

# Legislative Analysis

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## ELECTION CHANGES TO COMPLY WITH FEDERAL ACT

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**Senate Bill 350 (Substitute H-1)**  
**Sponsor: Sen. Cameron S. Brown**

**Senate Bill 432 (Substitute H-2)**  
**Sponsor: Sen. Bev Hammerstrom**

**House Committee: Local Government and Urban Policy**  
**Senate Committee: Government Operations**

### First Analysis (2-23-04)

**BRIEF SUMMARY:** Senate Bill 350 would amend the Michigan Election Law (MCL 168.666) to replace provisions regarding the posting of certain information at polling places.

Senate Bill 432 would amend the Election Law (MCL 168.73 et al.) to do the following:

- Specify that the secretary of state would be responsible for the coordination of requirements imposed under the federal Help America Vote Act (HAVA).
- Allow an individual who was not listed on the voter registration list to receive a ballot and vote, if he or she presented a receipt issued by specified state or local officers verifying the acceptance of a voter registration application.
- Allow an unlisted individual to vote a "provisional ballot" under certain circumstances.
- Require a voter who had moved within a city or township to verify his or her change of residence, or vote in his or her former precinct, and submit an address correction before being allowed to vote.
- Specify that a stray mark made in a predefined area on a ballot would not be a valid vote; require election inspectors to determine whether a mark was a stray; and require the secretary of state to issue instructions relevant to stray marks.
- Require an expedited canvass if unofficial results for a U.S. presidential election showed a vote differential of less than 25,000 votes.
- Repeal two sections that deal with cancellation of voter registration.

The bills are described in more detail later.

**FISCAL IMPACT:** Federal funds are available for assistance in implementing the Help America Vote Act. Supplemental appropriations bills totaling \$64.3 million in federal funds and state matching funds were enacted for Fiscal Year 2002-2003.

**THE APPARENT PROBLEM:**

The Federal Help America Vote Act (HAVA), enacted in October 2002, imposes several requirements on state and local units of government regarding the administration of federal elections. According to the Office of the Secretary of State, the U. S. Congress has appropriated at least \$1.5 billion to assist state and local governments to comply with the requirements, and Michigan is eligible for a portion of the funding in this and future fiscal years. The amount of funding that will be available to implement the new law in Michigan will be about \$70 million, according to committee testimony.

To qualify for the funding, a state must file a plan with the Federal Election Assistance Commission. The plan must show how the state will comply with various HAVA requirements, including voting system guidelines, voter education provisions, and informational mandates for poll workers. The State of Michigan filed its plan on December 19, 2003.

It has been pointed out that several changes in the Michigan Election Law must be made for the state to comply with HAVA. Further, it has been suggested that the changes be extended to all state and local elections.

**THE CONTENT OF THE BILL:**

The following is a detailed description of the provisions of Senate Bill 432 (incorporating and updating information contained in the Senate Fiscal Agency's analysis dated 1-16-04).

***Voting***

Unlisted Voters and Provisional Ballots. Section 509y of the Election Law prescribes requirements regarding voting by individuals who are not listed in registration records or precinct voting lists. The bill would repeal Section 509y and rewrite its provisions.

Under the bill, if an individual presented a receipt issued by a Department of State office, a designated voter registration agency, or the individual's local election clerk verifying the acceptance of a voter registration application before the close of registration, and completed a new voter registration application, the election inspector would have to allow the individual to vote a ballot in the same manner as an elector whose name was listed on the voter registration list.

For an individual who did not present a receipt verifying the acceptance of a voter registration application, the election inspector would have to determine whether the individual was in the appropriate polling place, based on residence information provided

by the individual. The election inspector would have to review any documents or maps in the polling place or communicate with the city or township clerk to verify the appropriate polling place for the individual. The election inspector would have to direct a person who was not in the appropriate polling place to the appropriate polling place. If he or she refused to go there, the election inspector would have to issue the individual a provisional ballot. (The bill would define "provisional ballot" as a special ballot issued to an individual who was not listed on the voter registration list at the polling place, that was tabulated only after verification of the individual's eligibility to vote.)

An election inspector would have to require an individual who was not listed on the voter registration list to execute a sworn statement asserting that he or she submitted a voter registration application before the close of registration to a Department of State office, a designated voter registration agency, or the individual's local election clerk, or mailed an application as provided by Election Law, by the close of registration. A person who signed a sworn statement would have to complete a new voter registration application. Someone who provided false information in a signed sworn statement would be guilty of perjury.

An election inspector would have to contact the city or township clerk to verify whether the individual who signed a sworn statement was listed in the registration records of the jurisdiction or whether there was any information contrary to the content of the sworn statement. If the city or township clerk verified the elector information and found no information contrary to that provided by the individual in the sworn statement, and he or she presented proper identification to establish his or her identity and residence address, the individual would have to be permitted to vote a provisional ballot on election day. Before the provisional ballot was tabulated on election day, election inspectors would have to process the ballot as a challenged ballot under applicable sections of the Election Law.

An individual would have to be issued a provisional ballot that was not tabulated on election day but was secured for verification after the election, if any of the following applied: an election inspector was not able to contact a city or township clerk; the individual was not in the correct precinct; the individual presented identification other than a Michigan operator's or chauffeur's license or Department of State issued personal identification card; or the individual was unable to present any identification. A provisional ballot also would have to be issued to a voter who presented a Michigan operator's license, chauffeur's license, or Department of State personal identification card that did not bear the voter's current residence address, if the voter also presented a document to establish his or her current residence address. An election inspector would have to accept a document containing the name and current residence address of the voter as sufficient documentation if the document were a current utility bill, a current bank statement, or a current government paycheck, government check, or other government document.

A provisional ballot would have to be placed in a provisional ballot return envelope prescribed by the secretary of state and delivered to the city or township clerk after the polls closed, in a manner prescribed by the secretary of state.

Tabulation of Provisional Ballots. For a provisional ballot that was tabulated on election day, an election inspector would have to notify the voter that his or her ballot had been tabulated. For a provisional ballot that was not tabulated on election day, the election inspector would have to notify the voter that his or her information would be verified by the clerk of the jurisdiction or secretary of a school board within six days after the election, to determine if the ballot would be tabulated and, if the ballot were not tabulated, the reason it was not tabulated. A clerk of a jurisdiction or secretary of a school board would have to provide a free access system for the voter to determine whether the ballot was tabulated. The system could include a telephone number that did not require a toll charge, a toll-free telephone number, an internet website, or a mailed notice.

If an elector were issued a provisional ballot, an election inspector would have to enter a proper designation in the poll book, including whether the ballot was tabulated in the precinct or was secured for verification after the election. At the completion of the precinct canvass, an election inspector would have to record on the certificate provided in the poll book the number of each metal seal used to seal voting equipment and ballot containers. Each member of the board of election inspectors would have to sign the certificate.

Within six days after an election, for each ballot that was placed in a provisional ballot return envelope, the city or township clerk would have to determine whether the individual voting the provisional ballot was eligible to vote a ballot and whether to tabulate it. In making this determination, the clerk could not open the provisional ballot return envelope. A provisional ballot could be tabulated only if a valid voter registration record for the elector were located or if the identify and residence of the elector were established using a Michigan operator's license, chauffeur's license, or personal identification card along with a document establishing the voter's current residence address.

Within seven days after an election, but sooner if practical, the clerk would have to transmit the results of these provisional ballots to the board of county canvassers. The results would have to be transmitted in a form prescribed by the secretary of state.

Within seven days after an election, the city or township clerk would have to transmit to the county clerk a provisional ballot report for each precinct in the jurisdiction. The report would have to include for each precinct the number of provisional ballots issued, the number tabulated on election day, the number forwarded to the clerk to be determined after the election, the number tabulated by the clerk after election day, and any additional information concerning provisional ballots as required by the secretary of state.

The board of county canvassers would have to include the results of the tabulated provisional ballots in the canvass of the election following procedures prescribed by the

secretary of state (SOS) designed to maintain the secrecy of the ballot. Within 14 days after a primary or election, the county clerk would have to transmit a county provisional ballot report to the SOS, as he or she prescribed. After the secretary of state received the report, it would have to be immediately available for public inspection.

Change of Residence. Currently, the Election Law requires a clerk to update the registration of a voter upon receiving reliable information that the voter has changed his or her residence within the city or township. The clerk also must mail the voter a notice of the transfer informing the voter that he or she is registered at the new address, and include a postage prepaid and preaddressed return card on which the voter may verify or correct the address information. The bill would delete these requirements.

Under the bill, upon receiving reliable information that a registered voter had moved his or her residence within a city or township, the clerk would have to send to the voter, by forwardable mail, all of the following: 1) a notice that the clerk had received information indicating that the voter had moved his or her residence within the city or township; a postage prepaid and preaddressed return card on which the voter could verify or correct the address information; and a notice explaining that, if the address information were correct and the voter had moved his or her residence within the city or township, the voter should complete and return the card to the clerk with a postmark of at least 30 days before the date of the next election.

If the voter had moved his or her residence within the city or township and did not complete and return the card within that time limit, he or she would be required to vote in his or her former precinct of residence in the city or township. The voter also would have to submit an address correction before being permitted to vote.

### ***Electronic Voting Systems***

Tabulating Equipment. Under the Election Law, an electronic voting system must permit each elector to vote for all people and offices for whom and for which the elector is entitled to vote, and to vote for or against any question upon which the elector is entitled to vote. In addition, an electronic voting system must permit an elector in a primary election to vote for the candidates in the party primary of the elector's choice.

Under the bill, electronic tabulating equipment that tabulated ballots, including absentee ballots, at a central location would have to be programmed to reject a ballot if any of the following applied: the choices recorded on an elector's ballot for an office or a question exceeded the number that the elector was entitled to vote for on that office or question; no valid choices were recorded on an elector's ballot; or, in a primary election, votes were recorded for candidates of more than one political party. If electronic tabulating equipment rejected an absent voter ballot due to the required programming, the rejected ballot would have to be inspected to confirm the presence of the error before the ballot was processed. A vote for each elective office or ballot question in which an error was confirmed could not be counted.

Accessible Device. The bill would require that an electronic voting system be compatible with or include at least one voting device that was accessible for an individual with disabilities to vote in a manner that provided the same opportunity for access and participation, including secrecy and independence, as provided for other voters. The voting device would have to include non-visual accessibility for the blind and visually impaired.

Beginning January 1, 2006, each jurisdiction in the state conducting an election would have to equip each polling place with at least one accessible voting device.

Stray Marks. Currently, if an electronic voting system requires an elector to cast a vote by marking or stamping a predefined area on the ballot, the vote may not be considered valid unless there is a mark or stamp within that area, and it is clearly evident that the intent of the voter was to cast a vote. In determining the voter's intent, the board of canvassers or election official must compare the mark or stamp subject to recount with other marks or stamps appearing on the ballot.

The bill would delete reference to the voter's intent (as well as references to a stamp). The bill specifies that a stray mark made within the predefined area would not be a valid vote. In determining whether a mark within a predefined area was a stray mark, the board of canvassers or election official would have to compare the mark subject to recount with other marks appearing on the ballot.

The bill also would require the secretary of state to issue instructions relevant to stray marks to ensure the fairness and uniformity of determinations made under these provisions. An instruction could not be applied to a ballot unless the SOS issued it at least 63 days before the election.

The bill would make the same changes in the statutory rules that govern counting and recounting votes.

### ***U.S. Presidential Vote Differential***

Under the bill, if the unofficial election results showed that the election of President and Vice President of the United States was determined by a vote differential between the first and second place candidates of less than 25,000 votes, the secretary of state would have to direct the boards of county canvassers to canvass returns on an expedited schedule. The SOS would have to direct the boards to complete the statements required by the Election Law and certify them by the seventh day after the election or by a date before the 14th day after the election. (Under the Election Law, after canvassing returns, a board of county canvassers must prepare a statement containing specified information, and the clerk of the board must deliver to the secretary of state a certified copy of the statement and a certificate of authenticity.)

The bill also would require the SOS to appoint the day for the Board of State Canvassers to conduct the expedited canvass of the returns and determine the results of the election.

The day appointed would have to be as soon as practical after the receipt of the returns from the county boards, but not later than the 20th day after the election.

### ***Other Provisions***

Forwarding Lists. The Election Law requires officers of the state central committee of each political party, after a party convention, to mail a list of nominees for statewide elections to the secretary of state. Currently, the central committee officers also must send the list to the board of election commissioners of each county. Under the bill, the SOS would have to forward a copy of the list to the county boards.

Voter ID Card. Under the Election Law, a clerk must prepare a voter identification card for a voter immediately after receiving a registration or change of address. The bill provides that if an original voter identification card were returned to the clerk by the post office as non-deliverable, the clerk would have to reject the registration and send the individual a notice of rejection.

Repeals. The bill would repeal Section 509, which requires a local election official to follow specified procedures for the cancellation of a voter's registration if the voter has not voted, reregistered, or filed a change of address for five years. The bill also would repeal Section 509a, which prohibits a local official from canceling the registration of an active duty armed forces member.

### ***Senate Bill 350***

Currently, the Election Law requires county clerks to print large cards or posters containing information about voter qualification challenges by election officials, and requires the information to be displayed in each precinct. The Election Law also requires the Secretary of State to furnish two large placards of voting instructions to be displayed in each polling place. The bill would delete these provisions.

The bill would require the secretary of state to furnish to each county clerk, at state expense, two voter information displays for each precinct. The displays would have to be in at least 18-point type and contain the hours that the polls would be open; voting instructions; information on an individual's right to obtain a provisional ballot and instructions on how to vote a provisional ballot; information on the identification requirements that apply to voters who register by mail; instructions on how to contact the appropriate election official about alleged voting rights violations; information on the federal and state laws that prohibit fraud and misrepresentation; information on how to challenge another voter as unqualified to vote; and other information that the secretary of state considered necessary.

The bill would require local elections officials to provide to each precinct for display, two voter information displays and an instruction ballot. The board of election inspectors in each precinct would have to post these items in the polling place in a conspicuous place, before the polls opened on election day. At an elector's request, the local election official

would have to have available a means to provide the information in an alternative format, as prescribed by the secretary of state.

The bill also would delete a requirement that the secretary of state furnish a copy of the Election Law and the manual of instructions for each precinct board of election inspectors.

### ***HOUSE COMMITTEE ACTION:***

The members of the House Committee on Local Government and Urban Policy reported-out substitute versions of the bills—Senate Bill 432 (H-2) and Senate Bill 350 (H-1).

The Senate-passed version of Senate Bill 432 was amended in several ways, as follows:

First, the members of the committee adopted an H-1 conflict substitute that removed a reference to the “secretary of the school board” (serving as an election official), in order to conform to the new election consolidation laws passed earlier in this legislative session. Further, the H-1 substitute removed a subsection requiring the state’s political party chairmen to forward their parties’ candidate list to the secretary of state and all county clerks, in order to conform to legislation passed earlier in the session. Finally the H-1 substitute specified that if the city or township clerk determined that an individual voting a provisional ballot was not eligible to vote and did not tabulate that ballot, then voter could appeal the clerk’s determination, in the same manner as provided for a challenged voter ballot.

Second, the committee members adopted three amendments to the conflict substitute, that would 1) ensure that “voting accessibility” would be uniformly defined throughout the state, by referencing the definition of that term in the federal Help American Vote Act of 2002; 2) clarify that election officials would be required to process a provisional ballot in the same manner as a challenged ballot, before the provisional ballot was tabulated; and, 3) specify that when an individual executed a sworn statement asserting that he or she had submitted a voter registration application before the close of registration, the individual would be required only to state the *approximate date and in what manner* the registration application was submitted: to a Department of State office; to a designated voter registration agency; or to the office of the county, city, or township clerk. Currently, an individual is required to state the date and place, and since a person giving false information under this subsection is guilty of perjury, the committee adopted the broader “approximate” standard of compliance.

The committee adopted only one amendment to the Senate-passed version of Senate Bill 350, in order to remove two references in the bill to the “secretary of the school board” (serving as an election official) in order to make the bill conform to the new election consolidation laws passed earlier in this legislative session.



## **ARGUMENTS:**

### ***For:***

Although support for a uniform voting system is not new, the 2000 presidential election, with its unprecedented difficulty in the tabulation of votes, particularly in Florida, brought new attention to the election process and renewed calls for reform. In response, the Help America Vote Act of 2002 was enacted to require states to adopt certain uniform election standards.

The federal act includes several requirements that states must meet in conducting elections for federal offices. These include requirements for voting systems standards; provisional voting; voting information; computerized statewide voter registration lists; voter registration by mail; and other mandates regarding the administration of elections. In order to qualify for federal financial assistance in implementing the HAVA requirements, states must submit a state plan to the federal Election Assistance Commission. Michigan submitted its plan in December 2003. (The contents of the 65-page plan may be viewed at [www.Michigan.gov/sos](http://www.Michigan.gov/sos). The text of HAVA is available at [www.Fec.gov/hav/lawext.txt](http://www.Fec.gov/hav/lawext.txt).) If Michigan is to comply fully with HAVA and implement the state plan, several provisions of the Election Law must be amended. By making the necessary changes, the bills would help ensure that Michigan meets the HAVA requirements and receives federal funding--funding that will allow the state to replace outdated voting equipment, as well as improve access for voters with disabilities. Also, by making the changes applicable not only to federal elections but to all elections in Michigan, the bills would ensure that elections held in the state were uniform, and would make the administration of elections more efficient.

## **POSITIONS:**

The Michigan Townships Association supports the bills. (2-17-04)

The Secretary of State supports the bills. (2-17-04)

Michigan Protection and Advocacy Services supports Senate Bill 432, as amended. (2-17-04)

The Oakland County Clerk supports the bills. (2-17-04)

The Michigan Association of County Clerks supports the bills. (2-17-04)

The League of Women Voters supports the bills. (2-17-04)

Legislative Analyst: J. Hunault

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