



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 401 (Substitute S-3 as reported)
Senate Bill 402 (Substitute S-2 as reported)
Senate Bill 403 (Substitute S-3 as reported)
Senate Bill 404 (Substitute S-2 as reported)
Sponsor: Senator Darrin Camilleri (S.B. 401)
Senator Jeremy Moss (S.B. 402)
Senator Stephanie Chang (S.B. 403)
Senator Erika Geiss (S.B. 404)

Committee: Elections and Ethics

CONTENT

Senate Bill 401 (S-3) would enact the "State Voting Rights Act" to do the following:

- Prohibit a local government or State agency from imposing any law, practice, policy, or method of election that would lead to a disparity in voter participation between a protected class and other members of the electorate or that would impair the ability of a protected class to participate in the political process.
- Specify actions taken by a local government that would be considered violations of the Michigan Voting Rights Act (MVRA).
- Require a prospective plaintiff to send a notification letter to the clerk and chief administrative officer of a local government, which would have to explain in detail and propose a remedy for each alleged violation of the MVRA, before commencing an action.
- Allow a prospective plaintiff to meet with representatives of the local government to develop a plan to address the violation and prescribe the requirements of a plan.
- Allow a prospective plaintiff to submit a complaint concerning a local government's alleged violation of the MVRA to the Secretary of State (SOS).
- Prescribe the guidelines a court could or could not use to determine whether racially polarized voting by protected class members in a local government occurred.
- Prescribe the guidelines a court could or could not use to determine whether the political rights of any protected class member had been violated.
- Grant a court broad authority to order adequate remedies that were tailored to address a violation in any action brought under the MVRA or Article II of the State Constitution.
- Prescribe remedies for MVRA violations and requirements for punitive damages.
- Create the Michigan Voting Rights Assistance Fund in the State Treasury, from which the Michigan Department of State (MDOS) could spend money to reimburse prospective plaintiffs and local governments for certain expenses, not to exceed \$50,000.
- Allow a prospective plaintiff or local government to request reimbursement from the Fund within 90 days of the enactment or implementation of a required remedy.
- Require a local government and the SOS to follow certain notice requirements.
- Allow a disabled elector, or an organization representing disabled electors, to bring an action in the circuit court of a county to seek the appointment of a monitor for future elections conducted by a local government, if that local government had violated a State or Federal law involving the rights of disabled electors.
- Prescribe the appointment and duties of election monitors.
- Repeal Public Act 161 of 1969, which governs actions brought in any circuit court of the State affecting elections, dates of elections, candidates, qualifications of candidates, ballots, or questions on ballots.

Senate Bill 402 (S-2) would enact the "Voting and Elections Database and Institute Act" to do the following:

- Require the SOS to enter into an agreement, which would be binding for at least 25 years, with one or more public research universities in the State to create the Michigan Voting and Elections Database and Institute by November 5, 2025.
- Require the Database and Institute to provide a center for research, training, and information on voting systems and election administration.
- Require the Database and Institute to make available all relevant election and voting data and records for at least the previous 12-year period at no cost, after which the relevant data and records would have to be permanently maintained for archival purposes.
- Require the Database and Institute to protect election and voting data and records by implementing rigorous cybersecurity standards.
- Permit the data, information, and estimates maintained by the Database and Institute to be used as evidence.
- Require the SOS to transmit to the Database and Institute specified information within 180 days after an election.
- Allow the SOS to reimburse a local government for the cost of providing requested election and voting data and records to the SOS, upon request by the local government.

Senate Bill 403 (S-3) would enact the "Language Assistance for Elections Act" to do the following:

- Require a local government to provide language assistance for elections conducted in that local government a certain percentage of its population spoke a single shared language and had limited English proficiency.
- Require the SOS to post on its website, by January 31 of each odd-numbered year, a list of each local government required to provide language assistance, as well as the required languages, and notify each local government.
- Require the SOS to provide language assistance equal in quality to English for elections in each designated language and provide related materials in each designated language as translated by a certified translator.
- Require the SOS to reimburse a local government for certain costs related to tabulating translated ballots.
- Create the Language Advisory Council in the MDOS.
- Require a prospective plaintiff to send a notification letter to the SOS or to the clerk and chief administrative officer of the local government and meet with the SOS or representatives of the local government to prepare and agree on a written plan before an aggrieved party could commence a civil action under the Act.
- Allow any individual or entity aggrieved by a violation of language assistance requirements to file a cause of action if discussion failed.
- Allow the Attorney General to file an action in the circuit court of the county in which the local government was located to compel compliance with and seek an appropriate remedy under the Act.
- Require the MDOS to reimburse a prospective plaintiff or a local government using money from the Michigan Voting Rights Assistance Fund if that local government enacted or implemented a remedy to a potential violation of the Act.
- Grant actions brought under the Act expedited trial proceedings, allow them to receive an automatic calendar preference, and prescribe remedies and restitution for them depending on their outcomes.

Senate Bill 404 (S-2) would amend the Michigan Election Law to do the following:

- Beginning January 1, 2026, require a local government to provide notice to the SOS, within certain time periods, of various changes undertaken by or proposed to be undertaken by the local government, such as a governmental organization or a change to the local government's method of election, or of requests or notifications made by electors and received by the local government, such as a request to view voting equipment.
- Beginning January 1, 2026, require a local government to provide to the SOS, at least 14 days before an election, a list of any organization or committee whose authorization to appoint election challengers had been approved or denied.
- Require the SOS to prescribe the form of these notices and, within five days after receiving such a notice, post the notice on the MDOS website; if a local government failed to submit a required notice, the SOS would have to post that violation on the MDOS website.
- Prescribe additional notice requirements for the SOS, to begin January 1, 2026.
- Allow an elector who was unable to enter a polling place or early voting site to request voting assistance from the elector's county, city, or township clerk or precinct board of election inspectors.
- Prescribe the process for providing voting assistance.
- Allow an elector to seek language assistance for election purposes.
- Allow an individual to provide necessities to electors at a polling place location, early voting site, or city or township clerk's office, provided that the individual did not interfere with the voting process and at the discretion of the appropriate clerk.
- Repeal Section 579 of the Law, which requires a board of election inspectors to reject the ballot of an individual who allows another individual to view the ballot.

Senate Bills 401, 402, and 403 are tie-barred. Senate Bill 404 is tie-barred to Senate Bills 401 and 403. Senate Bill 401 is also tie-barred to Senate Bill 404.

MCL 168.726 et al. (S.B. 404)

BRIEF RATIONALE

Generally, the Federal Voting Rights Act was enacted to enforce the Fifteenth Amendment of the United States Constitution, which prohibits the right to vote from being denied to any eligible citizen based on race, color, or previous condition of servitude. Section 5 of the Act required jurisdictions with a history of discrimination to obtain preapproval from the United States Department of Justice or a court before changing its voting rules; however, the Supreme Court ruled in *Shelby County v. Holder* (2013) that the formula contained in the Act to determine which jurisdictions were subject to the preapproval requirement was unconstitutional. In effect, this allowed jurisdictions once required by Section 5 to seek preapproval to change their voting methods and processes without supervision. As a result of this decision, some believe that individual rights, such as the right to vote, are no longer guaranteed protection by the Federal government. Accordingly, it has been suggested that Michigan's election law be updated to include protections for the right to vote.

Legislative Analyst: Abby Schneider

FISCAL IMPACT

Senate Bill 401 (S-3) would have additional costs for the MDOS to implement its requirements that would include the hiring of two additional full-time equivalents (FTEs) at a cost of \$300,000 per year to approve MVRA resolutions as required. Costs could be higher depending on the actual number of resolutions received by the MDOS. There also could be additional costs to adopt new administrative rules but the MDOS believes those duties could be handled with the additional FTEs.

There also could be a cost to the MDOS related to reimbursing plaintiffs for reasonable costs associated with generating a notification letter to the local government alleging a violation of Sections 7 or 9 of the bill. Should the local government enact and implement a remedy based on the notification letter, the MDOS could incur additional costs for reimbursing plaintiffs for reasonable costs or a mutually agreed upon amount if the funds in the Michigan Voting Rights Assistance Fund were insufficient to pay the claims, in which case the MDOS would have to pay those costs from other MDOS resources. Those costs are indeterminate and depend on the number of actual claims paid; however, those costs would be limited to \$50,000 per claim.

The bill likely would not have a significant fiscal impact on the Department of Treasury. It is likely that the average daily balance of the Fund would be sufficiently small that current appropriations would be sufficient to carry out administrative activities; however, if an additional source of revenue for the Fund were found and resulted in a higher average balance, it is possible that the Department could require one or more additional FTEs in future fiscal years. The current average annual cost of an FTE is approximately \$139,100.

Senate Bill 402 (S-2) would require the MDOS to pay for the costs of entering the memorandum of understanding with the university or universities to create the database and institute and for the transfer of election and voting data and records. The university or universities would be responsible for any other costs associated with operating the database and institute. The costs to the MDOS for the memorandum of understanding should be absorbable within its annual appropriation.

Local governments would be reimbursed by the MDOS for costs associated with reporting election, voter registration, and ballot access for their jurisdictions to the MDOS. These costs are indeterminate as reimbursement rates vary across local governments.

Senate Bill 403 (S-3) would have an indeterminate cost for the MDOS to provide language assistance to voters depending on the demographics of that local government. The costs would vary by local government and depend on whether live interpreters were required. The MDOS also could incur additional costs for reimbursing plaintiffs for claims against violations of the proposed Act if the Michigan Voting Rights Assistance Fund did not have sufficient funding to pay claims as those costs would have to be paid from other MDOS resources. Those costs are indeterminate and depend on the number of actual claims paid; however, those costs would be limited to \$50,000 per claim.

Senate Bill 404 (S-2) could require local governments to hire additional election inspectors to provide enough inspectors to allow for curbside voting. The average cost for an election inspector is \$180 per day thus the costs would vary by local government and depend on the number of inspectors hired.

Date Completed: 6-18-24

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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.