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BILL ANALYSIS

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Senate Bill 350 (as enrolled)
Senate Bill 432 (as enrolled)
Sponsor: Senator Cameron S. Brown (S.B. 350)
Senator Bev Hammerstrom (S.B. 432)
Senate Committee: Government Operations
House Committee: Local Government and Urban Policy

PUBLIC ACT 96 of 2004
PUBLIC ACT 92 of 2004

Date Completed: 8-11-04

RATIONALE

The Federal Help America Vote Act (HAVA), enacted in October 2002, places several requirements on states and local units of government regarding the administration of Federal elections. According to Michigan's Secretary of State, Congress has appropriated at least \$1.5 billion to assist state and local governments to comply with the requirements; Michigan is eligible for a portion of the funding in this and future fiscal years.

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 was pointed out that several statutory changes also had to be made for the State to comply with HAVA. Further, it was suggested that the changes be extended to all State and local elections.

CONTENT

Senate Bill 350 amended the Michigan Election Law to replace provisions regarding information displays at polling places. The bill requires the displays to include information about provisional ballots, voter identification requirements, voting rights violations, and challenging other voters. The bill also requires local clerks to have a way to provide the information in an alternative format.

Senate Bill 432 amended the Election Law to do the following:

- Specify that the Secretary of State (SOS) is responsible for coordinating the requirements imposed by the Help America Vote Act and other laws.
- Require local units of government to provide polling places that comply with HAVA.
- Require electronic voting systems to include devices that are accessible for individuals with disabilities, and require jurisdictions conducting elections to equip polling places with accessible voting devices.
- Allow an individual who is not listed on the voter registration list to receive a ballot and vote, if he or she presents a receipt issued by a specified State or local officer verifying the acceptance of a voter registration application.
- Allow an unlisted individual to vote a "provisional ballot" under certain circumstances.
- Require a person to present certain identification if he or she is voting a provisional ballot, or if the person registered by mail and is voting in person for the first time.
- Require a voter who has 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 is not a valid vote; and require the SOS to issue instructions relevant to stray marks.

-- Allow the SOS to provide for an expedited canvass if unofficial results for a U.S. presidential election show a vote differential under 25,000 votes.

Senate Bill 350 took effect on May 7, 2004, and Senate Bill 432 took effect on April 26, 2004. The bills are described in more detail below.

Senate Bill 350

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

The bill requires the Secretary of State to furnish to each county clerk, at State expense, two voter information displays for each precinct. The displays must be in at least 18-point type and contain the hours that the polls will 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 SOS considers necessary.

The bill requires the county clerks to give each city, township, or village clerk, as determined by the SOS, two voter information displays for each precinct in the county. The city, township, or village clerk then must provide the displays and an instruction ballot for display at each precinct. The board of election inspectors in each precinct must post these items in the polling place in a conspicuous place, before the polls open on election day.

Under the bill, at an elector's request, a city, township, or village clerk must have available a means to provide the information contained in the displays in an alternative format, as prescribed by the SOS.

The bill deleted 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.

Senate Bill 432

HAVA Compliance

The bill provides that the Secretary of State is responsible for the coordination of the requirements imposed under Chapter 23 of the Election Law (which governs voter registration), the National Voter Registration Act, and the Help America Vote Act. (Previously, the SOS was responsible for coordinating the requirements of Chapter 23 and the National Voter Registration Act.)

Accessible Polling Places

The Election Law requires the legislative body in each city, village, and township to designate the places of holding a local election, and to provide a suitable polling place in or for each precinct in the city, village, or township for use at each election. Polling places may be in particular types of buildings described in the Law. A polling place may not be established, moved, or abolished less than 60 days before an election unless doing so is necessary because the polling place has been damaged, destroyed, or rendered inaccessible or unusable as a polling place.

The Election Law also requires the legislative body of each city, village, or township to ensure that a polling place complies with the Voting Accessibility for the Elderly and Handicapped Act. Under the bill, a polling place must comply with HAVA, as well.

The bill states that "accessible" means the removal or modification of policies, practices, and procedures that deny an individual with a disability the opportunity to vote, including the removal of physical barriers as identified in HAVA, so as to ensure individuals with disabilities the opportunity to participate in elections in this State.

Accessible Voting Systems

The bill requires that an electronic voting system be compatible with or include at least one voting device that is accessible for an individual with disabilities to vote in a manner that provides the same opportunity for access and participation, including secrecy and independence, as provided for other voters.

The voting device must include nonvisual accessibility for the blind and visually impaired.

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

Registration by Mail/Voting in Person

Under the bill, an individual who registers to vote in a jurisdiction in this State by mail must vote in person if he or she has not previously voted in person in this State. (The Election Law had required voting in person if the individual had not previously voted in person in the jurisdiction where he or she registered.) The bill also requires the individual to provide identification as required under Section 303(b) of HAVA. (Under that section, a state must require an individual to provide certain identification or documentation if the individual registered to vote in a jurisdiction by mail and has not previously voted in an election for Federal office in the state; or the individual has not previously voted in such an election in a jurisdiction in a state that does not have a computerized voter registration list. A person voting in person must present a current and valid photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the voter's name and address.)

As the Election Law had provided, these requirements do not apply to a registered voter who is entitled to vote by absentee ballot under the Federal Uniformed and Overseas Citizens Absentee Voting Act, or who has a disability as defined in Michigan's Persons with Disabilities Civil Rights Act. The bill also retains an exemption for a registered voter who is at least 60 years old, but only for the purpose of voting in person.

Voting

Unlisted Voters; Provisional Ballots. The bill repealed Section 509y of the Election Law, which prescribed requirements regarding voting by individuals not listed in registration records or precinct voting lists. Under the bill, if an individual, who has applied to register to vote before the close of registration, and who appears at a polling place on election day and completes an application, is not listed on the voter registration list, the election inspector

must issue a ballot to the individual as described below.

For an individual who presents a receipt issued by a Department of State office, a designated voter registration agency, or the individual's county, city, or township clerk's office verifying the acceptance of a voter registration application before the close of registration, and completes a new voter registration application, the election inspector must allow the individual to vote a ballot in the same manner as an elector whose name is listed on the voter registration list.

For an individual who does not present a receipt verifying the acceptance of a voter registration application, the election inspector must determine whether the individual is in the appropriate polling place, based on residence information provided by the individual. The election inspector must 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 must direct a person who is not in the appropriate polling place to the appropriate polling place. If he or she refuses to go there, the election inspector must issue the individual a provisional ballot. (The bill defines "provisional ballot" as a special ballot used for an individual who is not listed on the voter registration list at the polling place, that is tabulated only after verification of the individual's eligibility to vote.)

Except for an individual who produces a receipt verifying the acceptance of a voter registration application, an election inspector must require an individual who is not listed on the voter registration list to execute a sworn statement affirming that he or she submitted a voter registration application before the close of registration and is eligible to vote in the election. A person who provides false information in a signed sworn statement is guilty of perjury.

An individual signing a sworn statement must complete a new voter registration application. He or she must state the approximate date and the manner in which the registration statement was submitted to a Department of State office, a designated voter registration agency, or the office of his or her county, city, or township clerk, by a mailed application.

The election inspector must contact the city or township clerk to verify whether the individual

is listed in the registration records of the jurisdiction or whether there is any information contrary to the content of the sworn statement. The individual must be permitted to vote a provisional ballot on election day if the city or township clerk verifies the elector information and finds no information contrary to that provided by the individual in the sworn statement, and he or she presents a Michigan operator's or chauffeur's license, Department of State-issued photo identification card, other government-issued photo ID card, or photo ID card issued by an institution of higher education in this State or a junior or community college, that contains a current residence address, to establish his or her identity and residence address. Before the provisional ballot is tabulated on election day, election inspectors must process the ballot as a challenged ballot under applicable sections of the Election Law.

An individual must be issued a provisional ballot that is not tabulated on election day but is secured for verification after the election, if any of the following applies: An election inspector is not able to contact the city or township clerk; the individual is not in the correct precinct; the individual presents identification other than that described above; or the individual is unable to present any identification. A provisional ballot also must be issued to a voter who presents a Michigan operator's or chauffeur's license, Department of State personal ID card, other government-issued photo ID card, or photo ID card issued by a university or a junior or community college, that does not bear the voter's current residence address, if the voter also presents a document to establish his or her current residence address. The election inspector must accept a document containing the name and current residence address of the voter as sufficient documentation if it is a current utility bill, a current bank statement, or a current paycheck, government check, or other government document.

A provisional ballot must be placed in a provisional ballot return envelope prescribed by the SOS and delivered to the city or township clerk after the polls close, in a manner prescribed by the Secretary of State.

Tabulation of Provisional Ballots. For a provisional ballot tabulated on election day, the bill requires an election inspector to notify the voter that his or her ballot has been tabulated. For a provisional ballot not

tabulated on election day, the election inspector must notify the voter that his or her information will be verified by the clerk of the jurisdiction within six days after the election, to determine if the ballot will be tabulated and, if the ballot is not tabulated, the reason it was not tabulated. A clerk of a jurisdiction must provide a free access system for the voter to determine whether the ballot was tabulated. The system may include a telephone number that does not require a toll charge, a toll-free telephone number, an internet website, or a mailed notice.

Under the bill, if an elector is issued a provisional ballot, an election inspector must 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 must 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 must 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 must 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 may not open the provisional ballot return envelope. A provisional ballot may be tabulated only if a valid voter registration record for the elector is located or if the identity and residence of the elector are established using a Michigan operator's license, chauffeur's license, personal identification card, other government-issued photo ID card, or photo ID card issued by a university or a junior or community college, along with a document establishing the voter's current residence address. Before the provisional ballot is tabulated, election officials must process it as a challenged ballot.

Within seven days after an election, but sooner if practical, the city or township clerk must transmit the results of provisional ballots tabulated after the election to the board of county canvassers.

Within seven days after the election, the city or township clerk also must transmit to the county clerk a provisional ballot report for each precinct in the jurisdiction. The report must 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 must include the results of the tabulated provisional ballots in the canvass of the election following procedures prescribed by the SOS designed to maintain the secrecy of the ballot. Within 14 days after a primary or election, the county clerk must transmit a county provisional ballot report to the SOS, as he or she prescribes. After the Secretary of State receives the report, it must be immediately available for public inspection.

Challenged Elector

The Election Law requires an election inspector to challenge a person applying for a ballot if the inspector knows or has good reason to suspect that the applicant is not a qualified and registered elector of the precinct, or if a challenge appears in connection with his or her name in the registration book. A registered elector present in a polling place may challenge the right of someone attempting to vote if the elector knows or has good reason to suspect that the person is not a registered voter in that precinct. An election inspector or other qualified challenger also may challenge someone who previously applied for an absent voter ballot and claims on election day that he or she never received the ballot or lost or destroyed it.

When a challenge is made, an election inspector must identify a ballot voted by the challenged individual, and make a report including specified information. The bill requires an election inspector also to inform the challenged elector of his or her rights under Section 729. (Under that section, if a person is challenged as unqualified, an election inspector or a qualified elector may question the person as to his or her qualifications. If the person's answers show that he or she is a qualified elector in that precinct, the person is entitled to receive a ballot and vote.)

Change of Residence

Previously, the Election Law required a clerk to update the registration of a voter upon receiving reliable information that the voter

had changed his or her residence within the city or township. The clerk also had to mail the voter a notice of the transfer informing the voter that he or she was registered at the new address, and include a postage prepaid and preaddressed return card on which the voter could verify or correct the address information. The bill deleted these requirements.

Under the bill, upon receiving reliable information that a registered voter has moved his or her residence within a city or township, the clerk must send to the voter, by forwardable mail, all of the following:

- A notice that the clerk has received information indicating that the voter has moved his or her residence within the city or township.
- A postage prepaid and preaddressed return card on which the voter may verify or correct the address information.
- A notice explaining that, if the address information is correct and the voter has 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 has moved his or her residence within the city or township and does not complete and return the card within that time limit, he or she will have to vote in his or her former precinct of residence in the city or township. The voter also must 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 tabulates ballots, including absentee ballots, at a central location must be programmed to reject a ballot if any of the following applies: The choices recorded on an elector's ballot for an office or a question exceed the number that the elector is entitled

to vote for on that office or question; no valid choices are recorded on an elector's ballot; or, in a primary election, votes are recorded for candidates of more than one political party. If electronic tabulating equipment rejects an absent voter ballot due to the required programming, the rejected ballot must be inspected to confirm the presence of the error before the ballot is processed. A vote for each elective office or ballot question in which an error is confirmed may not be counted.

Stray Marks. Under the Election Law, 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. Previously, it also had to be 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 had to compare the mark or stamp subject to recount with other marks or stamps appearing on the ballot.

The bill deleted 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 is not a valid vote. In determining whether a mark within a predefined area is a stray mark, the board of canvassers or election official must compare the mark subject to recount with other marks appearing on the ballot.

The bill also requires the Secretary of State to issue instructions, subject to the approval of the Board of State Canvassers, relevant to stray marks to ensure the fairness and uniformity of determinations made under these provisions. An instruction may not be applied to a ballot unless the SOS issued it at least 63 days before the election.

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

U.S. President Vote Differential

Under the bill, if the unofficial election results show that the election of President and Vice President of the United States is determined by a vote differential between the first and second place candidates of less than 25,000 votes, the Secretary of State may direct the boards of county canvassers to canvass returns on an expedited schedule. The SOS may 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 allows 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 must 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. Previously, the central committee officers also had to send the list to the board of election commissioners of each county. Under the bill, the SOS must 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 is returned to the clerk by the post office as nondeliverable, the clerk must reject the registration and send the individual a notice of rejection.

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

MCL 168.666 et al. (S.B. 350)
168.73 et al. (S.B. 432)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal

Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

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 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 Election Assistance Commission. Michigan submitted its plan in December 2003.

The bills will help ensure that Michigan meets the HAVA requirements and receives Federal funding by making necessary changes in the Election Law, particularly in regard to provisional ballot requirements for people who go to the wrong precinct; information displays at polling places telling voters of their rights and how to file a complaint; a requirement that first-time voters who registered by mail show proper identification; and the accessibility of polling places and voting systems. The Federal funding 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 will ensure that elections held in the State will be uniform, and the administration of elections more efficient.

Response: Despite the improvements made by some aspects of this legislation, especially the requirements for equal access for disabled voters, there is concern that the bills do not bring Michigan into full compliance with HAVA. According to a press release from the Office of the Governor, the State will continue to face enforcement action by the U.S. Department of Justice unless several shortcomings in Senate Bill 432 are addressed. For example, the bill contains no mechanism for counting provisional ballots

due to a court order extending poll-closing time, and no requirement that voting systems provide for alternative language accessibility.

Opposing Argument

Senate Bill 432 represents a lost opportunity to make it easier for people to vote by mail. The Election Law allows absentee voting only if an elector meets certain criteria, such as being absent from the community on election day, physically unable to attend the polls without assistance, or unable to attend the polls because of the person's religion. It is time for Michigan to allow anyone to apply for absentee voting without a specific reason. Fewer and fewer people seem to vote these days, and there are many potential impediments to getting to a polling place. For example, a person might be called out of town unexpectedly on election day, fall sick, be unable to find child care, or have no transportation to the polls. Making it more convenient for Michigan electors to cast a ballot would, after all, "Help America Vote".

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 350

Federal Help America Vote Act funds could be used to pay the cost of the informational displays. No specific cost estimate is available from the Department of State at this time.

Senate Bill 432

There were two FY 2002-03 supplemental appropriation bills totaling \$64.3 million that included Federal funds and the required State match for implementation of the Help America Vote Act. There also is an enrolled supplemental appropriation bill (Senate Bill 267) that contains \$710,000 in Federal Health and Human Services funding that would be allocated to local governmental units for compliance with the Voting Accessibility for the Elderly and Handicapped Act.

Fiscal Analyst: Bill Bowerman

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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.