House
Legislative
Analysis
Section

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House Bill 5531 as enrolled
Public Act 441 of 1994
Sponsor: Rep. Agnes Dobronski

House Committee: Local Government
Senate Committee: Government
  Operations
Second Analysis (1-25-95)

THE APPARENT PROBLEM:

The National Voter Registration Act (also known as the "motor/voter" law), signed into law by President Clinton in May of 1993, has been described as "the most sweeping reform of the nation's voter registration laws ever initiated on the federal level." One of its main elements, the one from which the colloquial name is derived, is the requirement that citizens be able to apply to register to vote when engaged in driver's license transactions. Michigan was the first state to combine driver's license transactions with voter registration and the federal law is said to be modeled on this state's program, begun in 1975. The federal law requires the states to comply with its provisions for the conduct of elections for federal offices. Election specialists say that this essentially leaves states with two options: maintain two separate voter registration systems, one for federal elections and one for state and local elections, or conform the state registration law to the requirements of the NVRA.

In addition to its provisions for the motor/voter programs, the NVRA requires that states establish so-called agency-based registration and postcard registration (or registration by mail) programs, among other things. Agency-based registration, which some human service advocacy groups have been promoting for more than a decade, involves providing citizens the opportunity to register to vote at offices providing public assistance or services to the disabled. (One of the justifications for making voter registration possible at such locations is that people seeking such services are less likely to hold driver's licenses.) Other requirements deal with how voter registration records are to be maintained and how registrations can be purged. Obviously, the thrust of the federal law is to increase the number of registered voters, both by increasing opportunities to register to vote and decreasing the

likelihood that someone is wrongfully removed from registration lists (while, at the same time, safeguarding the integrity of the voter lists).

Election experts say that nationwide only 65 percent of eligible voters are registered (although the figure is about 85 percent for Michigan), and that voter turnout in the 1988 presidential election was only slightly above 50 percent of those eligible. The argument is that once people are registered they are likely to turn out to vote (about 85 percent of registered voters turn out to vote in general elections, according to testimony from the League of Women Voters), and so, increasing the number of registered voters will improve voter turnout at elections, meaning that more people are participating in the democratic process.

THE CONTENT OF THE BILL:

House Bill 5531 would amend the Michigan Election Law to implement the federal National Voter Registration Act of 1993 (sometimes called the "motor/voter" law). A key provision of the federal law requires states to allow people to apply to register to vote (for federal election purposes at least) when applying for a driver's license. The Michigan Election Law already contains a similar "motor/voter" provision. The bill's provisions would take effect January 1, 1995. The bill specifies that a number of its provisions would be repealed if the federal law was found to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal had expired or the appellant had exhausted all of his or her appeals. (Generally speaking, the five sections that would then be repealed are those referring to the federal law, to mail registration, and to designated voter registration agencies.)

The bill designates the secretary of state as responsible for the coordination of the requirements under Chapter 23, which deals with voter registration, and under the new federal voter registration law, and requires that agency to: develop a mail registration form and make it available for distribution; and instruct voter registration agencies, local election clerks, and school officials about voter registration procedures and requirements.

Among the major new provisions are the following.

Statement of Purposes. The stated purposes of the bill are:

-- to establish a statewide qualified voter file that consists of all qualified electors who wish to be registered to vote in local, state, and federal elections.

-- to enhance the uniformity of the administration of elections by creating and maintaining a statewide file of qualified voters.

-- to increase the efficiency and decrease the public cost of maintaining voter registration files and implementing the National Voter Registration Act of 1993.

-- to increase the integrity of the voting process by creating a single qualified voter file that will permit the name of each citizen to appear only once and that is compiled from other state files that require citizens to verify their identity and residence.

-- to apply technology and information gathered by principal executive departments, state agencies, and county, city, township, and village clerks in a manner that ensures that accurate and current records of qualified voters are maintained.

Voter Registration Agencies. Not later than the 30th day after the effective date of the bill, the governor would have to provide a list to the secretary of state designating the executive departments, state agencies, or other offices that will perform voter registration activities in the state. (The bill also specifies that an armed forces recruiting office would be a voter registration agency, pursuant to the federal law.)

A person not registered to vote at the address where he or she resided would be able to apply to register to vote in person at a designated voter registration agency when submitting an application, recertification, renewal, or change of address. (A person could also apply to register, as now, at a county, city, or township clerk's office or at a Department of State office.) The person processing an application at a designated voter registration agency, Department of State office, or county clerk's office would have to validate the application, issue a receipt, and transmit the application not later than seven days after its receipt to the appropriate county, city or township clerk. If the application was made within seven days before the close of registration for a federal election, it would have to be transmitted not later than one business day after receipt. If funds were appropriated for the purpose, the secretary of state would compensate the county clerk for the cost of forwarding an application to a city or township clerk when an application was transmitted by the secretary of state or a designated voter registration agency to a county clerk.

Mail Registration. The secretary of state would be required to develop a mail registration form and make it available for distribution through governmental and private entities, and especially to voter registration programs established for the purpose of registering people to vote. A person could apply to register to vote by submitting a mail registration application. Mail registration applications would be available from and would have to be submitted to the secretary of state; the clerk of the county, city, or township where the applicant resides; and a designated voter registration agency.

A person who registered to vote by mail would have to vote in person if he or she had not previously voted in person in that jurisdiction. This would not apply, however, to a person entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, a person who had a handicap under the Michigan Handicappers' Civil Rights Act, a person 60 years of age or older, or a person entitled to vote other than in person under any other federal law.

Qualified Voter File. The secretary of state would be required to direct and supervise the establishment and maintenance of a statewide qualified voter file. That department would have to establish the technology to implement the file on or before January 1, 1997. This would be the official file for conducting all elections held in the state as

of January 1, 1998. (The secretary of state could direct that all or any part of the city, township, or village registration files be used in conjunction with the qualified voter file at the first state primary and election held after creation of the file.) As of January 1, 1998, notwithstanding any provision to the contrary, anyone who appeared to vote in an election and whose name appeared in the qualified voter file for the jurisdiction would be considered a registered voter.

The file would have to consist of all of the following: a computer file with the capacity to maintain a number of records equal to or greater than the voting age population of the state; an electronic network that would allow participating designated executive departments, state agencies, and county, township, and village clerks to electronically add change, and delete records; a statewide street address system in an electronic medium that could accurately identify the city or township of each record and (by January 1, 1998) the precinct of each record; and an interactive electronic communication system that would allow access to records in county, city, and township files for the purposes of receiving copies of those files, transmitting data to those files, or reviewing and printing the files. (The interactive communication system would have to be designed to permit counties, cities, or townships capable of accessing the system to add, change, or delete records regarding qualified voters.)

The voter file would contain for each qualified voter the name, address, and date of birth; a driver' license number, state identification card number, or similar number issued by a designated voter registration agency; jurisdictional information (including school district); precinct and ward numbers; a five-year voting history; and other information determined by the secretary of state to be necessary to assess voter eligibility or to administer elections.

The secretary of state would have to establish and maintain the computer system and programs needed to operate the file, and allow each county, city, township, or village access to the file. Local clerks would be required to verify the accuracy of names and addresses in the file. The file would be compiled by state and local clerks from the following sources and in the following order of priority: a driver's license or state identification card, including renewals and changes of address; an application for benefits or services, including renewals and changes of address, taken by a designated voter registration agency; and an application to register to vote taken by a county, city, township, or village clerk, or a secretary of a school board. A designated agency and a local clerk could not add to, delete from, or change any information contained in the file during the period beginning on the seventh day before an election and ending on the day of the election.

Implementation Study. The secretary of state would be required to secure the necessary assistance to conduct a feasibility study of the qualified voter file before July 1, 1995. The study would have to assess the hardware and software needed to establish and maintain a qualified voter file involved with the file; and survey all available and planned communication networks for counties, cities, and townships to communicate with the file. Study results would have to be presented to the governor, Senate Majority Leader and Speaker of the House on or before October 1, 1995. The secretary of state would have to create a system design, cost analysis, and programming schedule by that same date.

Confidentiality of Records. Certain information contained in registration records would be exempt from the Freedom of Information Act, including the record that a person declined to register to vote; the office that received the voter application; a registered voter's driver's license or state I.D. card number and telephone number; and (as exempt now) the month and day of birth of a registered voter. The secretary of state, a designated agency, and local clerks could not release a copy of that portion of a registration record containing any of that information.

Cancellation of Registrations. A clerk could not cancel or cause the cancellation of the registration of a voter from the records of a city or township based solely on that registered voter's failure to vote. (Currently, a local clerk could begin cancellation proceedings after five years of inactivity. Inactivity is considered evidence a person has moved.) A registration would immediately be canceled upon receipt of an authorization or request from the voter; upon the death of a voter; or a notice that a voter had moved from the city or township and had completed an application at the new address.

The secretary of state would be required to notify each clerk of the following information regarding residents or former residents of their cities or townships: changes of addresses on driver's licenses or state identification cards and whether the person submitted an application for the new address; the names and addresses of persons issued driver's licenses in other states; and death notices received by the department.

Under the bill, if a clerk engaged in a program to remove names of registered voters (as they may do now through a house-to-house canvass or other means), the program would have to be completed 90 days or more before the date of a federal election.

Registration/Removal Program. The bill specifically provides that a clerk could conduct a program to register voters or remove names through a house-to-house canvass; a general mailing to voters for address verifications; participation in the national Change of Address Program established by the U.S. Postal Service; or any other appropriate means. Such a program would have to be administered in a uniform manner to the entire city or township. The clerk would have to use nondiscriminatory procedures that complied with the requirements of the federal Voting Rights Act of 1965.

Change of Residence Procedures. When a clerk received reliable information that a voter had moved to another city or township, the clerk would send by forwardable mail to the voter a notice of that and a postage prepaid, preaddressed, return card on which the voter could verify or correct the change of address. The clerk would also send a notice that if the voter had not moved and wanted to remain registered, he or she should complete and return the card with a postmark of 30 days or more before the next election. The notice would have to say that if the card was not returned by then, the voter could be required to affirm his or her address before being allowed to vote; and, further, if the voter did not vote within the period beginning on the date of the notice and ending on the first business day after the second November general election held after the date of the notice, the registration would be canceled. The notice would also explain how a voter could become registered at the new address if he or she had moved elsewhere.

If a notice was returned as undeliverable, the clerk would identify the registration record as challenged. The clerk would instruct the election inspectors to challenge the voter at the first election at which he or she appeared to vote. If in response, the voter indicated that he or she resided at the registration address or had changed addresses within the jurisdiction, the voter would be permitted to vote a regular rather than a challenged ballot. (The voter would complete a change of address form, if applicable.) If the person did not appear to vote by the second November general election, the clerk would cancel the registration.

Upon notice that a voter had changed his or her residence within the city or township, the clerk would send by forwardable mail a notice of the transfer informing the voter he or she was registered at the new address and include a postage prepaid, preaddressed, return card for the voter to verify or correct the address information.

Non-listed/challenged Voters. If a voter who had applied to register on or before the close of registration appeared at a polling place on election day and was not listed on the registration records or precinct voting list, the election inspectors would have to allow the person to vote if 1) the voter presented a receipt verifying acceptance of the application, completed a new application, and otherwise qualified to vote; or 2) if unable to provide a receipt, the voter signed an affidavit that an application had been submitted or mailed in, completed a new application, and provided proof of identification sufficient to satisfy the clerk. Providing false information on an affidavit would be perjury.

If a registration was challenged and the challenged voter did not respond as provided in the election law, the registration record of the voter would remain challenged and election officials could not allow the challenged voter to vote until he or she answered the grounds of the challenge in the manner provided in the law. If an election official determined, based on the challenged voter's response, that the voter was qualified to vote, the election official would allow the voter to vote and the clerk would remove the identification as challenged from the registration record. If the clerk did not independently determine the voter was qualified or if the challenged voter did not respond or failed in the response to prove he or she was qualified during the period beginning on the date of the notice of challenge and ending on the first

business day following the second November general election held after the date of the notice, the clerk would cancel the registration.

<u>Maintenance of Records.</u> The secretary of state and each county, city, township, or village clerk would be required to maintain all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of registration records under Chapter 23 for two years or more. Except to the extent the records relate to a declination to register to vote or to the identity of a designated voter registration agency through which a particular voter applied to register, the records would be made available for public inspection under reasonable conditions and, if available, for photocopying at a reasonable cost. Included in the records to be maintained would be a list of names and addresses of all persons to whom notice of change of address had been sent and if the voter had responded.

<u>Repealers.</u> The bill would repeal numerous sections of the existing voter registration provisions in Chapter 23 of the election law, some of which would conflict with provisions in this bill and others which contain similar but superseded provisions.

MCL 168.509 et al.

FISCAL IMPLICATIONS:

In describing an earlier, similar, version of the bill, the Senate Fiscal Agency noted that there would be increased costs to the Department of State. Initial costs were estimated at $332,000. That estimate included $200,000 for the feasibility/implementation study for a qualified voter file and $132,000 for the study on a statewide street address index. (9-21-94)

ARGUMENTS:

For:
The bills would implement the new federal voter registration law as the state is required to do. If the state does not conform its election law to federal requirements by January 1, 1995, election clerks will be required to maintain dual registration systems, one for federal elections and one for state and local elections. This is clearly impractical. As a result, legislation has been drafted to make Michigan law comply with federal requirements. The aim of the federal legislation is to increase voter registration, both by offering citizens more opportunities to register, notably by offering citizens the opportunity to register at certain designated state offices (e.g., state human service agency offices), and by preventing unwarranted purging of voter files. The only permissible reason a citizen should not be registered to vote is that he or she does not want to be registered. Registration laws should be a method of protecting the integrity of elections and not a means of preventing eligible citizens from voting.

This NVRA implementation proposal envisions the creation of a statewide qualified voter file that would eventually become the official file for conducting elections. This makes sense, in part because already about 85 to 90 percent of voter registrations are carried out at the state level (through Department of State branch offices), and with the involvement of other state agencies in registration, that percentage will likely increase. The file would have as a component an interactive electronic communication system that would allow clerks at every level access to the file and the ability to input and alter data. A study to determine how to implement this statewide system in an efficient manner would have to be completed in July of 1995. This statewide system will work towards reducing duplication of effort in voter registration, which otherwise could become a major problem under the provisions of the federal law.

For:
Some people complain that the federal mandates contained in the NVRA are expensive and unnecessary, particularly in a state like Michigan, which already has a motor/voter style of registration and where registration percentages are well above the national average. There are likely to be considerable administrative headaches suffered by state agencies in order to increase voter registration only marginally, critics say. They claim that the potential for duplication of registration applications is significant given the way the federal legislation is understood. While this implementing legislation must be passed at this time, the bills say that if the federal mandates fall away as a result of the court challenges being mounted by some states, then the provisions establishing voter registration agencies and mail registration should be rendered inoperative. Furthermore, there is growing opposition to the whole idea of the federal government imposing "unfunded mandates" on the states. Motor/voter legislation is a classic example of an unfunded mandate, some argue.

Response:

The bill represents a lukewarm adoption of mandatory federal motor/voter requirements at best. If the actual implementation of the bill's provisions is unenthusiastic, the state could find itself the subject of a federal lawsuit. The proposal that passed the House specified some of the state departments that would have to participate as voter registration agencies, such as the departments of Labor, Mental Health, Public Health, and Social Services. This bill leaves the decision to the governor. Specifying which agencies must participate represented more of an endorsement of the notion that people should be encouraged (or at least offered the opportunity) to become registered voters when coming into contact with agencies providing public assistance and providing services to people with disabilities. Furthermore, the House-passed bill would have recodified the voter registration laws (into a new Chapter 23), which is much needed.