

ABSENT VOTER WITH FEDERAL POSTCARD APPLICATION

House Bill 5086 (Substitute H-2) First Analysis (10-8-03)

Sponsor: Rep. Edward Gaffney
Committee: Local Government and
Urban Policy

THE APPARENT PROBLEM:

The Help America Vote Act was signed into law by President Bush on October 29, 2002. It creates many mandates for state and local governments to improve their voting processes, in order to establish more fairness and uniformity in the voting practices followed by all qualified electors in the United States. Having adopted an improvement plan, Michigan is eligible to receive about \$45 million during this fiscal year, and an estimated \$33 million in grants funds during the next two fiscal years. The federal funding will help election officials throughout the state replace outdated voting equipment. It also will help to improve access for voters with disabilities and those who are living outside the country, including military personnel stationed overseas.

Section 242 of the federal Help America Vote Act—sometimes called HAVA—requires that states facilitate voting by absent uniformed services voters. See [Background Information](#) below.

According to the Congressional Research Service *Report for Congress* entitled “The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues” (1-30-03), HAVA amended the Uniformed and Overseas Citizens Absentee Voting Act (P.L.99-410) which had been in effect since August 1986. The amendments extended the period covered by a single absentee ballot application; added a section that prohibits a state from refusing to accept a valid voter registration application on the grounds that it was submitted prior to the first date on which the state processed applications that year; and required a state to provide to a voter the reasons for rejecting a registration application or an absentee ballot request. In addition, HAVA recommends that states accept the federal write-in absentee ballot for general elections for federal office. The law also stipulates that voting materials be carried “expeditiously and free of postage,” and it recommends that states accept the Federal Post Card Application from uniformed services voters, their

spouses and dependents, as well as overseas voters, in order to allow for simultaneous absentee registration and requests for an absentee ballot. See [Background Information](#) below.

In Michigan, the secretary of state appointed a HAVA advisory committee, and released Michigan’s Preliminary State Plan for public comment between June 17 and June 30, 2003. Following revisions, the plan was submitted to Washington, D.C. for publication in the Federal Register. See [Background Information](#) below. The 48-page Michigan Plan sets Performance Goal 5 to increase voter accessibility, including improving the ease with which overseas electors can vote, in order to conform with the Uniformed and Overseas Citizens Absentee Voting Act.

Legislation to update the Michigan Election Law has been proposed, in order to comply with the federal voting laws.

THE CONTENT OF THE BILL:

House Bill 5086 would amend the Michigan Election Law to make absentee voting easier for those electors who are temporarily residing overseas or who are temporarily residing in the District of Columbia, including members of the armed services, and who apply to vote as absentee voters by federal postcard.

The bill specifies that a member of the armed services, or an overseas voter who had not registered but who possessed the qualifications of an elector (other than the requirement of residing in the city, township, or village on or before the thirtieth day before the next regular, primary, or special election), could apply for registration by using the federal postcard application. The Department of State, Bureau of Elections, would be responsible for disseminating information on the procedures for

registering and voting to absent armed services and overseas voters.

The bill also specifies that an elector, including a member of the armed services or an overseas voter who registers to vote by federal postcard application, and who applied to vote as an absentee voter by federal postcard would be eligible to vote in any local or state election, including a school election, that occurred within the calendar year in which his or her application had been received by the city, village, or township clerk. However, the elector could not vote in an election if the application had been received by the clerk after the 2 p.m. deadline on the Saturday before the election.

The bill would require that the city or township clerk who received a federal postcard application transmit to the village clerk, and the secretary of the school district (where applicable), the necessary information to enable them to forward an absent voter ballot throughout that calendar year. Under the bill, if the local elections official rejected a registration or absent voter ballot application that had been submitted, then the election official would be required to notify the armed services or overseas voter of the rejection.

The bill also would delete the requirement for an affidavit in the following instances. Currently under the law, an elector who is a civilian employee of the armed services outside of the United States, or a citizen who is temporarily residing outside the territorial limits of the United States, or a citizen who is residing in the District of Columbia, must include with their application for an absent voter ballot, an affidavit (in a form and manner approved by the state director of elections) that states either a) his or her qualifications as an elector at the time of departure from the U.S., or when he or she began residency in the District of Columbia, and affirming that he or she had not relinquished citizenship or established residence for voting elsewhere; or, b) that he or she was a spouse or dependent of a person described above, that he or she met the qualifications of an elector other than residency, and that he or she had not established residence for voting in another place. House Bill 5086 would eliminate these provisions of the law.

Repealed. Currently under the law, a clerk cannot cancel the registration of any member of the armed forces on active duty during his term of duty, and for 90 days after his discharge or release from active duty, if the member, his parent, guardian, or spouse

notifies the clerk in writing. House Bill 5086 would repeal this provision.

Finally, the bill also would repeal sections 504 and 509 of the Michigan Election Law. Section 504 allows electors who are physically disabled or absent from their legal residences to register elsewhere by securing duplicate registration cards from the appropriate clerks and executing in duplicate the registration affidavit before a notary public. (However, this notarization requirement does not apply to an elector who lives or is stationed in a foreign country, or who has a disability as defined in the state Persons with Disabilities Civil Rights Act.) Section 509 requires that each December, a clerk examine voter registration records, and if an elector has not voted within the preceding five years, the clerk may consider the five-year inactivity as reliable information that the elector has moved, and then follow the procedure under section 513 for canceling the registration.

MCL 168.497, 168.759 and 168.759a

BACKGROUND INFORMATION:

Help American Vote Act (HAVA). Under Section 242 of HAVA, the results of a study to ensure greater ease in voting by those overseas must be reported to the president before March 29, 2004. That report must consider the following issues, among others: the rights of residence of absent voters due to their military orders; the right to cast absentee ballots, and submit absentee ballot applications early during an election year; the appropriate pre-election mailing deadlines; the security and privacy of transmission, receipt, and processing of overseas ballots; the use of a single application by absent military voters and overseas voters for *all* federal elections occurring during the entire year, as well as a single application for voter registration and absentee ballots.

For more information about the Help America Vote Act, visit the website of the Federal Election Commission at www.fec.gov/hava/hava.htm

To review Michigan's Preliminary State Plan, visit the website of the Office of Secretary of State at www.michigan.gov/sos and click on HAVA.

HAVA amendments and recommendations. Other recommendations in Help America Vote Act (HAVA) suggest that states waive registration requirements for military and overseas voters who do not have an opportunity to register because of service or residence; send registration material, along with an

absentee ballot to be returned simultaneously; expedite the processing of voting materials; permit any required oath to be administered by a commissioned officer in the military; assure the mailing of absentee ballots to military and overseas voters at the earliest opportunity; and provide for late registration for people recently separated from the military.

In addition, HAVA requires the Secretary of Defense to establish procedures to provide time and resources for voting action officers to perform voting assistance duties; requires each state to designate a single office to provide information to all absent uniformed services; requires states to report the number of ballots sent to uniformed services and overseas votes, the number returned, and the number cast in the election; and requires the Secretary of Defense to ensure that state officials are aware of the requirements of the law, and to prescribe a standard oath for voting materials to be used in states that require such an oath.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bill would have no fiscal impact on the state. Local units of governments would experience an indeterminate increase in costs due to the requirement of forwarding absent voter ballots to absent voters who are eligible. (9-29-03)

ARGUMENTS:

For:

This legislation should be passed to update the Michigan Election Law to ensure that it complies with the federal Help America Vote Act (HAVA) as signed into law in August 2002, and also the Uniformed and Overseas Citizens Absentee Voting Act of 1986, as that act has been amended by HAVA.

For:

Fairness, accessibility, and uniformity of procedures during elections are key watchwords of a participatory democracy. This legislation makes voting—a fundamental responsibility of citizenship—easier when an elector is overseas, and most especially easier for those overseas because of military assignments.

POSITIONS:

The Office of the Secretary of State supports the bill. (10-7-03)

Analyst: J. Hunault

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