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BILL ANALYSIS

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Senate Bill 401 (Substitute S-3 as passed by the Senate)
Senate Bills 402 and 404 (Substitute S-2 as passed by the Senate)
Senate Bill 403 (Substitute S-4 as passed by the Senate)
Sponsor: Senator Darrin Camilleri (S.B. 401)
Senator Jeremy Moss (S.B. 402)
Senator Stephanie Chang (S.B. 403)
Senator Erika Geiss (S.B. 404)
Committee: Elections and Ethics

Date Completed: 10-3-24

INTRODUCTION

Collectively, the bills would enact new, and modify existing, election law. Senate Bill 401 (S-3) would enact the "State Voting Rights Act" (MVRA) to prohibit a local government from imposing any law, practice, policy, or method of election that led to a disparity in electoral participation between members of a protected class and other members of the electorate or otherwise influence the outcome of an election. The bill would establish court proceedings regarding a violation of the Act and prescribe a process for local governments to remedy violations. The bill also would allow a court to retain jurisdiction over a local government that violated the rights of voters and require that local government to seek judicial preapproval of any voting-related policy, except under emergency circumstances. Additionally, the bill would allow a disabled elector to bring an action in a county circuit court if the local government in which elector resided violated a State or Federal law involving the rights of disabled electors. Lastly, the bill would create a fund and require the Secretary of State (SOS) to reimburse local governments and plaintiffs for specified expenses in remedying violations.

Senate Bill 402 (S-2) would require the SOS, in partnership with at least one university in the State, to create the Michigan Voting and Elections Database and Institute to collect election data and provide research and training on voting systems and election administration. Senate Bill 403 (S-4) would require certain local governments to provide language assistance for elections. Senate Bill 404 (S-2) would prescribe the process for a voter unable to enter a polling place or early voting site to request and receive voting assistance. It also would allow an individual to provide necessities to waiting voters, provided that the individual did not interfere with the voting process and at the discretion of a clerk.

BRIEF FISCAL IMPACT

The bills would result in a negative fiscal impact for the Department of State (MDOS) and an indeterminate fiscal impact for local governments. The MDOS estimates Senate Bill 401 (S-3) would require the hiring of two additional full-time equivalents (FTEs) to approve MVRA resolutions. Each FTE would cost an estimated $150,000 annually. Additionally, if funds appropriated to the Michigan Voting Rights Assistance Fund were insufficient, the MDOS could incur additional costs to reimburse prospective plaintiffs. The cost to local governments is indeterminate and variable. Under the bills, local governments could incur costs associated with reporting election data to the Database and Institute and hiring additional election inspectors and monitors; however, the local government could be reimbursed from the Fund.

MCL 168.726 et al. (S.B. 404)

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CONTENT

Senate Bill 401 (S-3) would enact the "State Voting Rights Act" to do the following:

- **Prohibit a local government or State agency from imposing any law, practice, policy, or method of election that would lead to a disparity in voter participation between a protected class and other members of the electorate or that would impair the ability of a protected class to participate in the political process.**
- **Specify actions taken by a local government that would be considered violations of the MVRA.**
- **Require a prospective plaintiff to send a notification letter to the clerk and chief administrative officer of a local government, which would have to explain in detail and propose a remedy for each alleged violation of the MVRA, before commencing an action.**
- **Allow a prospective plaintiff to meet with representatives of the local government to develop a plan to address the violation and prescribe the requirements of a plan.**
- **Allow a prospective plaintiff to submit a complaint concerning a local government's alleged violation of the MVRA to the SOS.**
- **Prescribe the guidelines a court could use to determine whether racially polarized voting by protected class members in a local government occurred.**
- **Prescribe the guidelines a court could or could not use to determine whether the political rights of any protected class member had been violated.**
- **Grant a court broad authority to order adequate remedies that were tailored to address a violation in any action brought under the MVRA or Article II of the State Constitution.**[1]
- **Prescribe remedies for MVRA violations and requirements for punitive damages.**
- **Create the Michigan Voting Rights Assistance Fund in the State Treasury, from which the MDOS could spend money to reimburse prospective plaintiffs and local governments for certain expenses, not to exceed $50,000.**
- **Allow a prospective plaintiff or local government to request reimbursement from the Fund within 90 days of the enactment or implementation of a required remedy.**
- **Require a local government and the SOS to follow certain notice requirements.**
- **Allow a disabled elector, or an organization representing disabled electors, to bring an action in the circuit court of a county to seek the appointment of a monitor for future elections conducted by a local government if that local government had violated State or Federal law involving disabled elector's rights.**
- **Prescribe the appointment and duties of election monitors.**
- **Repeal Public Act 161 of 1969, which governs actions brought in any circuit court of the State affecting elections, dates of elections, candidates, qualifications of candidates, ballots, or questions on ballots.**

Senate Bill 402 (S-2) would enact the "Voting and Elections Database and Institute Act" to do the following:

- **Require the SOS to enter into a 25-year agreement with one or more public research universities in the State to create the Michigan Voting and Elections Database and Institute by November 5, 2025.**
- **Require the Database and Institute to provide a center for research, training, and information on voting systems and election administration.**

[1] Generally, Article II covers elections throughout the State. It provides for the qualifications for electors; the place, time, and manner of elections; boards of canvassers; State office term limits; and more.

-- Require the Database and Institute to make available all relevant election and voting data and records for at least the previous 12-year period at no cost, after which the relevant data and records would have to be permanently maintained for archival purposes.
-- Require the Database and Institute to protect election and voting data and records by implementing rigorous cybersecurity standards.
-- Permit the data, information, and estimates maintained by the Database and Institute to be used as evidence, at the discretion of the court.
-- Require the SOS to transmit to the Database and Institute specified information within 180 days after an election.
-- Require the SOS to reimburse a local government for the cost of providing requested election and voting data and records to the SOS upon request by the local government.

Senate Bill 403 (S-4) would enact the "Language Assistance for Elections Act" to do the following:

-- Require a local government to provide language assistance for elections conducted in that local government if a certain percentage of its population spoke a single shared language and had limited English proficiency.
-- Require the SOS to post on its website, by January 31 of each odd-numbered year, a list of each local government required to provide language assistance, as well as the required languages, and notify each local government.
-- Require the SOS to provide language assistance equal in quality to English for elections in each designated language and provide related materials in each designated language as translated by a certified translator.
-- Require the SOS to reimburse a local government for certain costs related to tabulating translated ballots.
-- Create the Language Advisory Council in the MDOS.
-- Require a prospective plaintiff to send a notification letter to the SOS or to the clerk and chief administrative officer of the local government and meet with the SOS or representatives of the local government to prepare and agree on a written plan before an aggrieved party could commence a civil action under the Act.
-- Allow any individual or entity aggrieved by a violation of language assistance requirements to file a cause of action if discussion failed.
-- Allow the Attorney General (AG) to file an action in the circuit court of the county in which the local government was located to compel compliance with and seek an appropriate remedy under the Act.
-- Require the MDOS to reimburse a prospective plaintiff or a local government using money from the Michigan Voting Rights Assistance Fund if that local government enacted or implemented a remedy to a potential violation of the Act.
-- Grant actions brought under the Act expedited trial proceedings, allow them to receive an automatic calendar preference, and prescribe remedies and restitution for them depending on their outcomes.

Senate Bill 404 (S-2) would amend the Michigan Election Law to do the following:

-- Beginning January 1, 2026, require a local government to provide notice to the SOS, within certain time periods, of various changes undertaken by or proposed to be undertaken by the local government, such as a governmental reorganization or a change to the local government's method of election, or of requests or notifications made by electors and received by the local government, such as a request to view voting equipment.

-- Beginning January 1, 2026, require a local government to provide to the SOS, at least 14 days before an election, a list of any organization or committee whose authorization to appoint election challengers had been approved or denied.
-- Require the SOS to prescribe the form of these notices and, within five days after receiving such a notice, post the notice on the MDOS website; if a local government failed to submit a required notice, the SOS would have to post that violation on the MDOS website.
-- Prescribe additional notice requirements for the SOS, to begin January 1, 2026.
-- Allow an elector who was unable to enter a polling place or early voting site to request voting assistance from the elector's county, city, or township clerk or precinct board of election inspectors.
-- Prescribe the process for providing voting assistance.
-- Allow an elector to seek language assistance for election purposes.
-- Allow an individual to provide necessities to electors at a polling place location, early voting site, or city or township clerk's office, provided that the individual did not interfere with the voting process and at the discretion of the clerk.
-- Repeal Section 579 of the Law, which requires a board of election inspectors to reject the ballot of an individual who allows another individual to view the ballot.

Senate Bills 401, 402, and 403 are tie-barred. Senate Bill 404 is tie-barred to Senate Bills 401 and 403. Senate Bill 401 also is tie-barred to Senate Bill 404.

Senate Bill 401 (S-3)

General Prohibition Against Election Impairment

The bill would enact the MVRA. Generally, it would prohibit any local government from impairing an elector's ability to participate in an election, focusing specifically on members of protected classes.

"Local government" would mean a county, a city, a township, a village, a public school, a public community college, a district library, or any other political subdivision of the State, authority, or other public body corporate that has an elected governing body.

"Protected class" would mean individuals who are members of a racial, color, or language minority group, or two or more racial, color, or language minority groups, and includes any of the following:

-- Individuals who are members of a racial, color, or language minority group that has been subject to protection under a consent decree ordered by a Federal court in the State in a suit alleging a violation of Section 2 of the Voting Rights Act (see **BACKGROUND**).
-- Individuals who are members of a minimum reporting category that has ever been officially recognized by the United States Census Bureau (see **BACKGROUND**).

"Language minority group" would mean that term as defined in 52 USC 10503: persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

Specifically, the bill would prohibit a local government, State agency, or State or local government official from imposing any qualification for eligibility to be an elector; any other prerequisite to voting;[2] any ordinance, regulation, or other law regarding the administration

[2] "Vote" or "voting" would include any action necessary to cast a ballot and make that ballot count in an election, including registering as an elector, applying for an absent voter ballot, and any other action

of elections; or any standard, practice, procedure, or policy; or take or fail to take any other action, including a reorganization of a local government, such as an annexation or division, in a manner that resulted in, would result in, or was intended to result in, either of the following:

-- A disparity in voter participation, access to voting opportunities, or the equal opportunity or ability to participate in the political process between members of a protected class and other members of the electorate.
-- Based on the totality of the circumstances, an impairment of the equal opportunity or ability of members of a protected class to participate in the political process and nominate or elect candidates of the protected class members' choice.

The bill provides the following examples of an election impairment:

-- A local government closed, moved, or consolidated one or more precincts, clerk's offices, polling places, early voting sites, or absent voter ballot drop boxes in a manner that impaired the right to vote of members of a protected class or resulted in a disparity in geographic access between members of a protected class and other members of the electorate, unless the changes were necessary to significantly further a compelling governmental interest and there was no alternative that resulted in a smaller impairment or disparity.
-- A local government changed the time or date of an election in a manner that impaired the right to vote of members of a protected class, including making the change without proper notice as required by law.
-- A local government failed to use voting or election materials in languages other than English that were provided to the local government by the SOS, as required by State law (see **Senate Bill 403 (S-4)**).
-- A local government implemented a reorganization of that local government that altered which electors were eligible to vote in elections for that local government if 1) the reorganization was intended to impair or diminish the equal opportunity or ability of protected class members to nominate or elect candidates of the protected class members' choice, or 2) based on the totality of the circumstances, the equal opportunity or ability of protected class members to nominate or elect candidates of their choice was impaired or diminished as a result of the reorganization.

Under the bill, "disparity" would mean any statistically significant variance that is supported by validated methodologies.

These provisions would not apply to the Citizens Independent Redistricting Commission established under Section 6 of Article IV of the State Constitution (see **BACKGROUND**).

Impairment in Methods of Election

Under the bill, a local government could not employ or impose any method of election that impaired the equal opportunity or the ability of protected class members to nominate or elect candidates of the protected class members' choice by diluting the vote of those protected class members. This prohibition would not apply to the Citizens Independent Redistricting Commission.

A local government would violate this prohibition if elections in that local government made one or more changes to the method of election that would likely impair the equal opportunity

required by law as a prerequisite to casting that ballot and having that ballot counted, canvassed, certified, and included in the appropriate totals of votes cast with respect to an election.

or ability of protected class members to nominate or elect candidates of the protected class members' choice and either of the following occurred:

-- Elections in the local government exhibited racially polarized voting and the method of election resulted in a dilutive effect on members of a protected class.
-- Based on the totality of the circumstances, the ability of protected class members to nominate or elect candidates of the protected class member's choice was impaired.

"Racially polarized voting" would mean voting in which the candidate or electoral choice preferred by protected class members diverges from the candidate or electoral choice preferred by other electors (see Racially Polarized Voting for more information).

To the extent that a change to the method of election was a proposed district-based plan that provided protected class members with one or more reasonably configured districts in which the protected class members would have an equal opportunity or ability to nominate or elect candidates of the protected class members' choice, it would not be necessary to show that members of a protected class comprised a majority of the total population, voting age population, voting eligible population, or registered voter population in any district.

MVRA Violations

Except as provided below, before commencing an action against a local government alleging a violation of the MVRA, a prospective plaintiff would have to send by certified mail a notification letter to the clerk and chief administrative officer of the local government asserting that the local government could be in violation of the Act. The notification letter would have to explain in detail and propose a remedy for each alleged violation. Any individual aggrieved by a violation of the MVRA or any entity whose membership included individuals aggrieved by a violation, whose mission would be frustrated by a violation, or that would spend resources to fulfill its mission because of a violation, could be a prospective plaintiff.

Within 30 days after receiving a notification letter, the clerk of the local government and the chief administrative officer or chief executive officer of that local government, along with legal counsel or other individuals the local government wished to attend, could meet with the prospective plaintiff or the prospective plaintiff's representative to prepare and agree on a plan to address the alleged violations. If the local government agreed to meet with the prospective plaintiff, the bill would require the prospective plaintiff or the prospective plaintiff's representatives to participate in the meeting. If the local government did not meet with the prospective plaintiff, the prospective plaintiff could seek remedies (see Adequate Remedies).

The prepared plan would have to be in writing, be approved by a resolution of the local government's governing body, and do all the following:

-- Identify each alleged potential violation of the MVRA by the local government.
-- Identify a specific remedy for each alleged violation or state that the parties agreed no remedy was appropriate for one or more of the violations.
-- Affirm the local government's intent to enact and implement the remedy.
-- Establish specific measures that the local government would take to facilitate any needed approvals to implement each specific remedy.
-- Provide a schedule for the necessary approvals and the implementation of each specific remedy; the schedule would have to provide enough time for all the needed steps to obtain authorization for the remedy.
-- Provide an alternate plan if necessary amendments to a State statute or local charter were not approved.

If a prospective plaintiff and the local government agreed on a written plan and that plan was approved by a resolution of the governing body of the local government, no action could be filed by the prospective plaintiff unless the local government failed to comply with the requirements of the written plan. If a prospective plaintiff and the local government did not agree on a written plan within 60 days after the prospective plaintiff and the local government first met, the prospective plaintiff could seek remedies (see Adequate Remedies).

The prospective plaintiff also could file a complaint with the SOS. A complaint filed with the SOS would have to be in writing in the form prescribed by the SOS and would have to include the notification letter sent to the local government. After receiving a written complaint, the SOS would have to send by certified mail a written request to the local government for a written response to the complaint. Within 21 days after receiving the written request from the SOS, the local government would have to send by certified mail to the SOS a detailed written response to each alleged violation and explain why the local government was unable to reach an agreement with the prospective plaintiff on a new plan to address each alleged violation.

After receiving the written response from the local government, the SOS would have to investigate the complaint, including conferring with the prospective plaintiff and the local government as considered necessary, to address the complaint with a written plan, to find that there was no violation, or to determine that the local government *was* in violation of the MVRA. If the SOS determined that the local government was violating the MVRA and the local government did not agree to a written plan to remedy each violation that was acceptable to the SOS, the SOS would have to make a written referral to the AG and notify the prospective plaintiff of that determination. A prospective plaintiff who filed a complaint with the SOS could not commence an action against the local government until one of the following occurred:

-- The SOS determined there was no violation of the MVRA.
-- The SOS determined that the local government *was* violating the MVRA, and the local government would not agree on a written plan to remedy each violation that was acceptable to the SOS.
-- Ninety days or more elapsed since the date the SOS received the local government's response to the written complaint.

If one of the above occurred, a party could bring an action against a local government. A party also could bring an action if any of the following occurred:

-- Another party had already submitted a notification letter alleging a substantially similar violation and that party was eligible to bring an action.
-- The party sent a notification letter, and the local government did not meet, approve, or implement a written plan.
-- The party sought preliminary relief with respect to an action concerning a change to the method of election, a governmental reorganization, any change to a district within a local government, or any program to remove electors from the voter registration records.
-- The party sought preliminary relief with respect to an upcoming election.

Determining Occurrences of Racially Polarized Voting

The bill provides procedures, guidelines, and tests that a local government should use when determining whether a local government exhibited racially polarized voting as follows.

Generally, statistical evidence using validated methodologies, especially that based on election results, would be more probative than non-statistical evidence. Additionally, if members of a protected class consisting of two or more racial, color, or language minority

groups that were similarly situated because those groups were politically cohesive in local government brought a claim against a local government, members of those groups should be combined to determine whether voting from these combined members was polarized from other electors. It would not be necessary to demonstrate that each group was racially polarized from other electors.

Evidence concerning the causes of, or the reasons for, the occurrence of racially polarized voting, such as partisan explanations, should not be relevant to the determination of whether it occurred, or whether candidates or electoral choices preferred by the protected class would usually be defeated; however, this evidence could be considered when determining appropriate remedies or punitive damages. Evidence concerning whether a protected class was geographically compact or concentrated and evidence concerning projected changes in population or demographics should not be considered in determining liability but could be considered when determining a remedy for a violation or punitive damages.

These provisions would not apply to the Citizens Independent Redistricting Commission.

Determining Violations of Political Rights

In determining whether the political rights for any protected class member had been violated, a court could consider factors that included any of the following:

-- Whether members of the protected class typically voted at a lower rate than other electors.
-- The history of discrimination affecting members of the protected class.
-- The extent to which members of the protected class were disadvantaged, or otherwise bore the effects of past public or private discrimination, in any areas that could hinder the member's ability to participate effectively in the political process, including education, employment, and health, among other factors.
-- The use of overt or subtle racial appeals by government officials or in political campaigns.
-- The extent to which members of the protected class had been elected to office, contributed to political campaigns at lower rates, or faced barriers with respect to accessing the ballot, while campaigning, receiving financial support, or receiving any other support for an election.
-- Any law regarding the administration of elections or any practice or policy that tended to impair the political rights of members of a protected class.
-- The presence of racially polarized voting.
-- The lack of responsiveness by elected officials to the needs of protected class members.
-- Whether the challenged method of election, law, or practice or policy was designed to advance, or materially advanced, a compelling State interest that was substantiated and supported by evidence.
-- The extent to which protected class members suffered the effects of historical housing segregation or benefited from housing policies to implement fair housing goals.
-- The extent to which officials had undertaken efforts to remedy racial disparities that had yielded improvements for protected class voters, even if these efforts to remedy racial disparities and any improvements were inadequate.

The court could *not* consider in its determination of a violation any of the following:

-- The total number or share of members of a protected class on whom a challenged method of election, law, resolution, or procedure did not impose a material burden; however, evidence could be introduced showing a challenged method of election, resolution, rule, policy, or law did not affect qualified electors who were protected class members more than non-member electors.

-- The degree to which the challenged method of election, law, resolution, or procedure had a long pedigree or was in widespread use at some earlier date; however, this factor could be considered for determining a remedy or punitive damages.
-- The use of an identical or similar challenged method of election, law, resolution, or procedure in another local government, unless it was adopted or implemented to remedy a MVRA violation, affected voter rights, or enhanced the voting rights of a protected class.
-- The availability of other forms of voting unaffected by the challenged method of election, law, resolution, or procedure to all members of the electorate, including members of the protected class.
-- A deterrent effect on potential criminal activity by individual electors, if those crimes had not occurred in the local government in substantial numbers, or if the connection between the challenged policy and any claimed deterrent effect were not supported by substantial evidence.
-- Mere invocation of interests in voter confidence or prevention of fraud; however, evidence could be introduced to show that the challenged practices were implemented to address actual instances of voter fraud, that those practices were tailored to prevent the recurrence of voter fraud, and that, before implementing the practices, the local government took reasonable measures to prevent or minimize possible adverse impacts on protected classes.
-- A lack of evidence concerning the intent of electors, elected officials, or public officials to discriminate against protected class members; however, written evidence or oral statements concerning the intent of electors or officials could be introduced to address whether punitive damages were appropriate or in evaluating claims of discriminatory intent.

Evidence that the court determined was not probative could be introduced to determine appropriate remedies, particularly concerning punitive damages.

To the extent a claim involved a local government, evidence of these factors would be best evidenced if it related to the local government in which the alleged violation occurred but would still hold probative value if the evidence related to the geographic region in which that local government was located or to the State.

Adequate Remedies

The AG or another party authorized to seek an action under the MVRA (see Impairments in Methods of Election) could file an action in the circuit court of the county in which the local government was located or in the Court of Claims to compel compliance with and seek an appropriate remedy under the MVRA. In an action involving a districting or redistricting plan, an individual with standing to challenge any single district would have standing to challenge the districting or redistricting plan as a whole.

The MVRA would grant a court broad authority when determining remedies that were tailored to best mitigate the violation and were reasonably necessary to remedy the violation. To the extent the court chose between various potential remedies, the court could consider each of the voting protections outlined in the bill; any impact to how disruptive the remedies would be to the local government's leadership; the services provided within the local government; home rule, any local charter or ordinances, State law, the local government's electors, and other aspects of the local government's operations; and the extent to which the remedy would be inconsistent with any local charter, ordinance, or State law.

Adequate remedies would include any of the following:

-- Drawing new or revised districting or redistricting plans; the court would have to specify the election at which the new or revised plan would take effect and, if needed, shorten or lengthen the terms of current office holders who would be affected by the plan.
-- Adopting a different method of election, including adopting a district-based or alternative method of election, or reasonably increasing the size of the legislative body.
-- Adding or changing voting days, hours, or polling places, early voting sites, and absent voter ballot drop boxes.
-- Eliminating staggered elections so that all members of the legislative body were elected at the same time; however, if an amendment to a State charter or a local government charter was needed to provide for this remedy, the court's order would have to allow reasonable time for those amendments to be approved, and also would have to provide remedies that would be imposed if those statutory or charter amendments were not approved.
-- Ordering a special election.
-- Restoring or adding individuals to a voter registration list or requiring expanded opportunities for admitting electors.
-- Imposing civil fines and nominal or compensatory damages.
-- Any other form of declaratory or injunctive relief that, in the court's judgment, was tailored to address the violation.
-- Retaining jurisdiction for a period of time the court considered appropriate.

The court also could impose punitive damages in the form of a civil fine, which would have to be deposited into the Michigan Voting Rights Assistance Fund (see The Michigan Voting Rights Assistance Fund). When imposing punitive damages, the court would have to take into consideration the severity and number of the violations, whether the defendant had previous violations, and any other factors the court considered appropriate. If the defendant were a local government, the court also would have to take into consideration the number of its registered electors and its ability to pay punitive damages.

The court would have to provide in its order an explanation of why the payment of punitive damages was required and how the court determined the amount of damages to be paid. The court could impose punitive damages only if it found any of the following:

-- The violation was intentional.
-- If the defendant were a local government, the local government or the officials in that local government demonstrated a disregard for the voting rights of qualified electors within its jurisdiction.
-- If the defendant were a local government, when notified of an alleged violation, the local government failed to take any action.
-- The defendant violated a court order issued under the MVRA, Article II of the State Constitution, or another applicable law.
-- After addressing any violation of the MVRA, Article II of the State Constitution, or another applicable law, the defendant committed a subsequent violation.
-- Punitive damages were otherwise reasonably necessary to ensure compliance.

In any action brought under the MVRA or under Article II of the State Constitution, the court could order a remedy only if the remedy would not impair the equal opportunity or ability of protected class members to participate in the political process and nominate or elect the protected class members' preferred candidates. The court would have to consider remedies proposed by any parties and interested nonparties and could not provide deference or priority to a proposed remedy offered by the defendant or the local government simply because the remedy had been proposed by the defendant or the local government. Additionally, the court would have the authority to order remedies that could be inconsistent with other provisions

of State or local law when the inconsistent provisions of law would otherwise preclude the court from ordering an adequate remedy.

In any action in which a court found a violation of the MVRA, the Federal Voting Rights Act, the State Constitution concerning the right to vote for protected class members, the Fourteenth or Fifteenth Amendment of the United States Constitution,[3] or any other State or Federal law concerning the right to vote for protected class members, the court could, in addition to the remedies outlined above, retain jurisdiction and require that, for a period of up to 10 years, the local government obtain a court order before enacting any voting-related policy. When considering this remedy, the court would have to take into consideration the severity and number of violations, whether the violations were intentional, and whether the local government had any previous violations. A court would be required to retain jurisdiction if it found that the violation was susceptible to repetition or the remedy to circumvention, there was evidence of intentional discrimination by the local government, or the local government failed to adopt broad deterrent measures that prevented any future violations.

A request for judicial preapproval submitted to a court could be granted only if the court concluded that the proposed voting-related policy would not diminish, in relation to the status quo before the enactment or implementation of the voting-related policy, the equal opportunity or ability of members of a protected class whose voting rights were implicated by the voting-related policy and that the proposed voting-related policy was unlikely to violate any of the provisions of the MVRA.

In any request for judicial preapproval, the local government would have to indicate the position of each party as to whether the proposed voting-related policy complied with standards for preapproval. The parties could submit a stipulated order for judicial preapproval for the court's consideration. To the extent the local government was required to make emergency changes to locations of polling places, early voting sites, or absent voter ballot drop boxes within seven days before an election due to circumstances that were outside of the local government's control, the local government could implement the emergency changes without first obtaining judicial preapproval, as long as that local government notified, in writing, the court and all parties to the action of the emergency changes necessary before implementing them and explained in detail the circumstances that made the emergency changes necessary. Any party to the action could request that the court subject emergency changes to the judicial preapproval process. To the extent a local government intended to maintain any emergency changes beyond that election, the local government would have to obtain judicial preapproval for those changes. The local government would bear the burden of proof in a proceeding involving judicial preapproval.

"Voting-related policy" would include enacting or seeking to administer any voting qualification or prerequisite to voting and enacting or seeking to administer any standard, practice, or procedure with respect to voting.

In any action brought under the MVRA, the court could order the parties to enter mediation under MCR 2.411 at any time during the proceedings.[4]

[3] Among other things, the Fourteenth Amendment prohibits any State from denying to any person within its jurisdiction equal protection under the law. The Fifteenth Amendment prohibits the right to vote from being denied to any citizen by the United States or any State based on race, color, or previous condition of servitude.

[4] MCR 2.411 specifies the process by which a mediator is selected, the scheduling and conduct of mediation, how fees may be imposed, the qualifications a mediator must possess, and more.

Rights of Disabled Electors

Under the bill, a court would have to determine whether a local government violated the rights of disabled electors if the local government violated, or had failed to fully remedy a previous violation of, a State or Federal law involving the rights of disabled electors, and that violation adversely affected the ability of one or more disabled electors to vote at a polling place safely, securely, and privately or in another manner legally available to the electors. (Provided that the local government had issued other measures that enabled disabled voters to vote safely, securely, and privately, it would be an affirmative defense to an alleged violation that appropriately located polling places that complied with Federal or State laws, rules, and regulations affecting accessibility were not reasonably available to the local government despite its best efforts).

Before commencing an action in the circuit court of the county in which the local government was located seeking the appointment of a monitor, described below, for future elections or for another appropriate remedy for a violation of the rights of disabled electors, a prospective plaintiff, which could be a disabled elector or an organization who advocated for disabled electors, would have to follow a process similar to that laid out in Actions for Violations; however, a prospective plaintiff could not submit a complaint to the SOS. A local government also would have to follow that process.

The AG or any prospective plaintiff could file an action in the circuit court of the county in which the local government was located seeking the appointment of a monitor under the following circumstances:

-- The prospective plaintiff gave a written notification to the local government, but the local government did not meet, approve, or implement a written plan.
-- Another party had already submitted a notification letter alleging a substantially similar violation and the party was eligible to bring an action under the Act.

If the court determined that a local government had violated the rights of disabled electors, the court could order the appointment of a monitor for that local government, at that local government's expense, for a period of up to 10 years. When considering this remedy, the court would have to consider the severity of the violation, whether the violation was intentional, the number of violations, and whether the local government had any previous violations. The bill would require the court to order a monitor if the court found that the violation was susceptible to repetition or the remedy susceptible to circumvention, there was evidence of intentional discrimination by the local government, or the local government failed to adopt broad measures to prevent any future violations.

A monitor's duties would include investigating all complaints that were submitted to the circuit court or to the monitor regarding the local government's compliance with a State or Federal law that involved the rights of disabled electors. If the monitor determined that a complaint indicated that the local government had violated or would likely violate a State or Federal law that involved the rights of disabled electors, the bill would require the monitor to inform the circuit court of the violation or likely violation. The circuit court would have to order all relief that was necessary to remedy the violation. If the circuit court found that a violation had already occurred, it would have to order a penalty of $1,000 payable to an elector whose State or Federal rights were violated if that elector reported the violation to the monitor.

If the monitor received a report of an alleged violation within 40 days before an election and the report indicated that a disabled elector was unable to vote because of the alleged violation, the monitor would have to bring the issue to the circuit court's attention immediately. The circuit court would have to order a hearing on an emergency basis to ensure that the disabled

elector was not disenfranchised. This provision would not prohibit an elector from filing a separate lawsuit to enforce State or Federal law if the State or Federal law provided that elector with a cause of action.

Additionally, the monitor would have to undertake any investigations or inspections that the monitor considered reasonably necessary during the 180 days before any election administered by the local government to ensure that the local government was in full compliance with any State or Federal law involving the rights of disabled electors.

No less than 90 days before any election administered by the local government, the monitor would have to produce a report for the circuit court regarding the local government's compliance, anticipated compliance, or lack of compliance, with any State or Federal law involving the rights of disabled electors.

If the monitor's report indicated any concerns that the local government would not comply with any State or Federal law involving the rights of disabled electors, the circuit court would have to hold a hearing to address those concerns and order any relief the circuit court determined necessary to ensure the local government's full compliance with the laws. The hearing and any orders resulting from those hearings would have to occur in sufficient time before the election to ensure that electors were not disenfranchised. If the circuit court found that a violation of State or Federal law had likely occurred or was occurring, the court would have to issue emergency relief the same day, as necessary. That remedy would have to include extending the term of the monitor at least through the next election administered by the local government.

On election day, and during the early voting period, the monitor would have to be available to receive reports by disabled electors, or any organization representing disabled electors, of any violations of a State or Federal law involving the rights of disabled electors. The monitor would have to bring any creditable reports of violations to the circuit court's attention immediately, and if the circuit court found that a violation of State or Federal law had likely occurred or was likely occurring, the circuit court would have to issue emergency relief the same day, as necessary, to ensure that the elector was not disenfranchised.

If the circuit court determined that a violation of a State or Federal law involving the rights of disabled electors had occurred, the remedy would have to include extending the term of the monitor at least through the next election administered by the local government.

A monitor would have to be an individual who met all the following requirements:

-- Had extensive knowledge of and experience with the rights of disabled individuals.
-- Had an established history of advocating on behalf of disabled individuals.
-- Had significant knowledge regarding election law.

The bill would require a monitor to bill the local government for the monitor's time on an hourly basis at a rate that was customary in the State for an individual with the required experience and qualifications and that was approved by the court.

The Michigan Voting Rights Assistance Fund

The bill would create the Michigan Voting Rights Assistance Fund in the State Treasury. The State Treasurer would have to deposit money and other assets received from charitable contributions or from any other source in the Fund. The State Treasurer would direct the investment of money in the Fund and credit interest and earnings from the investments to the Fund. Money in the Fund at the close of the fiscal year would remain in the Fund and

would not lapse to the General Fund. The MDOS would be the administrator of the Fund for auditing purposes.

The bill would require the MDOS to reimburse a local government from the Fund, or, if there were insufficient money in the Fund, from other money appropriated to the MDOS for this purpose, for the reasonable costs incurred to evaluate whether a remedy was necessary to prevent a possible violation of the MVRA, or to a potential violation of a State or Federal law involving the rights of disabled electors, if the MDOS found both the following were met:

-- The costs were incurred by the local government in response to a notification letter.
-- The MDOS determined, on request from the local government, that a reasonable plaintiff, with reasonable investigation before sending the notification letter, knew the allegations in the notification letter lacked legal or factual merit.

If a local government enacted or implemented a remedy to a potential violation of the MVRA, or to a potential violation of a State or Federal law involving the rights of disabled electors, either in response to a notification letter or on its own volition, the MDOS would have to reimburse that local government for the reasonable costs to evaluate whether the remedy was necessary to prevent a potential violation of the MVRA or a State or Federal law involving the rights of disabled electors. A local government could not be reimbursed for both evaluating *and* implementing a remedy. The MDOS also would have to reimburse the prospective plaintiff who sent the notification letter to the local government, if applicable, for the reasonable costs to generate the notification letter.

The amount of reimbursement provided could not exceed $50,000. This amount would have to be adjusted annually by an amount determined by the State Treasurer to reflect the cumulative annual percentage increase in the United States Consumer Price Index for the immediately preceding calendar year and rounded to the nearest $100 increment.[5]

If the MDOS determined that the allegations of a MVRA violation in a notification letter lacked legal or factual merit, the local government would have to transmit a request for reimbursement to the MDOS within 90 days after the local government received the MDOS's determination.

A request for reimbursement made by a prospective plaintiff or a local government would have to be transmitted to the MDOS within 90 days after the enactment or implementation of the remedy. The request for reimbursement would have to be substantiated with financial documentation, including, as applicable, detailed invoices for expert analysis and reasonable attorney fees calculated using a lodestar methodology.[6] The MDOS could deny a request for reimbursement if the remedy was not necessary to prevent a potential violation of the MVRA. A prospective plaintiff or local government that did not receive satisfactory reimbursement within 120 days after the request for reimbursement could file a declaratory judgment action to obtain a clarification of rights.

Additionally, the MDOS could spend money from the Fund to reimburse prospective plaintiffs and local governments for certain expenses incurred under the Language Assistance for Elections Act (see **Senate Bill 403 (S-4)**).

[5] "United States Consumer Price Index" would mean the United States Consumer Price Index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics.

[6] Generally, the lodestar method is used to calculate attorneys' fees by multiplying a reasonable hourly rate by a reasonable number of hours expended, as determined by the court.

Additional Provisions

In any action brought under the MVRA, the court would have to award reasonable attorney fees and litigation costs, including expert witness fees and expenses, to the party that filed and prevailed in the action, other than the State or a local government. The party that filed the action would be considered to have prevailed if, because of the action, the party against whom the action was filed had yielded some or all the relief sought in the action. If the party against whom the action was filed prevailed in the action, the court could not award that party any costs unless the court found the action was frivolous, unreasonable, or without merit.

Actions brought under the Act, Section 4 of Article II of the State Constitution,[7] or any other law concerning voting rights or elections would be subject to expedited pretrial and trial proceedings and would receive an automatic calendar preference. In any action alleging a violation of the Act, the Constitution, or any applicable law in which a plaintiff party sought preliminary relief with respect to an upcoming election, the court would have to grant relief if it determined that the plaintiffs were more likely than not to succeed on the merits and it was possible to implement an adequate remedy before an upcoming primary or general election that would resolve the alleged violation.

The bill would require the SOS to provide guidance to county, city, and township election officials, and to any other local government officials who had obligations under the bill, regarding the process for its implementation. Any country, city, or township election official, or any other local government official who had an obligation under the MVRA, could request guidance in writing at any time from the SOS concerning the obligations and responsibilities under the MVRA. Any written request for guidance, and any written guidance issued by the SOS, would have to be promptly posted on the MDOS website. The SOS would have to update this guidance to reflect any amendments to the bill, any updates to voting technology or equipment, or any other changes that the SOS determined necessary.

Additionally, anything required by the bill to be done on a certain day, if that day fell on a Saturday, Sunday, or legal holiday, could be done within the same time limits on the next business day.

The bill also would repeal Public Act 161 of 1969, which regulates civil actions brought in any circuit court of the State affecting elections, dates of elections, candidates, qualifications of candidates, ballots, or questions on ballots.[8]

Senate Bill 402 (S-2)

The "Voting and Elections Database Institute Act" would require the SOS, by November 5, 2025, to enter into an agreement with one or more public research universities in the State to create the Michigan Voting and Elections Database and Institute. The Database and Institute would have two goals. Firstly, it would maintain and administer a central repository of election and voting data available to the public from all local government in the State. Secondly, it would foster, pursue, and sponsor research on existing laws and best practices in voting and elections.

The following provisions would take effect May 5, 2026.

The Database and Institute would have to provide a center for research, training, and information on voting systems and election administration. It could do any of the following:

[7] Section 4 of Article II of the Michigan State Constitution establishes the place and manner of elections.
[8] MCL 691.1031 to 691.1032

-- Conduct classes for credit and noncredit.
-- Organize interdisciplinary groups of scholars to research voting and elections in the State.
-- Conduct seminars involving voting and elections.
-- Establish a nonpartisan centralized database to collect, archive, and make publicly available an accessible database pertaining to elections, voter registration, and ballot access in the State.
-- Assist in the dissemination of election data to the public.
-- Publish books and periodicals considered appropriate by the Database and Institute.
-- Provide nonpartisan technical assistance to local governments, scholars, and the public seeking to use the resources of the Database and Institute.

If the SOS entered into an agreement with one or more universities, the parties to that agreement would have to enter a memorandum of understanding that included the following provisions:

-- The initial term of the memorandum was not less than 25 years.
-- The university or universities would select the Director of the Database and Institute.
-- The SOS would be responsible only for the costs of entering into the memorandum with the university or universities to create the Database and Institute and for the transfer of election and voting data and records, and the university or universities would be responsible for any other costs associated with operating the Database and Institute.

The bill would require the Database and Institute to maintain an electronic format and make publicly available all relevant election and voting data and records for at least the previous 12-year period. After this 12-year period, all relevant election and voting data and records would have to be permanently maintained in an electronic format by the Database and Institute for archival purposes.

The Database and Institute would have to implement rigorous cybersecurity standards for the election and voting data and records maintained by the Database and Institute that were comparable to the cybersecurity standards implemented by the Department of Technology, Management, and Budget.

Except for any information that identified individual electors, the data, information, and estimates maintained by the Database and Institute would have to be posted on the Database and Institute's website and made available to the public at no cost. The data and records would have to include all the following:

-- Estimates of the total population, voting age population, and citizens voting age population by racial, color, or language minority groups and disability status, broken down to the precinct level, on a year-by-year basis, for every local government in the State, based on data from the United States Census Bureau, including the American Community Survey, collected by a public office.
-- Election results at the precinct level for every Federal, State, and local election held in every local government in the State.
-- The most recent voter registration lists, voter history files, election day polling places, early voting sites, and absent voter ballot drop box locations for every election in every local government in the State.
-- The most recent maps or other documentation of the configuration of precincts.
-- Election day polling places and early voting sites.
-- Adopted districting or redistricting plans for every election in every local government in the State.
-- Any other data that the Director of the Database and Institute considered necessary.

The data, information, and estimates maintained by the Database and Institute could, at the discretion of the court, be relied on as evidence.

All State agencies and local governments would have to provide the SOS with any publicly available election and voting data and records as reasonably requested by the SOS in a timely manner. Before requesting this data, the SOS would have to consult with the Director of the Database and Institute, the Michigan Association of County Clerks, and the Michigan Association of Municipal Clerks. Upon receiving election and voting data and records from State agencies and local governments, including information that corresponded to the data and records described above, the SOS would have to transfer this data in a timely manner to the Database and Institute. Within 180 days after an election, the SOS would have to transmit to the Database and Institute information that corresponds to the data and records described above.

The bill would require the SOS to reimburse each local government for the cost of providing any requested election and voting data and records to the SOS. The reimbursement of a local government could not exceed the allowable costs to the local government as described in the Freedom of Information Act (FOIA).[9] To qualify for reimbursement, a local government would have to submit a verified account of its allowable costs to the SOS within 90 days after the requested election and voting data and records were provided to the SOS. Within 90 days after the SOS received a verified account of allowable costs from a local government, the SOS would have to pay or disapprove the verified account.

After a local government provided any requested election and voting data and records to the SOS, and those election and voting data and records were posted on the Database and Institute's website, that local government would no longer be obligated to provide those election and voting data and records in response to a written FOIA request. If that local government received a written FOIA request from a person for election and voting data and records already publicly posted, the local government would have to, within 10 business days after receiving the written request, give written notice to the requesting person that the request for the election and voting data and records would have to be submitted to the Database and Institute.

The AG, the Director of the Database and Institute, or a designee of either could file an action to enforce compliance with the Act.

Within 90 days of the end of each State fiscal year, the Database and Institute would have to publish a report on its priorities and finances.

Senate Bill 403 (S-4)

Election-related Language Assistance

The "Language Assistance for Elections Act" would require a local government to provide language assistance for elections conducted in that local government if it met either of the following conditions:

-- Before January 1, 2030, had more than 5% of the voting-eligible population in that local government who spoke a single shared language other than English and had limited

[9] Generally, a public body may charge a fee for the provision of public records. An allowable fee is limited to the sum of labor costs, the economical cost of nonpaper physical media, the total incremental cost of the necessary duplication or publication of paper physical media, and the actual cost of mailing, if applicable. For more information, see MCL 15.234.

English proficiency, or, beginning January 1, 2030, had a voting-eligible population of at least 600 individuals in that local government who spoke a single shared language other than English and had limited English proficiency.

-- Before January 1, 2030, had a voting-eligible population of more than 10,000 in that local government who spoke a single shared language other than English and had limited English proficiency, or, beginning January 1, 2030, had a voting-eligible population of at least 100 individuals in that local government who spoke a single shared language other than English and had limited English proficiency and also comprised 2.5% or more of the voting-eligible population in the local government.

Under the Act, "local government" would mean a county, city, or township that conducts an election. "Limited English proficiency" would mean an individual who does not speak English as that individual's primary language and who speaks, reads, or understands the English language less than very well.

By January 31 of each odd-numbered year, the SOS would have to post on the MDOS website a list of each local government that would be required to provide language assistance for elections and a list of each language it would have to provide. These determinations would have to be made based on data made available by the United States Census Bureau or the American Community Survey, or, if that data was insufficient, data of comparable quality collected by a governmental entity or the Michigan Voting and Elections Database and Institute (see **Senate Bill 402 (S-2)**). The Director of Elections would have to provide the information posted on the MDOS website to the clerk of each local government in the State.

If a local government were added to the information posted on the MDOS website, the SOS would have to do the following:

-- Notify that local government of the language assistance requirements.
-- Require that local government to implement the language assistance requirements by the next State primary election date.
-- Provide in the covered language all voting materials produced by the SOS relevant to that local government.
-- Issue guidance on implementing the language assistance requirements.

If the SOS determined that language assistance would have to be provided in a local government for elections, the SOS also would have to do all the following:

-- Provide effective language assistance for elections in each designated language and provide related materials in English, and in each designated language as translated by a certified translator, including registration and voting notices, newspaper notices, absent voter ballot applications and other materials and information relating to the electoral process.
-- Ensure the quality and accuracy of the translated voting or election materials.
-- Provide to that local government, and to the county in which that local government was located if that local government had entered into an agreement with the county to conduct early voting, a voting system technology that produced ballots on demand and a voter assist terminal (VAT) that displayed a translated ballot for the voter to mark using the electronic interface on the VAT and that printed a translated ballot reflecting the elector's votes for tabulation.
-- Reimburse that local government for additional costs associated with logic and accuracy testing on tabulators conducted by that local government, or, if approved by the local government's governing body, directly contract with a vendor to do logic and accuracy testing on tabulators in that local government.

Under the bill, a clerk of a local government or a board of election commissioners could use any source to print test ballots if the source were capable of printing ballots that were designed to be scanned properly by voting equipment, and could use any source to conduct logic and accuracy testing if that testing were limited to only placing test ballots in voting equipment and comparing the results to the chart of predetermined results, and did not involve any additional examination of or access to voting equipment. The SOS could not prohibit the clerk of a local government or a board of election commissioners from using any source to prepare the chart of predetermined results and test decks with those predetermined results used in that preliminary logic and accuracy testing if the chart of predetermined results and tests decks with those predetermined results met the required standards under law.

The SOS also would have to provide local government clerks access to a live interpreter for electors. If a live interpreter were unavailable, the SOS would have to provide local government clerks access to a telephone system or other remote system that could be used to provide language interpretation to voters. It also would have to produce electronic copies of any election material that it made public in each designated language.

If the SOS provided language assistance for elections, the local government would have to use all the language assistance provided by the SOS. If a local government required language assistance for elections that the SOS *did not* provide, that local government would be required to submit language to the SOS no later than 82 days before the election. If that language were not submitted, the *local government* would be required to provide the language assistance.

The Act would not prohibit a local government from voluntarily providing language assistance for elections beyond that required if the local government determined that language assistance for elections would be beneficial for its limited English proficiency residents.

These provisions would take effect January 1, 2026.

Language Access Advisory Council

The bill would create the Language Advisory Council in the MDOS. The Council would consist of the following members, who would be appointed by the SOS no later than May 1, 2025:

-- One clerk who was selected from a list of nominees submitted by the Michigan Association of Municipal Clerks.
-- One clerk who was selected from a list of nominees submitted by the Michigan Association of County Clerks.
-- One member from each group that was eligible for language assistance for elections under the Act.

If a vacancy occurred on the Council, the SOS would have to fill the vacancy in the same manner as the original appointment. The members of the Council would have to meet one or more times annually, as directed by the SOS, to advise the SOS on implementing the provisions of the Act.

Judicial Implications

Before commencing a civil action against the SOS or a local government that alleged a violation of the Act, a prospective plaintiff would have to send by certified mail a notification letter to the SOS or clerk and chief administrative officer of the local government that asserted that the SOS or local government could be in violation of the Act. The notification letter would have to explain in detail the alleged violation and propose a remedy for each alleged violation.

Within 30 days after receiving the notification letter, the SOS or the clerk of the local government and the chief administrative officer or chief executive officer of that local government, along with legal counsel or any other individual the SOS or the local government wished to attend, could meet with the prospective plaintiff and the prospective plaintiff's representatives to prepare and agree on a written plan to address the alleged violation. If the SOS or the local government agreed to meet with the prospective plaintiff to prepare and agree on a plan to address the alleged violations, the prospective plaintiff or the prospective plaintiff's representatives would have to participate in the meeting. If the SOS or the local government did not meet with the prospective plaintiff, the prospective plaintiff could file a cause of action in the Court of Claims.

The written plan described would have to be in writing, be approved by the SOS or, for a local government, a resolution of the governing body, and do all the following:

-- Identify each alleged violation by the SOS or the local government.
-- Identify a specific remedy for each alleged violation by the SOS or the local government or state that the parties agreed that no remedy was appropriate for one or more of the violations.
-- Establish specific measures that the SOS or the local government would have to take to facilitate any needed approvals to implement each specific remedy.
-- Provide a schedule for the needed approvals and the implementation of each specific remedy.

If a prospective plaintiff and the SOS or the local government agreed on a written plan and the plan was approved by the SOS or a resolution of the governing body of the local government, no cause of action could be filed for the prospective plaintiff unless the SOS or the local government failed to comply with the plan's requirements. If a prospective plaintiff and the local government did not agree, the prospective plaintiff could file a cause of action.

The AG or any individual or entity whose members were aggrieved by a violation of language assistance requirements could file a cause of action if any of the following requirements were met:

-- The party gave written notice as required and the SOS or the local government failed to meet, approve, or implement a written plan.
-- Another party already had submitted a notification letter that alleged a substantially similar violation, and that party was eligible to bring a cause of action.
-- The party was seeking preliminary relief with respect to an upcoming election.

In any action brought under the Act, the Court would have broad authority to order adequate remedies that were tailored to address the violation; however, the remedies could only be as extensive as reasonably necessary to remedy the violation. Unless otherwise prohibited by law, adequate remedies would include any of the following:

-- Requiring the establishment of and conducting of a comprehensive program that ensured equal opportunity for citizens in the local government who were entitled to language assistance under the bill to participate in the electoral process.
-- Adding voting days or hours.
-- Ordering a special election on either a regular election day or on another date, as determined by the Court.
-- Imposing punitive damages in the form of a civil fine, which would have to be deposited into the Michigan Voting Rights Assistance Fund (see **Senate Bill 401 (S-3)**).
-- Any other form of declaratory or injunctive relief that, in the Court's judgement, was tailored to address the violation.

-- Retaining jurisdiction for a period of time the Court found appropriate.

When assessing the amount of punitive damages, the Court would have to take into consideration the severity and number of violations, whether the local government had previous violations, the number of registered electors in the local government, the local government's ability to pay the punitive damages, and any other factors considered necessary. The Court would have to provide an explanation in any order requiring the payment of punitive damages on why punitive damages were required and how the court determined the amount of damages. Punitive damages could be ordered only if the Court found any of the following:

-- The violation was intentional.
-- The local government or an official of a local government demonstrated a disregard for the voting rights of qualified electors in the local government.
-- After being notified of an alleged violation, the local government failed to take any action.
-- The local government violated a Court order issued under the Act, Article II of the State Constitution, the Federal Voting Rights Act, or any other applicable law.
-- Violations of any law applicable to or affecting voting rights were violated again after previously addressing a violation.
-- Punitive damages were reasonably necessary to ensure compliance with the Act.

The Court would have to consider remedies proposed by any parties and interested nonparties and could not provide deference or priority to a proposed remedy offered by the defendant or the local government simply because the remedy had been proposed by the defendant or local government. In any action brought, the Court would have the authority to order remedies that could be inconsistent with other provisions of State or local law, when the inconsistent provisions of law would otherwise preclude the court from ordering an adequate remedy.

The bill would require the MDOS to reimburse prospective plaintiffs and local governments for the enaction or implementation of a remedy from the Michigan Voting Rights Assistance Fund (see **Senate Bill 401 (S-3)**).

The AG or any individual or entity whose members were aggrieved by a violation of language assistance requirements could file an action against the SOS or a local government in the Court of Claims or the circuit court of the county in which the local government was located to compel compliance with and seek an appropriate remedy under the Act.

In any action, the Court would have to award reasonable attorney fees and litigation costs, including expert witness fees and expenses, to any of the following:

-- A party, other than the State or a local government, that filed the action and prevailed in the action; the party that filed the action would prevail if, because of the action, the party against whom the action was filed yielded some or all the relief sought.
-- A party that defended an action and prevailed in the action if the written response by the local government detailed why no violation occurred and the Court concurred.

Actions brought under the bill would be subject to expedited pretrial and trial proceedings and would have to receive an automatic calendar preference due to the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefited incumber officials. In any action alleging a violation of the proposed law in which a plaintiff party sought preliminary relief with respect to an upcoming election, the Court would have to grant relief if, after a hearing at which all parties could present arguments and offer evidence, it

determined that the plaintiffs were more likely than not to succeed on the merits and it was possible to implement an adequate remedy that would resolve the alleged violation in the upcoming election.

Senate Bill 404 (S-2)

Notifications

The bill would amend the Michigan Election Law to require a local government to provide notice to the SOS within 20 days after the governing body of that local government approved ballot language related to any of the following:

-- Any change to the method of how the winner of an election was determined.
-- Any change from an at-large method of election to a district-based method of election or from a district-based method of election to an at-large method of election.
-- Any governmental reorganization.

A local government also would have to provide notice to the SOS at least 20 days before the clerk of that local government started a program to remove electors from the voter registration records, other than for the canceling of the voter registration upon receiving reliable information that a registered elector had moved the elector's residence, the canceling of the voter registration of a deceased elector, or the canceling of the voter registration of an elector upon the request of that elector.

A local government also would have to provide notice to the SOS of any of the following:

-- No later than five business days after receiving and before complying with a request from any individual to view, inspect, take possession of, or copy voting equipment.
-- No later than five business days after receiving and before complying with a request from any individual to view, inspect, or copy ballots from more than 25% of the total votes cast in any election held in the local government.
-- At least 14 days before an election, a list of any organization or committee as to which authorization to appoint challengers has been approved or denied.
-- No later than five business days after receiving and before acting on a challenge made by an elector of the local government to the registration of an elector.

The SOS would have to prescribe the form of these notices. As soon as practicable, but no later than five days after receiving notice from a local government, as outlined above, the SOS would have to post the notice on the MDOS website and ensure that the posting was made available and accessible to individuals with disabilities and individuals with limited English proficiency. If a local government failed to submit a required notice to the SOS by the deadline, the SOS would have to post that violation on a visible portion of the MDOS website that was not archived and was updated at least every 30 days with additional information. The name of each local government that failed to submit a required notice would have to be listed in alphabetical order on the MDOS website. The information posted by the SOS on the MDOS website regarding a notice violation would have to include the name of the local government, the notice required that was not submitted by the local government, the date of the violation by the local government, and the date the notice was submitted by the local government, or an indication that the required notice was never submitted by the local government. The SOS could not remove the posted information regarding a notice violation by a local government until one year after the date of the notice violation.

If a state of emergency affecting a local government were declared under State law, these notice requirements would be temporarily suspended for that local government starting on

the date that the state of emergency was declared and continuing for the period of time that the state of emergency was in effect. On the date that the state of emergency was terminated for that local government, the temporary suspension of the notice requirements also would be terminated, and the local government would be obligated to provide any notices the local government would have been required to provide while the state of emergency was in effect.

The bill also would require the SOS to provide notice of any of the following:

-- Any change to the location of a polling place, absent voter ballot drop box, or other voting location within a local government.
-- Any change to the hours or days available for voting, including early voting, as compared to a previous election for the same or a similar office.
-- Any change to the hours or locations for absent voting.
-- Any early voting plan, or any amendments to an early voting plan.
-- The results of any election audit.
-- The selection of a voting system.
-- Any agreement to establish an absent voter counting board.
-- The governing body of a local government approved a change to a district within that local government.

As soon as practicable, but not later than 5 days after the SOS was notified of any of these occurrences, the SOS would have to post the notice on the MDOS website and ensure that the posting was made available and accessible to individuals with disabilities and individuals with limited English proficiency.

These notice requirements would take effect January 1, 2026. Before January 1, 2026, the bill would require the SOS consult with the Michigan Association of County Clerks, the Michigan Association of Municipal Clerks, and at least two voting rights advocates regarding the implementation of these requirements.

Voting Assistance

Among other things, the Michigan Election Law prescribes the circumstances under which an elector may receive aid while filling out a ballot. For example, the Law allows an elector disabled on account of blindness to receive assistance in the marking of the elector's ballot by a member of the elector's immediate family or by a designated individual of voting age.

Under the bill, during the hours that voting was available to electors at a polling place or early voting site, a sign would have to be displayed outside of the site that read the following: "If you need voting assistance, please call _____."

If an elector were unable to enter a polling place or early voting site, the elector could ask the county, city, or township clerk or precinct board of election inspectors to provide voting assistance, which would have to be provided as follows.

Under the bill, when the election inspectors at a polling place or early voting site became aware that an elector outside of the polling place or early voting site needed voting assistance, the following procedure would have to be used:

1. Two election inspectors from different political parties would have to deliver the ballot inside a secrecy sleeve to the elector who was outside the polling place or early voting site.
2. After the elector marked the ballot and placed it back in the secrecy sleeve, the election inspectors would have to immediately return to the polling place or early voting site and

deposit the ballot into the tabulator in a manner that protected the secrecy of the ballot to the greatest extent possible.

3. If the ballot were accepted by the tabulator, one election inspector, regardless of political party affiliation, would have to return to the elector who was outside the polling place or early voting site and indicate to the elector that the elector's ballot was successfully tabulated; if the ballot were rejected by the tabulator, two election inspectors from different political parties would have to return to the elector who was outside of the polling place or early voting site and give the elector the opportunity to have the ballot considered a spoiled ballot and vote another.

An elector who voted a ballot at a polling place or early voting site under this procedure would be subject to all the requirements, and have all the rights, that applied to electors who voted inside the polling place or early voting site.

The provisions described above would take effect January 1, 2026.

Additional Provisions

Beginning on the bill's effective date, an elector could seek language assistance from an individual the elector chose to exercise the elector's right to vote.

Additionally, the bill would allow an individual to provide food, warmth, or other necessities to electors who were in line to vote inside or outside of a building in which a polling place, early voting site, or a city or township clerk's office was located, provided the individual did not interfere with the voting process. The appropriate clerk could direct an individual who was providing food, warmth, or other necessities to immediately cease the individual's activities if the clerk determined that the individual was interfering with the voting process or the clerk's ability to maintain peace, regularity, and order at the site.

Currently, all the ballots given to an elector applying to vote must bear the same number, beginning, for the first elector to whom ballots are given, with the lowest numbered ballots, the next higher number for the second such elector, and so on. The bill would delete this provision.

Section 579

The bill would repeal Section 579 of the Michigan Election Law, which requires a board of election inspectors to reject a ballot if the elector, after marking it, exposes it to any person, other than a minor child accompanying that elector, in a manner likely to reveal the name of any candidate for whom the elector voted.

BRIEF RATIONALE

Generally, the Federal Voting Rights Act was enacted to enforce the Fifteenth Amendment of the United States Constitution, which prohibits the right to vote from being denied to any eligible citizen based on race, color, or previous condition of servitude. Section 5 of the Act required jurisdictions with a history of discrimination to obtain preapproval from the United States Department of Justice or a court before changing its voting rules; however, the Supreme Court ruled in *Shelby County v. Holder* (2013) that the formula contained in the Act to determine which jurisdictions were subject to the preapproval requirement was unconstitutional. In effect, this allowed jurisdictions once required by Section 5 to seek preapproval to change their voting methods and processes without supervision. As a result of this decision, some believe that individual rights, such as the right to vote, are no longer

guaranteed protection by the Federal government. Accordingly, it has been suggested that Michigan's election law be updated to include protections for the right to vote.

BACKGROUND

Voting Rights Act

Section 2 of the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate based on race, color, or membership in a language minority group. In 1982, the United States Senate Committee on the Judiciary issued a report on what factors courts may use to determine whether a violation of Section 2 had occurred. The report included the following:

-- The history of official voting-related discrimination in the state or political subdivision.
-- The extent to which voting in the elections of the state or political subdivision is racially polarized.
-- The extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts.
-- The exclusion of members of the minority group from candidate slating processes.
-- The extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which may hinder their political participation.
-- The use of overt or subtle racial appeals in political campaigns.
-- The extent to which members of the minority group have been elected to public office in the jurisdiction.

In a suit alleging a violation of Section 2, a Federal court may order protection for the group harmed by the violation under a consent decree, a settlement agreement consented to by all parties and approved by the court.

Currently, the United States Census Bureau recognizes five minimum categories: White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander. Participants also may select Some Other Race. Additionally, participants may select multiple options to indicate mixed-race status.

Independent Redistricting Commission

In 2018, Michigan voters approved Ballot Proposal 2, which amended the Michigan Constitution to establish the Citizens Independent Redistricting Commission. The 13 members of the Commission were selected in 2020. On December 28, 2021, the Commission voted to approve its final congressional and State legislative redistricting maps; however, in March 2022, a group of Detroit voters filed a lawsuit against Michigan Secretary of State Jocelyn Benson and the Commission alleging that the Commission's redistricting plans violated the Voting Rights Act by diluting the voting power of Black voters in several Detroit-area legislative districts. In December 2023, a Federal court ruled in *Agee v. Benson* that the Commission had violated the 14th Amendment of the U.S. Constitution and required several Michigan House and Senate districts to be redrawn. The Commission redrew and approved a new House district map, the Motown Sound FC E1 map, which was adopted by the court in March and will be used for the 2024 House election primaries and the general election.[10] In

[10] Solis, Ben, "Redistricting House Map Meets Court Muster, Plaintiffs Appear Satisfied", *Gongwer*, March 27, 2024.

June, the Commission approved a new Senate district map, Crane A1, which was adopted by the court in July.[11]

FISCAL IMPACT

Senate Bill 401 (S-3) would have additional costs for the MDOS to implement its requirements that would include the hiring of two additional FTEs at a cost of $300,000 per year to approve MVRA resolutions as required. Costs could be higher depending on the actual number of resolutions received by the MDOS. There also could be additional costs to adopt new administrative rules, but the MDOS believes those duties could be handled with the additional FTEs.

There also could be a cost to the MDOS related to reimbursing plaintiffs for reasonable costs associated with generating a notification letter to the local government alleging a violation of Sections 7 or 9 of the bill. Should the local government enact and implement a remedy based on the notification letter, the MDOS could incur additional costs for reimbursing plaintiffs for reasonable costs or a mutually agreed upon amount if the funds in the Michigan Voting Rights Assistance Fund were insufficient to pay the claims, in which case the MDOS would have to pay those costs from other MDOS resources. Those costs are indeterminate and depend on the number of actual claims paid; however, those costs would be limited to $50,000 per claim.

The bill likely would not have a significant fiscal impact on the Department of Treasury. It is likely that the average daily balance of the Fund would be sufficiently small that current appropriations would be sufficient to carry out administrative activities; however, if an additional source of revenue for the Fund were found and resulted in a higher average balance, it is possible that the Department could require one or more additional FTEs in future fiscal years. The current average annual cost of an FTE is approximately $139,100.

Senate Bill 402 (S-2) would require the MDOS to pay for the costs of entering the memorandum of understanding with the university or universities to create the database and institute and for the transfer of election and voting data and records. The university or universities would be responsible for any other costs associated with operating the database and institute. The costs to the MDOS for the memorandum of understanding should be absorbable within its annual appropriation.

Local governments would be reimbursed by the MDOS for costs associated with reporting election, voter registration, and ballot access for their jurisdictions to the MDOS. These costs are indeterminate as reimbursement rates vary across local governments.

Senate Bill 403 (S-4) would have an indeterminate cost for the MDOS to provide language assistance to voters depending on the demographics of that local government. The costs would vary by local government and depend on whether live interpreters were required. The MDOS also could incur additional costs for reimbursing plaintiffs for claims against violations of the proposed Act if the Michigan Voting Rights Assistance Fund did not have sufficient funding to pay claims as those costs would have to be paid from other MDOS resources. Those costs are indeterminate and depend on the number of actual claims paid; however, those costs would be limited to $50,000 per claim.

[11] Jackson, Colin, "Redistricting commission chooses final state Senate plan for court approval", *MPRN*, June 26, 2023; Hendrickson, Clara, "3-judge panel approves redistricting commission's new Michigan Senate map", *Detroit Free Press*, July 27, 2024.

Senate Bill 404 (S-2) could require local governments to hire additional election inspectors to provide enough inspectors to allow for curbside voting. The average cost for an election inspector is $180 per day thus the costs would vary by local government and depend on the number of inspectors hired.