

UNIFORMED SERVICE MEMBER ABSENTEE BALLOT

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Senate Bill 117 (H-6) as reported from House committee

Sponsor: Sen. Ruth Johnson

Senate Committee: Elections

1st House Committee: Elections and Ethics

2nd House Committee: Ways and Means

Complete to 9-24-20

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

BRIEF SUMMARY: Senate Bill 117 would allow certain members of the military and their spouses to return ballots to their local clerks electronically.

FISCAL IMPACT: The bill could create additional costs for the Department of State (DOS), depending on implementation, but would have no fiscal impact on local units of government. The bill would permit DOS to develop and maintain a secure web portal on the department's website to facilitate receiving ballots. DOS would incur indeterminate programming costs if it chooses to develop the portal system. It is not yet known if those costs could be supported with the department's ongoing appropriations.

SUMMARY:

Senate Bill 117 would amend the Michigan Election Law to require the Michigan Secretary of State (SOS) to create a process to allow *eligible members* to return ballots to their local clerks electronically.

Eligible member would mean a member of a uniformed service on active duty or his or her spouse or member of the merchant marine or his or her spouse who, because of active duty or service, is absent from the U.S. and does not expect to return to the residence where the member or spouse is otherwise qualified to vote before an election.

Currently, federal¹ and state² law require that ballots must be electronically transmitted or mailed to active duty members of the military at least 45 days before an election.

The bill would require the SOS to promulgate rules that establish policies and procedures for the electronic return of voted ballots by eligible members of the military that do all of the following:

- Ensure that the signature on the electronically returned ballot agrees with the signature of the eligible member on file.
- Include additional security features considered appropriate by the SOS to ensure and verify the integrity and secrecy of those ballots.
- Ensure that an eligible member's absentee ballot is considered received on Election Day as long as it is received electronically by 8 p.m. on that day.

¹ The Uniformed and Overseas Citizens Absentee Voting Act, as amended in 2010 by the Military and Overseas Voter Act, <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act>

² MCL 168.759a; codified into Article II, Section 4 of the Michigan Constitution by Proposal 3 of 2018. HFA summary of Proposal 3: http://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2018-3_Promote_The_Vote.pdf

- Ensure that, in addition to all other election returns and records required to be provided to the county clerk, each city or township clerk provides the respective county clerk with a list of eligible members' absentee ballots received on time electronically.
- Ensure that an eligible member is actually absent from the United States.
- Ensure that a county, city, or township clerk is responsible for sending and receiving electronic ballots.

The SOS would also have the option of developing and maintaining a secure web portal on its website to facilitate the return of ballots by eligible members.

MCL 168.759a

BACKGROUND:

According to the National Conference of State Legislatures, as of September of 2019, 31 states allow some electronic return of ballots.³ Four states⁴ allow some voters to return ballots using a web-based portal, one state⁵ has a mobile voting app, nineteen states⁶ and Washington D.C. allow some return via email or fax, and seven⁷ allow some return by fax. Most of those allowing online voting reserve those rights to voters who fall under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). In the 2016 presidential election, an estimated 100,000 military voters submitted their ballots electronically.⁸

The first web-based voting system for military and overseas voters was launched by Arizona in September 2008, and used the same encryption technology used for online banking and credit card transactions.

ARGUMENTS:

For:

Proponents advanced the bill as a way to ensure that troops serving overseas are able to have their votes counted. According to committee testimony, an estimated 5,000 ballots are sent to Michiganders serving overseas, and more than a quarter are not returned on time. Use of the electronic voting practices would make voting more accessible to service members and their spouses serving overseas.

Against:

The Secretary of State testified in support of the bill as passed by the Senate, but stated that the scope was too narrow. Although the bill included service members, it excluded their spouses and dependents, who often accompany service members on their assignments. Because those spouses are disproportionately female, there was concern that such a measure would expose the state to an equal protection challenge. Reportedly, 31 states and Washington D.C. allow the electronic return of ballots, and none exclude spouses in the way the Senate-passed bill would.

³ <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>

⁴ Arizona, Colorado, Missouri, and North Dakota

⁵ West Virginia

⁶ Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, South Carolina, Utah, and Washington

⁷ California, Florida, Louisiana, Oklahoma, Rhode Island, and Texas

⁸ <https://www.businessinsider.com/22-states-that-allow-you-to-vote-online-2016-9>

Response:

The H-6 substitute adopted by the House Ways and Means committee included spouses as “eligible members” to whom the electronic voting capability would apply.

Against:

Others argued that the use of Common Access Cards (CACs) in the Senate-passed bill might seem like a good idea, but that the system is often inaccessible and prone to problems. Moreover, some U.S. citizens working overseas for entities such as the CIA, who may be intended beneficiaries of the bill, do not have CACs.

Response:

The H-6 substitute also removed reference to a “U.S. Department of Defense verified electronic signature,” which is part of a digital identification code issued by the DOD as part of the CAC. Instead of requiring use of the CAC for verification, the H-6 substitute requires that the rules developed by the SOS ensure that the signature on the ballot agrees with the signature on file.

POSITIONS:

Representatives of the Secretary of State testified in support of the bill. (3-4-20)

The following entities indicated support for the bill:

Michigan Association of Municipal Clerks (9-24-20)

Council of Election Officials (3-4-20)

Michigan Association of County Clerks (3-4-20)

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■ 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.