

VOTER REGISTRATION AND ABSENTEE VOTING

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Senate Bill 1238 as enacted
Public Act 603 of 2018

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

Senate Bill 1239 as enacted
Public Act 604 of 2018

Senate Bill 1241 as enacted
Public Act 606 of 2018

Senate Bill 1240 as enacted
Public Act 605 of 2018

Senate Bill 1242 as enacted
Public Act 607 of 2018

Sponsor: Sen. Mike Kowall
House Committee: Elections and Ethics
Senate Committee: Elections and Government Reform
Complete to 2-13-19

BRIEF SUMMARY: Taken together, the five bills implement rules related to voter registration and absentee voting. Senate Bill 1238 amends the Michigan Election Law. The other four bills 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.

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 2018.¹

THE APPARENT PROBLEM:

Prior to Proposal 3 of 2018, 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.

¹ https://www.house.mi.gov/hfa/PDF/TestPDF/Ballot_Proposal_2018-3_Promote_The_Vote.pdf

Senate Bill 1238 amends 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.]

THE CONTENT OF THE BILLS:

Senate Bill 1238

Audits

Section 31a of the Michigan Election Law 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 requires the SOS to prescribe the procedures for and to conduct election audits, including statewide election audits.

The bill makes the optional training and certification of county clerks regarding random audits mandatory. Additionally, it requires 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 are not be recounts and do not change certified election results.

Automatic voter registration

The bill requires that the SOS automatically register all qualified electors who submit 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 does not opt out of registration. However, the bill provides that the SOS may only register applicants who indicate on the form that they are citizens of the United States.

The SOS must add the required information 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 may not transmit any information to the QVF if the individual opts out of voter 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.

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

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 incorporates these constitutional rights into statute. It provides that *proof of residency* means a driver's license or state personal ID card that proves residency in that city or township, or an enhanced version of either. If the voter cannot prove residency with a driver's license or state personal ID card, he or she may 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 does 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 must be present and accepting applications at the city or township clerk's office at all times a polling place is open on Election Day.

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

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

The bill allows 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 presents a voter registration receipt.

Notice of hours for receiving registrations

Under the bill, city and township clerks must give public notice in a local newspaper of office hours or other times and locations for receiving registrations at least seven days before Election Day. (This notice was previously required 30 days before voter registrations were due.)

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 is repealed by 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 allows only a person who is not a registered elector and who registers in person on Election Day to complete an absentee ballot on Election Day. Previously registered electors may not be issued an absentee ballot after 4 p.m. on the day before Election Day. A clerk is prohibited from sending an absentee ballot to an elector by first-class mail any later than 5 p.m. on the Friday before the election.

Under Proposal 3 and the bill, city and township clerks must 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 must be posted and the information conveyed to the SOS at least 30 days before the election.

The bill provides that envelopes containing absentee ballots must 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 requires a city or township clerk to ensure, within seven days of an election, that the QVF is up-to-date and includes 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 must 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 repeals Section 758 of the Election Law, which listed the valid reasons for obtaining an absentee ballot prior to the adoption of Proposal 3. It also repeals Section 524, which required 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 amend the Michigan Vehicle Code and the State Personal Identification Card Act, respectively, to incorporate the provisions of SB 1238. They require that applications and change of address forms for driver's licenses and state personal ID cards include a space where the applicant may indicate whether he or she is a citizen, as well as a space where the applicant may opt out of using the application as a voter registration application.

Senate Bill 1239 also allows 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 requires a photo on that ID card.⁴

MCL 257.307

MCL 28.291

Senate Bill 1241

Senate Bill 1241 amends 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 may 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 amends the Michigan Campaign Finance Act to update a reference based on a section that is repealed by SB 1238.

MCL 169.206

ARGUMENTS:

For:

Proponents stated that the bills would ease the process of instituting into practice the rights secured through Proposal 3. While the proposal listed the rights, it was silent on many of the technical issues related to clerks and the SOS. This leaves officials and voters unclear on deadlines, locations for extended office hours and turning in applications, and the allowable forms of identification needed to register. Accordingly, supporters argued that this implementation legislation is necessary.

⁴ This would incorporate amendments to this section of law contained in Public Act 504 of 2018 (Enrolled House Bill 6421). See: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6421-E84F1188.pdf>

Against:

Opponents argued that Proposal 3 was the culmination of months—indeed, years—of work on voting rights issues, and that implementation legislation, assuming it was needed, deserved more time than was available during a hurried lame-duck period.

Moreover, the constitutional amendment was approved by 69% of the Michigan electorate, they argued, and the people made their feelings clear in that vote. Why, then, they wondered, were none of the leaders of that initiative engaged in incorporating the rights guaranteed under the proposal into statute?

Some also wondered why, when the proposal offered the right to vote absentee without giving a reason during the 40 days before an election, the bills would only allow a previously registered person to vote absentee until 4 p.m. the day before Election Day.

Response:

According to testimony from clerks, local clerks download their electronic poll books from the QVF starting at 4 p.m. the day before Election Day. Because the poll book would indicate that they had not voted yet, there would be the potential for previously registered people to vote twice—in person at their polling place, and absentee at the clerk’s office. In order to avoid voter fraud, a cutoff was needed, they stated.

Additionally, clerks argued, actual polling places are open for a reason. People should not be able to show up at their polling place, see a long line, and opt to vote absentee at their clerk’s office instead. Such an option would be more efficient for that person, but would further strain the resources of local clerks. Besides, they argued, if a person is able to show up at a clerk’s office during office hours on Election Day, there is no reason that person could not go to the polling place instead.

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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.