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MARKS ON ELECTRONIC BALLOT/ DELETE PROOF OF CITIZENSHIP

House Bill 4221 as enrolled
Public Act 137 of 1997
Second Analysis (12-16-97)

Sponsor: Rep. Robert C. Brackenridge
House Committee: Local Government
Senate Committee: Government
Operations

THE APPARENT PROBLEM:

An electronic voting system, generally speaking, is one in which ballots are counted and tabulated by automated tabulating equipment. The punch card system, for example, is an electronic voting system although it does not appear "electronic" to the voter using it. A more recent kind of electronic voting system requires the voter to use a special type of pen or pencil to fill in a designated space; for example, by completing an arrow accompanying a candidate's name. Legislation was enacted in 1990 to accommodate that and other systems. One of its aims was to specify what would and what would not count as a valid vote in a recount when an optical scan system was in use. (Recounts are not conducted electronically but by hand.) The law says: "if the electronic voting system requires the elector cast a vote by marking or stamping a predefined area on the ballot, the vote shall not be considered valid unless it is clearly evident that the intent of the voter was to cast a vote." It goes on to add that in determining intent of the voter, the board of canvassers would compare the mark or stamp subject to recount with other marks or stamps appearing on the ballot.

Legislation has been introduced with the aim of clarifying this provision and making it more consistent with provisions for recounting paper ballots. State election officials point out that Michigan is not a "voter intent" state but provides standards that must be met regardless of the appearance of voter intent. For example, the law allows only crosses and check marks to be counted on paper ballots and describes where those marks are to be located in relation to the circles and squares provided for them on the ballot. Legislation that would clarify the standard for optical scan voting has been proposed.

In another matter, Public Act 583 of 1996 (House Bill 5420), which took effect March 31st, made a number of changes in the election law. One provision requires candidates for office to establish their citizenship by presenting a birth certificate, naturalization papers, or a

passport. A copy of the document must be kept on file by election officials. This applies to current officeholders as well as new candidates for office. Critics have said this requirement is likely to cause difficulties. The necessary documents can be difficult or time-consuming to locate or obtain. Since there has been no compelling evidence of a problem with non-citizens seeking office, legislation has been proposed to eliminate the new provision.

THE CONTENT OF THE BILL:

Ballot Marks or Stamps. Section 799a of the Michigan Election Law governs the recounting of a ballot on which a voter has made a selection by means of a punch, mark, or stamp. The section says: "if the electronic voting system requires the elector cast a vote by marking or stamping a predefined area on the ballot, the vote shall not be considered valid unless it is clearly evident that the intent of the voter was to cast a vote." The bill would amend that provision so that it would say, "The vote shall not be considered valid unless there is a mark or stamp within the predefined area and it is clearly evident that the intent of the voter was to cast a vote."

The bill would make a related amendment to Section 803, which lays out rules for counting and recounting of votes, including which marks are or are not to be counted. The bill would specify that if an electronic voting system requires the voter to place a mark in a predefined area on the ballot in order to cast a vote, the vote would not be considered valid unless there was a mark within the predefined area and it was clearly evident that the intent of the voter to cast a vote. In determining intent of the voter, the board of canvassers or other election official would compare the mark with other marks appearing on the ballot.

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Proof of Citizenship. The bill would delete a recently enacted provision that requires a candidate for office to present a birth certificate, naturalization papers, or a

passport as proof of citizenship when filing an affidavit of candidacy. That provision also requires that a copy of the proof of citizenship to be kept on file by the filing official. Instead, the bill would require that an affidavit of candidacy contain a statement that the candidate is a citizen, and would require the affidavit contain a statement that the candidate acknowledges that making a false statement in the affidavit is perjury, punishable by a fine of up to \$1,000 or imprisonment for up to five years, or both. The bill would specify that a person making a false affidavit for the purpose of qualifying as a candidate would be guilty of perjury.

MCL 168.558 et al.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports that eliminating the requirement that filing officials keep proof of a candidate's citizenship on file could result in an administrative saving to local clerks. (SFA floor analysis dated 10-3-97)

ARGUMENTS:

For:

The bill's aim is to clarify the provisions regarding what is to be counted as a valid vote in the recount of ballots used in certain kinds of electronic voting systems. The bill would standardize rules for counting ballots, so that the rules for electronic voting systems are consistent with those for paper ballot systems. It requires that marks be within the pre-defined areas that appear on the ballot for that purpose in order to be counted. This is consistent with how state election officials currently interpret the election law.

For:

The bill would repeal the newly enacted proof-of-citizenship provisions, which are likely to be difficult to implement. Without the repeal, candidates will be required to provide a birth certificate, naturalization papers, or a passport. This applies apparently not only to first-time candidates but to incumbent officeholders. Election officials, moreover, will be required to keep these documents on file, which will be an administrative headache. Such documents in some cases can be difficult or time-consuming for candidates to locate or obtain. Some people seeking office (and even re-election) might be taken unawares by the requirement and be denied the opportunity to run because they do not get the necessary documentation in time. Where is the evidence that there has been a problem with non-citizens seeking office? In place of the current requirements, the bill would simply require that a affidavit of candidacy

contain a statement that the candidate is a citizen, and would require the

affidavit to contain a statement that the candidate acknowledges that making a false statement in the affidavit is perjury, punishable by a fine of up to \$1,000 or imprisonment for up to five years, or both.

Analyst: C. Couch
