preparing the state for the move to a uniform statewide voting system, particularly should federal money become available to finance such a project in the near future. The bill does not designate or select a system. Instead, it creates a process by which a uniform system can be selected. It creates an advisory committee to assist the secretary of state in making the selection, in recognition of the fact that this is a significant decision that requires considerable consultation with election officials and others knowledgeable about the conduct of elections. The bill also allows the secretary of state, once the selection has been made, to phase in a statewide system over several election cycles, in

acknowledgement that this transition may not be an easy one for local election officials. The adoption of a statewide system is contingent upon an appropriation of money for that purpose. If an appropriation is made, the secretary of state would be responsible for selecting and implementing the system (which otherwise is a local responsibility).

requiring that a voting system be able to inform the voter when a ballot has been spoiled, with the voter to be given an opportunity to cast a new ballot (which typically requires precinct-based tabulation rather than central counting) than that any particular system be required. At least one punch card system in use can meet that standard.

The adoption of a uniform system statewide has a number of advantages, according to the secretary of state's recent report. The existence of one system would make it easier to carry out the education of voters and future voters as to voting procedures and would make it easier to train precinct inspectors (election workers). The existence of so many methods of voting makes this difficult now. When, for example, there are four or five systems within one county, it is hard for election officials and the news media to provide uniform voter education. Moreover, with a uniform system, experienced precinct workers could move to a new jurisdiction and find the same voting procedures. Given that recruiting election workers can be difficult, this would be helpful. Voters who move, too, would benefit from standardization. Local clerks would be able to provide additional support to one another and share information if all were using the same system. Other advantages include equal protection for voters against ballot spoilage; cost savings in purchasing equipment; faster, more efficient, and more accurate election results; and the availability of uniformly compiled election results. As enacted, moreover, the bill allows communities that recently purchased new voting equipment to use that equipment instead of the uniform system for ten years from the date of purchase.

Response:

Not everyone is enthusiastic about the adoption of a single uniform system statewide. Some election officials would prefer, for example, that voting systems be uniform on a countywide basis instead. Some local units have recently purchased new systems that they consider cost-effective and outstanding performers (including modern punch card systems) but that are unlikely to be selected as the uniform system. Some local clerks believe that education rather than technology should be the focus of those who want to improve the performance of voters at elections, including the education of voters, of election workers, and of the news media. Several task force reports issued in the wake of the 2000 election have emphasized the need for technology standards rather than the need for a single voting system, recognizing that many different systems can work successfully. For example, some people consider it more important that standards be adopted

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