

HOUSE BILL REPORT

HB 1072

As Passed Legislature

Title: An act relating to elections.

Brief Description: Changing provisions relating to elections.

Sponsor(s): Representatives McLean, Anderson, R. Fisher, Moyer, Sheldon, Chandler, Bowman, Pruitt, Winsley, Broback, Edmondson, Paris, D. Sommers, May, Wynne, Brumsickle, Nealey, Miller, P. Johnson, Casada, Wood, Forner and Mitchell.

Brief History:

Reported by House Committee on:
State Government, February 13, 1991, DP;
Passed House, March 11, 1991, 96-0;
Passed Legislature, 96-0.

**HOUSE COMMITTEE ON
STATE GOVERNMENT**

Majority Report: *Do pass.* Signed by 10 members: Representatives Anderson, Chair; Pruitt, Vice Chair; McLean, Ranking Minority Member; Bowman, Assistant Ranking Minority Member; Chandler; R. Fisher; Grant; Moyer; O'Brien; and Sheldon.

Staff: Kenneth Hirst (786-7105).

Background:

Crimes. The provisions of the state's Criminal Code establish penalties for crimes such as forgery and perjury. These penalties apply except in those cases in which state law prescribes different penalties for particular instances of forgery or perjury.

The crimes and penalties chapter of the Election Code prohibits certain activities regarding a primary or election and prescribe penalties for violations. Some of these crimes are declared to be misdemeanors or gross misdemeanors, but the penalties for these crimes are not consistent with those of the Criminal Code. Some are classified as being felonies, but the felony classification is not listed. Others are unclassified; for example, fraudulently causing a voter to vote for a person other than

the one for whom the voter intended to vote is punishable by a fine of from \$10 to \$100. Some prohibitions apply during primaries, but not during elections. Others apply only in paper ballot precincts, only in precincts using voting machines or only in certain forms of cities.

Voter Registration. A person who changes his or her name must register anew. A person desiring to transfer his or her voter registration within a county must submit a signed registration transfer form. State law permits a person to transfer his or her voter registration on the day of a primary or election by filing out a voter transfer form and voting in the precinct in which the person was previously registered or by indicating the new address in the poll book at the precinct.

Absentee Ballots. A person desiring to vote by absentee ballot must submit to the county auditor a signed request form. The auditor must compare the signature on the request with the signature on the voter's registration form. When the voted ballot is returned, the auditor must also compare the signature of the voter on the outer envelope with the signature on the voter's registrations form.

Recounts. The Election Code permits certain persons to request that the votes cast in a primary or election be recounted. The code also requires that the votes be recounted if the official canvass of the returns for an office reveal that the difference in the number of votes cast for the top two candidates for the office is not more than 0.5 percent.

Other. State law prohibits exit polling in a polling place or in any public area within 300 feet of the entrance to a polling place. The federal courts have found this prohibition to be unconstitutional.

Summary of Bill:

Election Crimes. The crimes and penalties chapter of the Election Code is rewritten. The penalties for misdemeanors and gross misdemeanors specified in the Election Code are now those established for those classes of crimes in the Criminal Code. Crimes which were simply classified as being "felonies" and which established terms of imprisonment similar to class "C" felonies are now classified as being class "C" felonies punishable as established in the Criminal Code. Prohibitions which were expressly applied only during primaries, only during general elections, or only to the use of certain types of voting equipment are now applied to primaries and special and general elections and to all voting equipment. The descriptions of many of the unlawful

activities under the Election Code are made somewhat more general in nature.

The following are now classified as being gross misdemeanors rather than (as under current law) misdemeanors: removing a ballot from a polling place without lawful authority; printing official ballots except as prescribed; a printer's misappropriating ballots or delivering them to persons other than the appropriate election officer; influencing a person in refusing to vote through menace or unlawful means; soliciting or demanding a reward in exchange for voting in a particular way; deceiving a voter in recording his or her vote or recording the vote in a manner other than as designated by the voter; divulging the results of a ballot count before the closing of the polls; revealing to another information unlawfully obtained regarding how a person voted; changing the results of a ballot count officially posted or to be delivered to an election officer; and conducting unlawful activities at a polling place, such as electioneering or causing disruptions.

The following are no longer crimes under the Election Code: making a false assertion or propagating a false report regarding a candidate; electioneering for hire in a commission form of city; forging a name on a nominating paper; and committing perjury at a primary.

Registration Files. The Secretary of State and county auditors are permitted to use automated files of voter registration information in lieu of the original voter registration cards if the automated file includes all of the information from the cards including retrievable facsimiles of the voters signatures. Only the following information from those files is available for public inspection and copying: the voter's name, gender, voting record, date of registration, and registration number. A voter's address and political jurisdiction are also available unless access to this information for that voter is prohibited by law. All county auditors must maintain automated files of voter registration information.

Registrations & Transfers of Registrations. A person who changes his or her name no longer needs to register anew. The person must complete a change-of-name form, prescribed by the Secretary of State. A person who completes a change-of-name form at a polling place must also sign the poll book using the new and former names. Registrations may be transferred within a county by telephone before the precinct registration lists are closed for a primary or election.

The county auditor may permit the use of one or both of the procedures currently authorized by law for transferring a voter's registration on election day.

The manner in which registration cancellation records must be maintained is no longer specified by law; the Secretary of State must adopt rules regarding maintaining such records.

Absentee Ballot Requests. A request for an absentee ballot need no longer be submitted in written form, signed by the voter requesting the ballot. A request may be submitted orally in person, by telephone, or in writing. A person may request his or her own absentee ballot and may request an absentee ballot on behalf of any member of that person's immediate family who is a registered voter for use by that family member. The secretary must adopt rules prescribing the circumstances under which a county auditor may require a requester to identify the date of birth of the voter for whom the ballot is requested and may deny a request which is not accompanied by this information.

Recounts. The dates by which a recount must be conducted are clarified. A canvassing board must conduct the recount within five days of: the date an application for a recount is filed with the board; the date the request for the recount or the directive issued by the Secretary of State ordering a mandatory recount is received by the board; or the returns are certified which indicate that a mandatory recount is required.

Other. A provision of law found to be unconstitutional is repealed which prohibits exit polling. The form which must be used by an auditor in attesting to the cancellation of voters' registrations is repealed. Also repealed is a section of law prohibiting a candidate for a nonpartisan office from advancing from a primary to the general election unless the person received 5 percent of the votes cast for the office at the primary (a different provision of the Election Code requires the candidate to receive 1 percent of those votes at the primary).

Fiscal Note: Available.

Effective Date: The bill takes effect July 1, 1992.

Testimony For: (1) In recent minor cases involving election fraud, the cases had to be dropped because the prosecutor's office found the applicable criminal provisions of the Election Code to be too antiquated to secure convictions. The bill modernizes the crimes and penalties chapter of the Election Code and links its penalties to those of the

Criminal Code. (2) Currently, when voters change their names, they lose their entire voter history records. The bill permits a voter to simply fill out a change-of-name form. (3) Checking the signatures on absentee ballot requests is expensive. The bill streamlines this procedure but still requires signatures to be checked on the outer envelopes of voted ballots. (4) Permitting electronic records with signature digitalization to replace hard copies of registration records makes checking signatures on initiatives and referenda much more efficient.

Testimony Against: None.

Witnesses: John Pearson, Office of the Secretary of State (in favor); and Sam Reed, County Auditors Association (in favor).