

Michigan Election Law Reform: Status of the 2021 Michigan Election Reform Package

February 1, 2022

Originally published in *Briefly, publication of the State Bar of Michigan Government Law Section, February 2022 (reprinted with permission)*

By Sean C. Rucker, Michael P. McGee and Erica Y. Auh

The Michigan Senate introduced a 39-bill reform package (later expanded) on March 24, 2021 “to ensure transparency, integrity, and confidence in Michigan’s election process.”¹ The bills have received much attention and triggered substantial reaction. Republicans tend to say that the reforms “will help ensure that our elections are free, fair, and secure,”² while Democrats have described the package as a “reprehensible rollback of the right to vote.”³

While some bills propose to make technical changes—such as allowing more challengers for larger absent voter (“AV”) counting boards (SB 279) and requiring a voter to attest to being registered in one place only and affirm a statement in the voter registration that voting more than once at the same election is a felony (SB 302)—others seek to change policy and law in greater magnitudes. A handful of the latter type have been passed by both chambers and presented to Governor Gretchen Whitmer.

Of the bills presented to the Governor, the key bill is SB 303, one of a number of bills dealing with voter identification. The original bill as introduced eliminates the current statutory provision allowing a voter without a photo ID to sign an affidavit to that effect and obtain a ballot, subject to challenge; instead mandating the issuance of a provisional ballot, which would be tabulated only if the voter verifies his or her identity with the local clerk within six days of the election. Since introduction, numerous amendments have been made to SB 303.

The final version of SB 303 passed by both chambers has grown into a bill embedding provisions from several other controversial bills in the reform package, especially pertaining to absentee voting. The final version, hence, not only retains the provisional ballot requirement for a voter without a photo ID, but also includes the following provisions from five additional bills:

- (1) Requiring identification verification for an AV ballot application by requiring an AV ballot applicant to provide his or her driver license number, state ID number or the last four digits of his or her Social Security number on the application, or to present an original or copy of a photo ID to a clerk (failing to meet the requirement results in the issuance of a provisional ballot) (originally SB 285);
- (2) Prohibiting the Secretary of State or other government officials from sending an AV ballot application to an unsolicited voter (SB 310);
- (3) Setting an AV ballot drop box deadline to 8:00 p.m. on the election day (SB 286);
- (4) Prohibiting accepting money from third-party entities to conduct or administer an election (SB 284); and

Continued

(5) Requiring only the board of county canvassers to tabulate provisional ballots and requiring the Secretary of State to promulgate rules to establish tabulating procedures for the board of county canvassers (the House substitute of SB 304).

Governor Whitmer vetoed the amended bill, along with two other bills tie-barred to SB 303, expressing concerns that the bills would disenfranchise the voters.⁴ The tie-barred bills are SB 304, a notice requirement mirroring provisions in SB 303, and HB 5007, eliminating a \$10 fee for an initial issuance and renewal of an official state ID card.

Two other bills have reached the Governor's desk, both similarly having been vetoed by the Governor. One requires county clerks to update the State's Qualified Voter File to cancel the voter registration of the deceased voters every month, and weekly within 16-45 days of the election, then daily within 15 days of the election (SB 277). The other is an initiative petition bill requiring the Board of State Canvassers to complete the canvass of an initiative petition within 100 days of it being submitted to the Secretary of State, and no later than 100 days before a general November election if filed with the Secretary of State at least 160 days before that general November election (SB 280).

There are other less controversial bills that have been reported out of the Senate Committee on Elections, but they are at various stages and have not yet been approved by the full Senate. These bills include greater training for challengers (SB 292), allowing U.S. military service members to vote electronically using a Common Access Card (SB 311), and setting additional AV ballot drop box requirements, including approval by the Secretary of State and the county board of canvassers, among others. Discussion on these bills is ongoing as of January 2022. Although the fate of the bills is unclear, a group calling itself the "Secure MI Vote Committee" has announced and is undertaking an initiative petition containing essentially the same provisions as SB 303 as amended and subsequently vetoed. If the petition obtains 340,047 signatures and the approval of the Legislature, the initiative would become law, successfully circumventing Governor Whitmer's vetoes. Whether the petition obtains the necessary signatures should be known later in 2022.

Endnotes

1. Outman sponsors bills as part of comprehensive election reform in Michigan, MI Senate GOP (March 24, 2021), <https://www.misenategop.com/outman-sponsors-bills-as-part-of-comprehensive-election-reform-in-michigan/>
2. Ruth Johnson, Opinion: Reforms would ensure free, fair and secure elections, Bridge Michigan (March 30, 2021), <https://www.bridgemi.com/guest-commentary/opinion-reforms-would-ensure-free-fair-and-secure-elections>
3. Dave Boucher & Clara Hendrickson, Michigan GOP senators file 39 election reform bills Democrats call racist, based on lies, Detroit Free Press (March 24, 2021, 3:50 PM), <https://www.freep.com/story/news/politics/elections/2021/03/24/michigan-senate-gop-election-reform-laws/6963314002/>
4. Clara Hendrickson, Whitmer vetoes election bills aimed at overhauling voter ID rules, Detroit Free Press (October 29, 2021, 6:00 PM). <https://www.freep.com/story/news/local/michigan/detroit/2021/10/29/whitmer-vetoes-election-bills/8520215002/>