

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)
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REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)

Agency Information:

Department name:

State

Bureau name:

Elections & Campaign Finance

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Rule Set Information:

ARD assigned rule set number:

2024-19 ST

Title of proposed rule set:

Electronic Voting Systems

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

There are no parallel federal rules or standards.

A. Are these rules required by state law or federal mandate?

Yes; MCL 168.794c, MCL 168.797b, and 168.31(1)(a), require the Secretary of State to promulgate rules that govern electronic voting systems.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules do not exceed a federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

Any differences between the proposed rules and those in other states are not affected by geographic location, topography, natural resources, commonalities, or economic similarities, as those are not relevant to the decisions regarding electronic voting systems. Ohio has promulgated rules on Voting Machines and Equipment (Chapter 111: 3-9 of its Administrative Code), which address many of the same topics included in Michigan's proposed rules. They also require an application fee of vendors seeking to provide voting equipment to the state and provide for a board of voting machine examiners. In Michigan these duties are performed by the Board of State Canvassers and the various boards of county canvassers. The agency is not aware of any other similarly situated states that have the same procedures the rules are attempting to regulate given that the proposed rules are specifically tailored to Michigan's electronic voting systems and procedures.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The rules do not exceed the standards in other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The proposed rules seek to mirror the definitions and provisions in the Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992, and existing instructions from the agency. Additionally, the recount section in the proposed rules clarifies agency responsibilities separate from and in conjunction with the provisions in the recount ruleset promulgated under the authority of the Board of State Canvassers, R 168.901 to 168.930. No laws or rules or other legal requirements completely overlap with or duplicate the rules. No laws, rules, or other legal requirements conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

As stated above, the rules incorporate existing applicable definitions from the Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992, and reference the recount administrative rule that is applicable. The rules do not duplicate the provisions they incorporate; rather, they make clear when existing laws and regulations apply in the context of electronic voting systems. In all other respects, the rules have not been coordinated with other federal, state, and local laws as there are none applicable to the same activity or subject matter.

Purpose and Objectives of the Rule(s)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

Electronic voting systems are used for all of Michigan’s elections. Michigan has three dates for regular elections annually (in May, August, and November), a date for a presidential primary (in February) every four years in the presidential election year, and special primaries and special elections as needed. MCL 168.641, MCL 168.631. In 2024, Michigan will have six election dates.

Additionally, beginning with the presidential primary, early voting will be required for all state and federal elections, necessitating the use of electronic voting systems for at least nine days of early voting ahead of all those elections. MCL 168.720b; 1963 Const, art 2, §4(1)(h). The current rules do not account for early voting.

Boards of election commissioners must complete preliminary and public logic and accuracy testing at least five days before the start of early voting or Election Day, as applicable. MCL 168.720j(1)(b); R 168.778.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

It is not anticipated there would be a change given that the frequency of elections will not change. However, the rules would account for the change in days the electronic voting systems will be in use, i.e., early voting days.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The proposed rules would seek to codify current practice. The current rules were promulgated in 1979 and have not been amended. They were promulgated before the use of electronic voting systems and provide for outdated terminology and process, including the use of chads, pencils, and “punching tools.” They do not account for the Qualified Voter File, electronic pollbooks, touch screens, voter assist terminals, ballot on demand systems, or other technological advancements. While election officials follow the same general practices and procedures, updated terminology and more clearly defining the application of the current rules to new processes would prevent confusion and miscommunication.

C. What is the desired outcome?

Once the proposed rules are adopted, the rules will reflect current technology and practice and provide clarity to election administrators and the public.

5. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

While many of the current rules reflect current practice but use outdated terminology (for instance, rules that refer to a “punch” on a “ballot card” can be easily understood to refer to a “mark” on a “ballot”), other rules are obsolete and may cause confusion. The public does not always understand the extensive testing and certification of voting systems and voting equipment, and the failure to update terminology to match current practice may undermine confidence in Michigan’s elections.

A. What is the rationale for changing the rules instead of leaving them as currently written?

As described above, the current rules use outdated terminology and describe processes that are no longer in use.

6. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rules would reflect current practice, provide clarity to clerks and election officials responsible for overseeing the safe and efficient administration of elections, bolster the public's confidence in elections, and alleviate the possibility of confusion and conflict.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The proposed rules rescind R 168.783 and R 168.787. Otherwise they rewrite obsolete or unnecessary sections of the ruleset in lieu of rescinding, this rewriting includes all currently existing rules in the ruleset other than R 168.783 and R 168.787, which are rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

It is not expected that the promulgation of rules will have a fiscal impact on the Department of State.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made, and no funding source has been provided, as it is not anticipated that the Department of State will have any expenditures associated with the proposed rules. The department estimates that there will be no cost increases or reductions for other state or local governmental units as a result of the rules.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rules will codify current practice and are not expected to place any additional fiscal or administrative burdens on individuals.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

There are no identified burdens.

Impact on Other State or Local Governmental Units

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no estimated increases or decreases in revenue to other state or local governmental units. There are also no estimated cost increases or reductions to other state or local governmental units.

12. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The current rules require accuracy testing of tabulators at least five days before Election Day, but statute requires accuracy testing at least five days before the start of early voting, if applicable. The proposed rules would resolve this conflict and allow all testing to take place on the appropriate date.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

As mentioned in answer 12, the timing for accuracy testing would be clarified. Clerks would also need to perform public testing on assisted voting devices (also called voter assist terminals) and on-demand ballot printing systems. However, since this testing would be conducted at the public accuracy test required under the current rules, the additional burden would be minimal.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

An appropriation has not been made because additional expenditures associated with the rules are not anticipated.

Rural Impact

14. In general, what impact will the rules have on rural areas?

The proposed rules are not expected to impact rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules are not expected to have any impact on public or private interests in rural areas.

Environmental Impact

15. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules will not have an impact on the environment.

Small Business Impact Statement

16. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules do not apply to small businesses.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The proposed rules do not apply to small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

The proposed rules do not apply to small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rules do not apply to small businesses and will not have an impact on their reporting requirements.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify the compliance and reporting requirements for small businesses as the proposed rules do not apply to small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The proposed rules do not apply to performance, design, or operation standards.

18. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules do not apply to small businesses.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

20. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There are no costs of compliance as the proposed rules do not apply to small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no estimated costs for small businesses as the proposed rules do not apply to small businesses.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There are no estimated costs to the agency for administration or enforcement against small businesses as the proposed rules do not apply to small businesses.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules do not apply to small businesses so there should be no impact on the standards of compliance.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The agency has not involved small businesses in the development because the proposed rules do not apply to small businesses.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were involved because the proposed rules do not apply to small businesses.

Cost-Benefit Analysis of Rules (independent of statutory impact)

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

It is not anticipated that there will be any statewide compliance costs.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

Clerks and election officials will directly benefit from the proposed rules, as they will have clear guidance on the administration of elections as it pertains to electronic voting systems. It is not anticipated that clerks or election officials will bear any additional costs from the proposed rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

There will be no costs imposed as a result of the proposed rules. It is anticipated that the rules can be followed with the current funding appropriated to clerks and election officials.

27. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

Clerk training is currently required under statute and provided by the agency. The proposed rules generally codify current practice and would be incorporated into existing training. They are not anticipated to impose any additional training costs, and no additional costs are anticipated.

A. How many and what category of individuals will be affected by the rules?

Clerks and election officials would be affected by the proposed rules, as they would be able to refer to the rules for answers to their questions. There are 1,604 clerks and hundreds of election officials and election inspectors who administer elections in Michigan. Challengers and members of the public would also be able to use the rules as a more useful set of instructions.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

Clerks, election officials, and the public would be rely on the rules when conducting tasks relating to electronic voting systems. It is not anticipated that the rules would have a quantitative impact.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

It is not anticipated that there would be any cost reductions to businesses, individuals, groups of individuals, or governmental as a result of the proposed rules.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The primary and direct benefits are clearer guidance on the administration of elections, and especially the use of updated terminology. This would impact the approximately 8.3 million voters in Michigan. The agency assumes that clearer rules will limit confusion, leading to more confidence in the election process and fewer challenges or complaints by citizens when those complaints were driven by misunderstandings about electronic voting systems.

30. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules will not impact business growth and job creation in Michigan.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

It is not anticipated that individuals or businesses will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The agency relied upon the Department of State's current practice, as well as comments provided by county, city, and township clerks. The agency relied upon agency staff and its regulatory experience to formulate estimates and assumptions and determine the need for the proposed rules.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The agency relied upon agency staff and its regulatory and administrative experience to determine the impact of the proposed rules. The agency also looked to local elections officials and clerks' associations and relied on their expertise for feedback, and looked to other jurisdictions when determining the existence and extent of the impact of the proposed rules. The agency assumed that the administrative rules should reflect current practice and current technologies and that having the rules reflect current practice/technology will be beneficial and eliminate any confusion and promote public confidence in elections. The agency also assumes that because the proposed rules will codify current practice, their implementation will not cause any major change or issue.

Alternative to Regulation

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

In order to create a safe, secure, and responsible system, there is no reasonable alternative to achieve the same or similar goals.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

In order to create a safe, secure, and responsible system, there is no reasonable alternative to achieve the same or similar goals, so no statutory amendments are necessary.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

A regulatory program established by a private third-party is not feasible because the subject of the rules concerns the administration of elections. Michigan Election Law, 1954 PA 116, MCL 168.1 to 168.992, reserves this power solely to the Secretary of State, Bureau of Elections, and County, City, and Township clerks. The agency is not aware of a private market-based system, as opposed to a state regulatory body for these purposes, utilized in other states.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Due to the nature of regulating the manner of elections, no significant alternatives to reasonable regulation were considered during the development of the proposed rules. Significant provisions of the proposed rules are intended to codify the current practices. The agency solicited feedback from clerks and incorporated suggestions and revisions to the proposed rules.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The rules inform persons of requirements and methods of compliance. Additional instructions will be developed if necessary.