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SFA

BILL ANALYSIS

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House Bill 5216 (Substitute S-4 as reported)
Sponsor: Representative Bruce Patterson
House Committee: Redistricting and Elections
Senate Committee: Government Operations

Date Completed: 3-5-02

RATIONALE

Michigan is one of eight states that administer elections at the local level, and is said to have the most decentralized election system in the nation. Statewide elections in Michigan involve 83 counties and over 2,400 county and local election officials. In addition, the 5,000-plus precincts across the State use five different kinds of voting systems: optical scan, punch cards, lever machines, paper ballots, and touch-screen computer terminals. While cities and townships decide which type of voting system will be used in each precinct, the State is responsible for certifying voting systems for use in Michigan.

In December 1995, Secretary of State Candice Miller appointed a Special Advisory Committee on Elections to conduct a review of Michigan's election system. The committee's final report, issued in June 1997, recommended that the State fund the "establishment and implementation of a statewide voting system to reduce election costs, reduce ballot printing errors, facilitate voter instruction programs and eliminate the need for voters who move to become acquainted with different voting systems". The concept of a single statewide voting system has received more attention in the aftermath of the 2000 U.S. Presidential election, in which voting machines received much of the blame for problems that occurred in Florida. In May 2001, Secretary of State Miller issued her recommendations for improving the voting process in Michigan, including the recommendation for a statewide, uniform voting system. Many people agree that this is a good idea, for the reasons cited in the 1997 report and because of "equal protection" concerns over the fact some voting systems alert voters when they have spoiled their ballot, while other systems do not.

CONTENT

The bill would amend the Michigan Election Law to require the Secretary of State to select a uniform voting system that would be used throughout the State, subject to the appropriation of money for this purpose. The bill also would do the following:

- Require the Secretary of State (SOS) to convene an advisory committee on the selection of the uniform voting system.**
- Require the SOS to notify local units of government about the selection of a uniform voting system, and prohibit them from purchasing a voting system other than the uniform voting system after receiving the notice.**
- Require the SOS to establish a schedule for the acquisition and implementation of the uniform system.**

Also, several current provisions regarding voting machines would not apply after the Secretary of State implemented the uniform voting system.

The bill would define "uniform voting system" as "the voting system that is used at all elections in every election precinct throughout the state".

The bill would add Section 37 to the Election Law to require the Secretary of State to select a uniform voting system. Section 37 would not apply, however, until money was appropriated for the purpose of selecting, acquiring, and implementing the uniform voting system. If Federal money became available for the purposes described in this section, the SOS would have to (and the bill states that "the legislature intends to") take

steps necessary to qualify for and appropriate that money for those purposes. If an appropriation for the purposes of Section 37 were not signed into law before January 1, 2006, the section would be repealed on that date.

The membership of the proposed advisory committee would have 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 and Minority Leaders of the Senate each could appoint one advisory committee member.

The Secretary of State could conduct tests of a voting system in order to select the uniform system. The SOS could not consider a voting system for selection unless it were approved and certified as provided in Section 795a of the Election Law. At the request of the SOS, the Board of State Canvassers would have to perform the approval and certification review, as provided in that section, of a voting system that the SOS wanted to consider for selection. (Under Section 795a, an electronic voting system may not be used without the approval and certification of the Board of State Canvassers, unless the system has been certified by an independent testing authority or the manufacturer. The section contains procedures for the approval of a system.)

When the uniform voting system was selected, or at an earlier time that the SOS considered advisable, he or she would have to notify each county, city, village, township, and school district about the selection or impending selection of the uniform system. A governmental unit that was notified could not purchase or enter into a contract to purchase a voting system other than the uniform voting system after receiving the notice.

After selecting the uniform voting system, the SOS would have to establish a schedule for its acquisition and implementation throughout Michigan, and widely publicize the schedule and changes to it. The SOS could devise a schedule that instituted the uniform system over several election cycles.

If the SOS determined, after selecting the uniform voting system, that it no longer served the welfare of the voters or had become out of date in regard to voting system

technology, the SOS could repeat the process for selecting the uniform system authorized by the bill.

Currently, at all elections held in the State, ballots or votes may be cast, registered, recorded, and counted by means of voting machines, as provided in Chapter 28 (Holding of Elections) of the Law. Under the bill, this provision would apply unless the Secretary of State implemented the uniform voting system.

The Secretary of State currently may permit the use of any type of voting device for election purposes in any election upon petition by the legislative body of the local unit wanting to use a new device. Also, a county board of commissioners, township board, or the legislative body of an incorporated city or village may authorize, purchase, and order the use of a thoroughly tested or reliable voting machine within the county, city, village, or township. Under the bill, this provisions would apply until the SOS implemented the uniform system.

The Election Law requires a county board of supervisors, the common council of a city or village, or a township board adopting a voting machine, as soon as practicable, to provide a voting machine in complete working order for each election district. Under the bill, a county or township board, or city or village council, adopting a voting system or implementing the uniform voting system would have to provide a voting machine or uniform voting system in complete working order for each election district.

Presently, the Law allows a county board of commissioners, a township board, the legislative body of a city or village, or a school board to authorize, acquire, adopt, experiment with, or abandon an electronic voting system approved for use in this State. A new electronic voting system may not be used at a general election in a county, city, or township unless specific requirements are met. Under the bill, these provisions would not apply to a county, city, village, township, or school district after it received the Secretary of State's notice about the selection of a uniform voting system.

The bill is tie-barred to House Bill 5335, which would amend provisions in the Election Law regarding the designation of candidates'

names on a ballot.

MCL 168.2 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although support for a uniform voting system is not new, the 2000 Presidential election brought new attention to the actual mechanics of the election process, and the extent to which the voting apparatus itself can contribute to election results. According to a report of the Caltech/MIT Voting Technology Project, which originated during the Florida recounts, "It is evident that problems with counting the votes of the citizens of Florida and elsewhere originated in unsound technology... The recounts revealed many tangible problems voters had with ballots and machines and the resulting ambiguities in the tallies." Although the situation in Michigan is not the same as that in Florida, this State suffers from a proliferation of different voting machines, including outmoded equipment, throughout the counties. According to Secretary of State Miller's May 2001 report, as of the November 7, 2000, general election, 20% of Michigan's precincts used punch cards, 13% used lever-style voting machines, and 3% used paper ballots.

In her report, the Secretary of State identified a number of reasons for Michigan to adopt a uniform voting system. Although the report recommended a particular system, optical scanning, many of the potential advantages would apply to any modern voting system that was used in all precincts throughout the State. Perhaps the most significant benefit of a uniform system is that it would ensure the voters "equal protection" against ballot spoilage, meaning that all would be alerted to the same degree and given the same opportunity to correct a spoiled ballot. This in turn should reduce "voter falloff", which represents the difference between the number of ballots cast and the number of valid votes counted. According to the Caltech/MIT project, the equipment used to cast and count ballots loses millions of votes nationwide each election. No doubt, Michigan experiences its share of lost votes due to outdated voting

systems.

Another advantage of a uniform voting system is that it would facilitate the education of current and future voters on the procedures for casting a vote, as well as eliminate the confusion of voters who move from one precinct to another. A uniform system also would facilitate the training of precinct inspectors. In addition, election results could be compiled and released, as well as certified, with greater speed and efficiency. A uniform system also would produce a cost saving on the purchase of voting equipment, service contracts, and ballots. Furthermore, updated technology could better accommodate the needs of elderly or disabled voters.

The bill represents a significant step in moving the State toward a uniform voting system. Rather than designating a particular system, the bill would establish a process by which the Secretary of State would select a system, with input from an advisory committee and subject to the approval and certification requirements of the Election Law. Since the implementation of a uniform voting system would carry a high price tag, the bill's requirements would be contingent on the appropriation of funds for this purpose. The bill also would require the Secretary of State to take the steps necessary to secure available Federal funding.

Response: Although Federal legislation providing financial support for election reform appears to be viable, it may be a long way from passage. At this time, there is no way to know what conditions might be imposed on states that accept the funding, should it become available.

Opposing Argument

A statewide uniform voting system would not necessarily be the best approach in Michigan or elsewhere. According to the September 2001 report of the Michigan Task Force on Voting Reform, chaired by Senator Dianne Byrum, "National task forces studying the issue have reported that no 'one voting system or brand is at present suitable for recommendation for use in all jurisdictions.' Testimony at hearings in Michigan revealed that the public is very resistant to a state-wide voting system. Many communities just invested significant funds into new voting systems." Instead of a uniform voting system, the task force recommended that Michigan adopt statewide uniform *standards*

for all types of voting equipment. "Standards should include: notification of over-voting, cross-voting in a primary, and a nonrecordable ballot...; an audit trail; and adequate security measures." This approach would provide flexibility to accommodate the needs and budgets of various precincts.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The Secretary of State produced a report in May 2001 advocating a uniform voting system using optical scan technology and it is assumed that this report reflects the action she would take under this bill. (Of the currently certified voting systems, only punch card, optical scan, and direct recording electronic (touch screen) systems remain in production.) The report detailed a four-year schedule for implementation of a statewide uniform voting system that would cost a total of \$26.1 million to \$38.7 million, \$14 million in the first year.

A voting technology study conducted jointly by the California Institute of Technology and the Massachusetts Institute of Technology in July 2001 estimated the implementation cost for an optical scan voting system at \$6 to \$8 per voter. Following the Secretary of State's proposed implementation schedule, this model would cost the State \$39.9 million to \$53.3 million, including approximately \$16.3 million to \$21.7 million in the first year of implementation.

The bill could result in savings to local units of government. Currently, the purchase of voting systems and equipment is the responsibility of local jurisdictions. The bill proposes that the State adopt that responsibility, dependent upon an appropriation for this purpose. Since voting equipment has a life span of 15 to 25 years, almost all local units of government would be relieved of the obligation of purchasing a new voting system over that time period. The savings would vary widely by jurisdiction, depending upon the size of the jurisdiction and the type of voting system it otherwise will purchase.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.