

ABSENTEE BALLOTS

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Senate Bills 370 (S-1) and 371 as reported from House committee

Sponsor: Sen. Sylvia A. Santana

House Committee: Elections

Senate Committee: Elections and Ethics

Complete to 6-21-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 370 would amend the Michigan Election Law to reflect a change made to the state constitution that granted Michigan voters the right to be placed on a permanent absent voter (AV) list.¹ Senate Bill 371 is a companion bill that would make a complementary change to the Code of Criminal Procedure. The bills are identical to House Bills 4700 and 4701, respectively, as passed by the House.

Senate Bill 370 would amend the Michigan Election Law to implement the permanent absent voter list and to make several other changes regarding absentee voting. The bill is tie-barred to Senate Bill 339,² a bill that would establish an online AV ballot tracking system, and Senate Bill 387, a bill that would allow AV ballot tabulation before election day, which means that SB 370 could not go into effect unless both of those bills were also enacted.

Absent voter ballot application

Under the bill, an individual who submits an AV ballot application before a primary election, including a presidential primary, could either use that application for the primary election only or for the primary and all following elections in that year. Registered voters would also have the right to receive an AV ballot for each election by submitting a single absent voter ballot application that covers all future elections.

A registered elector could submit an absent voter ballot application in any of the following ways:

- By mail or email to the appropriate city or township clerk.
- By using the online absent ballot application provided by the secretary of state (SOS).
- In person at their local clerk's office until 4:00 p.m. on the day before election day.
- To the city or township clerk on election day, if the elector is registering to vote or is updating their voter registration address and completes their ballot in the clerk's office.

City and township clerks would be required to provide an electronic absentee ballot application or mail an application with a postage prepaid return envelope upon an individual's request.³ The SOS, a county clerk, and a city or township clerk could also provide an absentee ballot application by either of those methods without a registered elector's request.

¹ This right was placed in the Michigan Constitution with the passage of Ballot Proposal 22-2. For a summary of Proposal 22-2, see https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2_of_2022.pdf.

² For a summary of SB 339 as passed by the Senate, see <http://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-0339-8DE96E06.pdf>.

³ Currently, the Michigan Election Law requires clerks to provide a physical AV ballot application form upon an individual's request but do not have to provide prepaid postage.

For a presidential primary election, the SOS would have to revise the application form to require a presidential primary elector to indicate a political party ballot selection when requesting an AV ballot. The SOS would also have to provide a separate form for a presidential primary elector who previously applied for an AV ballot that would allow them to indicate or change their political party ballot selection when requesting an absentee ballot.⁴

The instructions provided on an AV ballot application would have to specify that the return envelope includes prepaid postage. The application would also provide space for an email address and telephone number.

An individual could submit a voter registration application and an AV ballot application at the same time, and immediately after the voter registration application is approved, the appropriate clerk would have to verify the AV ballot application for that individual and issue an AV ballot. If an individual submits a voter registration application and an AV ballot application at the same time at a clerk's office on election day, they would have to vote the AV ballot at the clerk's office.

An individual who registers to vote or updates their voter registration on election day could apply for and complete an AV application in person at their local clerk's office. The individual would then be able to vote the ballot and return it to the clerk in the AV return envelope. An individual who is in line at 8:00 p.m. on election day would have to be allowed to register or update address and vote, including after midnight if necessary.

Received AV ballot applications

A city or township clerk who receives an application for an AV ballot would have to immediately determine if the applicant is registered to vote in that city or township and if the signature on the application sufficiently matches what is on file for that voter. The digital image of an elector's signature on a Michigan driver's license or personal ID card, in addition to an electronic image of the elector's physical signature, would constitute an acceptable signature for an absentee ballot application.

If a county clerk receives a completed application for an absentee ballot, they would have to immediately forward it to the appropriate city or township clerk.

If a city or township clerk receives a completed application from an individual registered to vote in a different city or township, the clerk would have to immediately contact the individual to determine where they reside and should be registered to vote. If the individual is registered in a different city or township, the clerk would have to electronically forward the application to the clerk of the city or township in which the individual is registered.

AV ballot delivery

Clerks would have to include a postage prepaid absentee ballot envelope when providing an absentee ballot. Absentee ballots would generally have to be mailed or delivered to the address on the applicant's voter registration, unless the applicant requests that the ballots be sent to a different address or the ballot is delivered in person at a clerk's office. An elector could request

⁴ This provision is similar to section 759c of the Michigan Election Law, which would be repealed by SB 370. Current law requires the SOS to either revise the form or provide a separate form, while the bill would require the SOS to do both. See also the related House Bill 4699.

the ballot to be delivered to a P.O. box if the P.O. box, rather than their registration address, is where they normally receive personal mail.

A clerk could not send an absentee ballot to an applicant by first-class mail after 5:00 p.m. on the fourth day before an election.⁵ If a city or township clerk receives an absent voter ballot application after the deadline for a clerk to mail an absentee ballot and the clerk does not otherwise promptly provide a ballot to the applicant, the clerk would have to immediately notify the applicant by telephone, email, or text message, as available, that their application for an absentee ballot was rejected as not timely received and would have to notify the applicant of alternative voting methods available for that election.⁶ If the applicant does not provide an email address or telephone number, the clerk would have to notify the applicant by mail.

Under the bill, AV ballots cast by a voter who does not have *identification for election purposes*⁷ when obtaining an AV ballot from their local clerk's office and who has signed an affidavit to that effect would no longer be processed as challenged. Electors could obtain a ballot in person after providing identification for election purposes or signing an affidavit until 4:00 p.m. on the day before election day, and an elector who is in line at this time would have to be issued an absentee ballot.⁸

Verification

Currently, boards of election inspectors determine the legality of an absentee vote. Under SB 370, city and township clerks would instead determine whether an AV ballot is approved for tabulation by verifying that the elector is a registered elector who did not vote in person in that election and that the signature on the absentee ballot return envelope sufficiently matches the signature on file for that elector.

A clerk could determine that a signature on an absentee ballot application or absentee ballot envelope does not sufficiently match the signature on file for that elector only if it is significantly and obviously different from their signature on file. Slight dissimilarities would have to be resolved in favor of the elector, and an exact match would not be required.

If the information is verified, the ballot would generally have to be approved for tabulation and such a record would have to be included in the Qualified Voter File (QVF). Otherwise, the ballot would have to be rejected.

Signature curing

If a clerk determines that the signature on an absentee ballot application or return envelope is missing or insufficient, they would have to reject the application or return envelope and provide the elector with notice of the rejection and the opportunity to cure the deficiency. Clerks would

⁵ Current law provides that a clerk cannot mail a ballot after 5:00 p.m. on the Friday before the election.

⁶ An electronic notification of rejection of an application would be considered sufficient notification, as long as the necessary information is provided. Additional notice could be provided by any other method of contact.

⁷ *Identification for election purposes* is defined in section 2 of the Election Law and generally includes official IDs issued by a state, the U.S. government, the military, or a high school or institution of higher education. The full list can be found here: https://www.michigan.gov/sos/-/media/Project/Websites/sos/05mcalpine/photo_id_flyer.pdf. More information on Michigan's voter ID laws can be found here: <https://www.michigan.gov/sos/elections/upcoming-election-information/voters/election-day/a-guide-to-voter-idaffidavit-at-the-polls>. See also related House Bill 4698.

⁸ These provisions would apply to an individual who applies for an AV ballot through any means and receives the ballot in person at a clerk's office.

be required to notify electors by telephone, email, or text message, if available, of all of the following:⁹

- The nature of the deficiency that resulted in the rejection of the absentee ballot application or return envelope.
- The need to cure the deficiency in order for the application to be accepted or for the ballot to be tabulated.
- How to cure the deficiency.
- The deadline to cure the deficiency, which would be 4:00 p.m. on the fourth day before the election for a deficiency with an AV ballot application to receive a mailed AV ballot or 5:00 p.m. on the third day after an election for a deficiency with an AV ballot return envelope.
- The alternative methods of voting if the deficiency is not cured.

Cure form

Electors could complete and submit a cure form prescribed by the SOS that allows them to cure a signature deficiency by signing the statement required for the absent voter ballot application or return envelope. (The SOS would have to modify the statement to reflect that the elector is signing a cure form for the application or return envelope rather than the original application or envelope.) The SOS would also be able to instruct clerks with other options to cure a signature deficiency.

The cure form would have to be returnable and receivable electronically, in person, or by mail with prepaid postage. An elector could submit an electronic image of their signature rather than a physical signature if they will return the cure form electronically.

City and township clerks would be able to physically collect completed cure forms, and clerks would have to accept a cure form if the signature on the form sufficiently matches what is on file for that elector. If the applicant cures the deficiency before the deadline, the clerk would be required to send them an absentee ballot with a prepaid return envelope. If the signature on a cure form does not match the signature on file, the clerk would have to reject the cure form and contact the elector to provide information on other options to cure the deficiency and on alternative methods available for voting in that election.

Signature cure deadlines

Electors would have to be given an opportunity to cure a signature deficiency until 5:00 p.m. on the third day after the election. If an absentee ballot return envelope is eligible to be cured but is not cured by the close of the polls on election day, then the return envelope would have to be retained at the clerk's office and could not be turned over to the board of election inspectors or to an absent voter counting board.

If an absent voter ballot return envelope is cured after the close of the polls but before 5:00 p.m. on the third day after the election, the ballot would have to be accepted and tabulated, as long as the individual did not vote in person in that election. Return envelopes not cured by the 5:00 p.m. deadline would remain rejected.

⁹ An electronic notification of the rejection would be considered sufficient notification, as long as the necessary information is provided. Additional notice could be provided by any other method of contact.

By the sixth day after election day, each city and township clerk would have to deliver all cured absentee ballot return envelopes to the county clerk in a ballot container. The ballots in the cured envelopes would be tabulated by the county clerk in a county canvass.

Acceptance and rejection deadlines

Clerks would no longer be required to issue AV ballots in the same order that applications are received. However, Senate Bill 370 would provide deadlines for when an application must be processed.

Beginning 45 days before an election, a clerk would have to make a reasonable effort to verify or reject an AV ballot application or return envelope by the end of the next business day after the day of receipt if the clerk received the application or return envelope at least six calendar days before the election. If the clerk determines that there is a signature deficiency, they would have to notify the elector, as provided above, by the end of the next business day.

If an absentee ballot application or return envelope is received five or fewer days before an election, including on election day, the clerk would have to verify or reject the application or return envelope by the end of the day that it was received. If the clerk determines that there is a signature deficiency on the application or return envelope, the clerk would have to notify the elector, as provided above, by the end of the day.

If the clerk determines that the elector's signature on an absent voter ballot application is missing or does not sufficiently match the signature on file after 4:00 p.m. on the fourth day before the election, the elector would have to be notified of the rejection of their application.

An AV ballot application or return envelope would be considered received by a clerk on the day it comes into the physical control of the clerk's office before or during the clerk's scheduled business hours, or, if it arrives at the clerk's office after hours, the first subsequent day on which the clerk has scheduled business hours. An application or return envelope retrieved from a drop box would be considered received on the day of retrieval, if retrieved during the clerk's business hours, or the first subsequent day on which the clerk has scheduled business hours if it is retrieved after hours. An absentee ballot return envelope personally collected by a clerk or assistant would be considered retrieved when the election official comes into physical possession of the envelope.

MCL 168.759 et seq.

Senate Bill 371 would amend the sentencing guidelines provisions of the Code of Criminal Procedure to update a reference to the Michigan Election Law to reflect a paragraph numbering change that would be made by SB 370. The bill cannot go into effect unless SB 370 is also enacted.

MCL 777.11d

FISCAL IMPACT:

Senate Bill 370 would codify in statute provisions of Proposal 22-2 AV ballot applications and ballots that entail significant costs to the state and to local units of government. While some of these costs are already incurred by the state and local units independently of SB 370, this

summary provides details of cost estimates of both the bill and ballot proposal for full cost transparency.

The bill would result in significant one-time implementation and annual ongoing costs to the Department of State as well as additional costs to local units of government. The Department of State estimates initial implementation costs to municipalities to be approximately \$1.7 million for sending notifications of deficiencies, cure forms, and other required notices. Proposal 22-2 requires the state to support all local election costs of sending AV ballots and ballot applications in prepaid return envelopes. The Department of State estimates initial costs of reimbursing municipal clerks to be \$1.4 million and ongoing annual costs to be \$5.5 million. The ongoing cost estimate includes \$277,000 for an additional 2.0 FTE positions to administer the service.

The bill would also require additional staffing and IT costs to provide for confidential addresses in the Qualified Voter File and to comply with the Address Confidentiality Program Act. Implementation costs would include \$300,000 for IT development costs and \$406,300 for additional Bureau of Elections staff. An additional 2.0 FTE positions and \$244,000 would be required annually.

Absent Voter Ballot and Ballot Application Mailing

<u>Cost Type</u>	<u>Description</u>	<u>State</u>	<u>Local</u>	<u>Total</u>
One-Time				
	Prepaid postage	\$5,477,000	1,750,000	\$7,227,000
	Address Confidentiality	\$706,300	\$0	\$706,300
TOTAL		\$6,183,300	\$1,750,000	\$7,933,300
Ongoing				
	Prepaid postage	\$5,477,000	\$0	\$5,477,000
	Address Confidentiality	\$244,000	\$0	\$244,000
TOTAL		\$5,721,000	\$0	\$5,721,000

Note: Estimates provided by the Department of State.

Senate Bill 371 is a companion bill to SB 371 and amends only an MCL citation. The bill would not have any fiscal impact on the state or on local units of government.

POSITIONS:

The following entities indicated support for the bills (6-20-23):

- American Association of University Women
- American Civil Liberties Union of Michigan
- Michigan Association of Municipal Clerks
- Institute for Responsive Government
- Promote the Vote
- Voters Not Politicians

The following entities indicated support for Senate Bill 370 (6-20-23):

- Common Cause Michigan
- Michigan League of Conservation Voters

Pure Integrity for Michigan Elections indicated support for Senate Bill 371. (6-20-23)

Pure Integrity for Michigan Elections indicated opposition to Senate Bill 370. (6-20-23)

Legislative Analyst: Holly Kuhn
Fiscal Analysts: Michael Cnossen
Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.