

Legislative Analysis



STATE IDENTIFICATION CARD FOR VOTING PURPOSES

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House Bill 6066 (H-5) as reported from committee
House Bill 6067 as reported from committee w/o amendment
House Bill 6068 (H-2) as reported from committee
Sponsor: Rep. Lisa Posthumus Lyons
Committee: Elections
Complete to 12-6-16

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

BRIEF SUMMARY:

House Bill 6066 would amend the Michigan Election Law to change the procedure for a voter who is unable to produce photo identification at the polling place. Currently, if a person is unable to produce photo ID, but is on the voter registration list, the person will be able to sign an affidavit to that effect and vote as usual (unless challenged); a person who does not produce ID and is not on the voter rolls may submit a provisional ballot, which will be processed as a challenged ballot. Under the bill, all voters who are unable to produce appropriate ID would sign an affidavit and be issued a provisional ballot. (This change does not apply to residents of a facility in which 150 or more people aged 62 or older live, who vote at a polling place in that facility and do not have photo ID they may continue to sign an affidavit attesting to their identities and vote as usual.)

That provisional ballot would only be counted if the person presents one of the following at their clerk's office within ten days after the election: (1) photo ID with current address; (2) a photo ID, document to establish current residency, and affidavit that the person was the one who cast the provisional ballot on election day; or (3) a document establishing current residence and an affidavit attesting to inability to obtain a photo ID due to indigency or a religious objection to being photographed.

House Bill 6067 would amend the Public Health Code to allow an individual to obtain a free certified copy of his or her live birth record, or an official statement that the record could not be found, if the individual submits an affidavit that the record is being obtained for the purpose of obtaining a state ID card and that the cost of the record is prohibitive.

House Bill 6068 would amend Public Act 222 of 1972, regarding personal ID cards, to waive the fee for a qualified elector seeking to obtain a state ID card if the elector certifies that the cost of the ID is prohibitive.

As described later in the summary, the bill would also provide that, in lieu of the birth certificate or other nonphotographic ID document, the SOS must also accept an affidavit under certain circumstances.

If enacted, the bills would take effect February 1, 2018. HB 6067 and 6068 are tie-barred to HB 6066 and to each other, meaning that either could only effect if the other and HB 6066 are also enacted.

DETAILED SUMMARY:

House Bill 6066 (MCL 168.523, 168.523a, 168.813, and 168.829)

Currently, state election law requires that a person present an official state ID card, a driver's license, or other generally recognized picture ID card, and to fill out and sign an application with identifying information, in order to be able to vote.

House Bill 6066 would specify the allowable identification to include the following:

Photo identification for voting purposes means, if issued to the individual presenting the card or document and if the name on the card or document matches the individual's name in his or her voting record, any of the following:

- An operator's or chauffer's license issued under the Michigan Vehicle Code;
- An official state personal ID card;
- A current operator's or chauffer's license issued by another state;
- A current state personal ID card issued by another state;
- A current state government-issued photo ID card;
- A U.S. passport or federal government-issued photo ID card;
- A military photo ID card;
- A tribal photo ID card;
- A current student ID card issued by a high school or an accredited institution of higher education.

Now, a person who cannot produce one of the three types of qualifying identification (state ID card, driver's license, or other generally recognized picture ID card), must sign an affidavit to that effect and then would be able to vote as usual (the person's right to vote is subject to challenge by an election inspector or elector in the precinct who has good reason to believe the person is not a qualified and registered elector of the precinct).

The bill would provide, instead, that if the person could not produce one of the types of photo ID for voting purposes listed above, he or she would sign an affidavit and be issued a provisional ballot. That ballot would only be counted if, by noon on the tenth day after the election, the person personally appears at the local clerk's office and presents one of the following: (1) photo ID with current address; (2) a photo ID, document to establish current residency, and affidavit that the person was the one who cast the provisional ballot on election day; or (3) a document establishing current residence and an affidavit attesting to inability to obtain a photo ID due to indigency or a religious objection to being photographed.

Provisional ballot means a special ballot utilized by an individual that is tabulated only after verification of that individual's eligibility to vote.

The bill would make an exception for residents of a facility in which 150 or more people aged 62 or older live, who vote at a polling place in that facility. Those residents, who sign an affidavit attesting that they do not have a photo ID for voting purposes, may sign an affidavit to that effect before an election inspector and will be allowed to vote as usual.

(The vote is still subject to challenge by an election inspector or elector in the precinct who has good reason to believe the person is not a qualified and registered elector of the precinct).

The election inspector would also provide the person with notice to verify identification with their local clerk within ten days of the election. The clerk, in turn, would provide a free access system (which may include a toll-free number, a website, or a mailed notice) which the voter may use to verify whether the provisional ballot was ultimately counted.

The bill would also change the time periods for the city or township clerk to submit the following documents. Currently, all must be transmitted within seven days of the election. Under the bill, they would be transmitted between 11 and 13 days after the election. The documents include:

- The results of the provisional ballots tabulated after the election to the Board of County Canvassers;
- A provisional ballot report for each precinct in the jurisdiction; and
- An affidavit report.

Finally, the bill would include a **\$10 million appropriation** from the General Fund for the 2016-2017 fiscal year to the Department of State for election modernizations, voter education, and implementation of the voter ID provisions. (This appropriation would have the effect of making the bill immune from referendum.)

House Bill 6067 (MCL 333.2891; proposed MCL 333.2882b)

The bill would allow a person to obtain a free copy of his or her birth certificate, or an official statement that the record could not be located, if the individual signs an affidavit that he or she is requesting the record for the purpose of obtaining a state ID card for voting purposes, and that the cost of the record would be prohibitive. Upon written request from the person, the state or local registrar would conduct the search, and would issue either the birth certificate or official statement. The registrar may require verification of the person's identity if the person is requesting the record for these purposes.

House Bill 6068 (MCL 28.291, 28.291a, and 28.292)

The bill would require the Secretary of State to waive the fee for a qualified voter seeking a state ID card who does not possess a photo ID for voting purposes and certifies that he or she is unable to otherwise obtain an ID for voting purposes due to indigency.

Under current law, a person seeking an official state ID card must submit a photo ID document, a birth certificate or other nonphotographic ID document, and any other documents the Secretary of State (SOS) requires in order to verify identify and citizenship.

The bill would provide that, in lieu of the birth certificate or other nonphotographic ID document, the SOS must also accept an affidavit attesting to the following:

- The applicant's date of birth as represented by the applicant;

- That the applicant is a citizen of the U.S., was born outside of the state, and is a qualified elector;
- That the applicant has tried to obtain a birth certificate or other form of nonphotographic ID from his or her place of birth, but failed either because those records are inadequate, nonexistent, or lost, or because of the applicant's indigency and the cost of the record.

The bill would also allow the SOS to mark an ID obtained via this affidavit to indicate that it is valid for voting purposes only.

BACKGROUND:

Rules in other states as of 2016 election

Strict vote ID	Strict non-photo ID	Photo ID requested	ID requested; photo not required	No document required to vote
Georgia Indiana* Kansas Mississippi Tennessee Virginia Wisconsin* (7 states)	Arizona Ohio (2 states)	Alabama Florida Idaho Louisiana Michigan Rhode Island South Dakota Texas* (8 states)	Alaska Arkansas* Colorado Connecticut Delaware Hawaii Kentucky Missouri Montana New Hampshire North Dakota* Oklahoma South Carolina Utah Washington (15 states)	California Illinois Iowa Maine Maryland Massachusetts Minnesota* Nebraska Nevada New Jersey New Mexico New York North Carolina* Oregon Pennsylvania* Vermont West Virginia Wyoming (18 states)
*See below				

Voter ID laws upheld

- Indiana: In 2008, the U.S. Supreme Court upheld Indiana’s 2005 voter ID law by a vote of 6-3. Justice Stevens stated in one of the two concurring opinion representing the majority that the state had valid interests in modernizing potentially-antiquated and inefficient election procedures, preventing voter fraud, and safeguarding voter confidence. While the opinion acknowledged that requiring photo ID imposed some burdens on voters, it was determined that those burdens were mitigated by the waiving of fees for birth certificates and ID cards, and the fact that a voter without photo ID could cast a provisional ballot that could ultimately be counted. Those opposing the law asked the court to look especially at the burdens imposed on the elderly, indigent, and those with religious objections to being photographed, but the court found that "we

cannot conclude that the statute imposes 'excessively burdensome requirements' on any class of voters."¹

- The Michigan bills are reportedly modelled on the Indiana law.

Voter ID laws struck down or defeated

- Arkansas: in 2014, strict photo voter ID law struck down by the Arkansas Supreme Court
- Minnesota: in 2012, strict voter ID law defeated by voters
- North Carolina: in 2016, voter ID law struck down by federal court
- North Dakota: in 2016, federal judge issued a temporary order that some sort of "fail safe," like an affidavit, be an option until the court makes an official ruling on the challenge.
- Pennsylvania: in 2012, strict voter ID law struck down by Pennsylvania Supreme Court.
- Texas: in 2016, a federal court ruled that the law violated the Voting Rights Act. While an appeal is possible, the Secretary of State has indicated that an affidavit option for voters will be available.
- Wisconsin: in 2016, federal judge ruled that the law was unconstitutional, such as signing an affidavit attesting to identity, must be permitted. The ruling is likely to be appealed, but it remains a "strict photo voter ID" state for NCSL.

Please see additional information on the National Conference of State Legislators website: <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

FISCAL IMPACT:

As reported from committee, House Bill 6066 contains a \$10 million appropriation to the Department of State for election modernization, voter education, and implementation of the voter ID provisions.

The following is the fiscal impact based on the bills *as introduced*. Information will be updated as needed.

House Bill 6066 would have no impact on state government, and minimal cost to local governments in order to provide a free access voter notification system.

House Bill 6067 as introduced has fiscal implications for the Department of Health and Human Services (DHHS), which would be required to waive vital records fees for persons seeking a certified copy of their birth certificate in order to obtain a state identification card, and who certify that they are unable to pay the fee. The fee for this service is currently \$34 as established by law.

If 1,000 persons annually were provided this service at no charge under this provision, the loss of funding to DHHS would be \$34,000. The vital records program is currently funded at \$11.9 million (\$438,300 GF/GP) and is almost entirely funded from fees ranging from \$14 to \$50 per service. In Fiscal Year 2012-13 over 91,000 requests were received by DHHS for certified copies of vital records, of which 72,100 were for birth records. Current

¹ *Crawford v Marion County Elections Bd*, 553 US 181; 128 S Ct 1610; 170 L Ed 574 (2008)

law allows for issuance of certified copies of vital records at no charge for veterans benefits only, and for adoption purposes only.

There is no fiscal impact for local governments as the bill allows, but does not require, local clerks to waive the local fee under these circumstances.

House Bill 6068 would have an indeterminate negative fiscal impact on the Secretary of State to the extent that the \$10 State ID fee waiver is utilized by those who would have otherwise paid it. An estimated range of potential lost fee revenue to waivers is not currently available. Personal identification card fees are used to fund various Department of State operations. For fiscal year 2016, the Department of State was authorized the use of \$2,780,700 in revenue from State identification card fees.

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■ 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.