

VOTER REGISTRATION AND ABSENTEE VOTING

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Senate Bill 1238 (H-2) as reported from House committee
Senate Bill 1239 (H-1) as reported from House committee
Senate Bill 1240 (S-1) as reported from House committee
Senate Bill 1241 as reported from House committee
Senate Bill 1242 as reported from House committee
Sponsor: Sen. Mike Kowall

Analysis available at
<http://www.legislature.mi.gov>

House Committee: Elections and Ethics
Senate Committee: Elections and Government Reform
Complete to 12-20-18

BRIEF SUMMARY:

Taken together, the five bills would implement rules related to voter registration and absentee voting. Senate Bill 1238 would amend the Michigan Election Law. The other four bills would incorporate those changes into the Campaign Finance Act, the Michigan Vehicle Code, the State Personal Identification Card Act, and the Enhanced Driver License and Enhanced Official State Personal Identification Card Act.

Prior to Proposal 3 of 2018,¹ an initiative petition recently approved by the electorate and incorporated into the Michigan Constitution of 1963, Section 4 of the Constitution generally authorized the legislature to enact laws related to elections and voting protections. Proposal 3 retained that language, but also enumerated the following eight specific rights related to voting:

- A secret ballot.
- Timely distribution of absentee ballots to military personnel or those living overseas.
- Straight-party voting.
- Automatic voter registration.
- Registration by mail up to 15 days before an election.
- In-person registration extended to Election Day with proof of residency.
- No-reason absentee voting.
- Statewide audit of election results.

Senate Bill 1238 would amend statute regarding the last five rights recently added to the Constitution.

[Proposal 3 stated that all rights set forth in the proposal were self-executing, meaning that they did not require implementing legislation. However, it also stated that none of the rights listed prevented the legislature from expanding voters' rights beyond those listed.]

¹ House Fiscal Agency analysis of Proposal 3: https://www.house.mi.gov/hfa/PDF/TestPDF/Ballot_Proposal_2018-3_Promote_The_Vote.pdf

DETAILED SUMMARY:

Senate Bill 1238

Audits

Section 31a of the Michigan Election Law currently provides that Michigan’s Secretary of State (SOS) “may” audit election precincts. Public Act 271 of 2012 required the SOS to develop an election audit program that detailed the documents to be inspected and procedures to be used during an election audit. The SOS announced in March 2018 that, following the November 2018 general election, the SOS and county clerks would audit 300 of Michigan’s 4,800 precincts.²

Instead of an optional audit at the discretion of the SOS, Proposal 3 set forth the right for voters to have the results of statewide elections audited. Accordingly, the bill would require the SOS to prescribe the procedures for and to conduct election audits, including statewide election audits.

The bill would make the optional training and certification of county clerks regarding random audits mandatory. Additionally, it would require that an election audit include an audit of the results of at least one race in each selected precinct and that a statewide audit include an audit of at least one statewide race or ballot question. It states that these audits would not be recounts and could not change certified election results.

Automatic voter registration

The bill would require that the SOS automatically register all qualified electors who submitted applications or change of address applications for driver’s licenses or state personal ID cards (or enhanced versions of those forms of ID), as long as the elector did not opt out of registration. However, the bill would provide that the SOS could only register applicants who indicated on the form that they were citizens of the U.S.

The SOS would add the required information³ to the Qualified Voter File (QVF)³ and forward the name of each voter automatically registered to his or her respective city or township. The SOS would be prohibited from transmitting any information to the QVF if the individual opted out of voter registration.

Under the bill, if a person who was ineligible to vote became registered through human or mechanical error, it would not be considered a violation of the prohibition on illegal or fraudulent registration.

² <https://www.freep.com/story/news/local/michigan/2018/03/18/audit-michigan-election-2018/436865002/>

³ The Michigan Qualified Voter File (QVF) was mandated by Public Act 441 of 1994 and implemented January 1, 1998. It lists all individuals who are registered to vote in Michigan, including their names, current addresses, address histories, and other identifying information. The QVF is especially important in Michigan’s highly decentralized election system, where voter records are managed by over 1,700 local officials.

Same day in-person voter registration and registration by mail up to 15 days before Election Day

Proposal 3 added the right for a person to register by mail up to and including 15 days before an election. It also allowed a person to register in person up to and including Election Day with *proof of residency* (or in person without proof of residency up to and including 15 days before Election Day).

The bill would incorporate these constitutional rights into statute. It would provide that *proof of residency* would mean a driver's license or state personal ID card that prove residency in that city or township, or an enhanced version of either. If the voter could not prove residency with a driver's license or state personal ID card, he or she could do so using (1) allowable *identification for election purposes* (defined in Section 2 of the Election Law and generally including official photo IDs issued by a state, the U.S. government, the military, or a high school or institution of higher education) or an affidavit indicating that the voter did not have that identification, as well as (2) a current utility bill, bank statement, paycheck, government check, or other government document.

A clerk or deputy clerk would have to be present and accepting applications at the city or township clerk's office at all times a polling place was open on Election Day.

If a voter registered by mail, online, or by automatic voter registration within the 15-day window before an election (and not in person), the voter would have to receive notice that he or she could not vote in the upcoming election unless he or she applied in person at the city or township clerk's office.

After an application was approved, the city or township clerk would have to provide a voter registration receipt. If the voter was not able to prove residency through his or her driver's license or state personal ID alone (and instead used identification for election purposes or an affidavit indicating that the voter did not have that identification), the voter's ballot would be processed as a challenged ballot.

The bill would allow election inspectors to receive the vote of a person who is not on the voter rolls who has registered in person at the local clerk's office during the 14 days preceding the election as long as the person presented a voter registration receipt.

Notice of hours for receiving registrations

Currently, the Election Law requires city and township clerks to give public notice in a local newspaper of office hours or other times and locations for receiving registrations; this notice must be given at least 30 days before voter registrations are due. The bill would amend this requirement so that the notice would have to be given at least 7 days before Election Day.

Absentee ballot

Prior to Proposal 3 of 2018, a voter could request an absentee ballot in Michigan for meeting any one of the following six criteria for being an "absent voter" (according to MCL 168.758, which would be repealed under the bill):

- 60 years old or older.
- Unable to vote without assistance at the polls.
- Expecting to be out of town on Election Day.
- In jail awaiting arraignment or trial.
- Unable to attend the polls due to religious reasons.
- Appointed to work as an election inspector in a precinct outside of the voter's precinct of residence.

Proposal 3 replaced those reasons with a blanket right to obtain an absentee ballot, without giving a reason, during the 40 days before an election. A voter may now choose whether the absentee ballot is applied for, received, and submitted in person or by mail.

The bill would allow only a person who was not a registered elector and who registered in person on Election Day to complete an absentee ballot on Election Day. Previously registered electors could not be issued an absentee ballot after 4 p.m. on the day before Election Day. A clerk would be prohibited from sending an absentee ballot to an elector by first-class mail any later than 5pm on the Friday before the election.

Under Proposal 3 and the bill, city and township clerks would have to be available at their offices to issue and receive absentee ballots for at least eight hours on the Saturday or Sunday before Election Day, and at additional times if approved by their local governing body. These hours and locations would have to be posted and the information conveyed to the SOS at least 30 days before the election.

The bill would provide that envelopes containing absentee ballots be delivered to the Board of Election Inspectors or to the Absent Voter Counting Boards to be tabulated.

Reporting on alternate means used for voter applications

The bill would require a city or township clerk to ensure, within seven days of an election, that the QVF was up-to-date and included any individuals who registered using proof of residency for election purposes or an affidavit indicating that the applicant did not have that identification. Within 14 days of an election, the SOS would have to transmit to the House and Senate committees dealing with elections a report of the number of applications executed using those means of application.

Repealers

The bill would repeal Section 758 of the Election Law, which lists the valid reasons for obtaining an absentee ballot prior to the adoption of Proposal 3. It would also repeal Section 524, which requires local clerks to report to their county clerks the number of persons eligible to vote in a primary or general election 15 days after the close of registration for that election.

Senate Bills 1239 and 1240

The bills would amend the Michigan Vehicle Code and the State Personal Identification Card Act, respectively, to incorporate the provisions of SB 1238. They would require that applications and change of address forms for driver's licenses and state personal ID cards

include a space where the applicant could indicate whether he or she is a citizen, as well as a space where the applicant could opt out of using the application as a voter registration application.

SB 1239 would also allow the SOS to forward a person's photo to the Department of Licensing and Regulatory Affairs (LARA) for use on an official marijuana registry ID card, if LARA required a photo on the ID card.⁴

MCL 257.307

MCL 28.291

Senate Bill 1241

Senate Bill 1241 would amend the Enhanced Driver License and Enhanced Official State Personal Identification Card Act to require that applications for those cards include a space where the applicant could opt out of using the application as a voter registration application. (The Act currently requires an applicant to provide documentation demonstrating his or her U.S. citizenship.)

MCL 28.305

Senate Bill 1242

Senate Bill 1242 would amend the Michigan Campaign Finance Act to update a reference based on a section that would be repealed under SB 1238.

MCL 169.206

Tie-bars

Senate Bills 1239, 1240, 1241, and 1242 are tie-barred to SB 1238, meaning that they could not take effect unless SB 1238 were also enacted.

HOUSE COMMITTEE ACTION:

The House Elections and Ethics committee reported an H-2 substitute to SB 1238 and an H-1 substitute to SB 1239. The SB 1238 substitute stipulated that an ineligible voter who accidentally became registered to vote would not be considered to have violated the Law, and made several technical changes. The SB 1239 substitute added a marijuana registry ID card to the list of permissible uses for which the SOS could use a person's photo.⁴

⁴ This would incorporate amendments to this section of law contained in Enrolled House Bill 6421.

See: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6421-CC638405.pdf>

FISCAL IMPACT:

The bills would have no fiscal impact on the state or local units of government. For an analysis of the fiscal impact of the creation and operation of the new voter rights provisions on the state, please see the House Fiscal Agency [Analysis](#) of Proposal 3 of 2018.

POSITIONS:

A representative of the Secretary of State's office testified and indicated a neutral position on the bills. (12-19-18)

A representative of the Council of Election Officials and the Michigan Association of County Clerks testified and indicated a neutral position on SB 1238. (12-19-18)

The ACLU of Michigan indicated a neutral position on the bills. (12-19-18)

A representative of the Proposal 3 Promote the Vote volunteers testified in opposition to SB 1238. (12-19-18)

The following organizations indicated opposition to the bills (12-19-18):

Sierra Club

League of Women Voters of Michigan

The Michigan Protection and Advocacy Service indicated opposition to SB 1238. (12-19-18)

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Michael Cnossen

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