

TABULATE ABSENTEE BALLOTS BEFORE ELECTION DAY

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House Bills 4755 and 4756 (H-1) as reported from committee

Sponsor: Rep. Penelope Tsernoglou

Committee: Elections

Revised 8-15-23

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

SUMMARY:

House Bill 4756 would amend the Michigan Election Law to make several changes regarding absent voter (AV) ballot processing and tabulation. House Bill 4755 is a companion bill that would make complementary changes to the Code of Criminal Procedure.

House Bill 4756 would amend the Michigan Election Law to establish election day vote centers, allow AV ballots to be tabulated on the day before election day and up to eight days before election day in certain municipalities, and allow absent voters to insert their AV ballots into a tabulator at their polling place or early voting site. The bill is tie-barred to House Bills 4697¹ and 4700,² meaning that it would not take effect unless both of those bills were enacted.

Election day vote centers

House Bill 4756 would add a new section to the Michigan Election Law that would provide that if a city or township has processed at least 500 voter registrations on election day in either or both of the previous two general elections, then the board of election commissioners of that city or township could establish election day vote centers to tabulate the ballots issued to individuals who register to vote or update their voter registration on election day. A board of election commissioners that establishes an election day vote center would have to notify their county clerk at least 90 days before the election. No later than the fourth day before election day, the clerk of each city or township that establishes an election day vote center would have to post a notice that provides the location of the election day vote center in the clerk's office and, if available, on the city's or township's website.

An election day vote center would be considered a polling place, and it would have to be located in the same building where a city or township clerk conducts voter registration on election day. A city or township clerk who operates an election day vote center would have to configure the center with at least one designated tabulator and a corresponding poll book that lists the voters who were issued a ballot for that tabulator. The county clerk would then have to program the tabulators so that the results from those tabulators will be included in the unofficial and official election accumulation reports, and the number of tabulators and poll books at the election day vote center would have to conform to the way in which the county

¹ House Bill 4697 would amend provisions of the Michigan Election Law that address absent voter drop boxes, largely to incorporate changes made to the state constitution with the passage of Proposal 22-2. A summary of the bill as passed by the House can be found here: <http://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-4697-F0496BCB.pdf>.

² House Bill 4700 would also amend provisions of the Michigan Election Law to amend absent voting procedures and to incorporate changes made to the state constitution by Proposal 22-2 regarding a permanent absent voter list. A summary of the bill as passed by the House can be found here: <http://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-4700-0C1E7C20.pdf>.

clerk has programmed the tabulators. The collected registration receipts and the list of electors issued a ballot in the poll book would serve as the two required poll lists.

At least three election inspectors would have to be appointed for an election day vote center, and a political party, incorporated organization, or organized committee of interested citizens could have one challenger for every eight election inspectors assigned to an election day vote center.

Only a voter who registers to vote or updates their registration on election day could cast a ballot at an election day vote center, and they would have to use an election day vote center located in the same building where they registered or updated their registration. After registering, a voter would have to provide their voter registration receipt to an election inspector and would be subject to all applicable requirements for a voter on election day.

Election inspectors would be responsible for issuing ballots to voters and entering each voter's name in the election day vote center poll book. Inspectors would have to allow a voter to cast a ballot at the vote center in the same manner as a voter who is listed on the registration list in an election-day precinct, if the individual who was issued a registration receipt and is in line at the vote center by 8:00 p.m., including after 11:59 p.m. on election day if necessary. An individual who is in line at a city or township clerk's office or satellite office by 8:00 p.m. on election day would have to be allowed to register to vote or update their voter registration and then immediately cast a ballot at an election day vote center.

After the last voter in line casts a ballot, the election inspectors assigned to an election day vote center would have to follow the same process required at an election day polling place.

Review and approval of AV ballots for tabulation

The bill would remove provisions that prohibit clerks from opening AV envelopes before election day and that prohibit the tabulation of AV ballots before election day, in addition to other provisions related to AV ballot processing on election day. It would also remove provisions added to the Michigan Election Law in 2020 to provide for the pre-processing of AV ballots.³

Instead, city and township clerks would have to keep sealed and unopened AV ballot return envelopes in their office until delivering the envelopes to either a precinct board of election inspectors, an absent voter counting board (AVCB), or a team of election inspectors.

As close as possible to 8:00 p.m. on election day, the city or township clerk would have to collect AV ballots from the post office at which the clerk regularly receives mail.⁴ Any return envelopes containing AV ballots received from the post office or from voters who cast an AV ballot in person in the clerk's office on election day would have to be reviewed and approved

³ For a summary of 2020 PA 177, which originally authorized clerks in cities or townships with a population of at least 25,000 to begin AV ballot pre-processing on the day before election day for the 2020 general election only, see: <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-0757-059CD2C3.pdf>. 2022 PA 195 amended these provisions to remove the 2020 sunset, reduce the population minimum to 10,000, and additionally authorize pre-processing on the Sunday before election day.

⁴ Current law provides that AV ballots must be collected from the post office on election day but does not require the ballots to be collected by a specified time. Under the bill, a clerk's authorized designee could no longer collect ballots from the post office.

for tabulation before being delivered to the board of election inspectors or an AVCB for tabulation. No more than 90 days after an election, but as soon as practicable, the clerk would have to notify a voter whose AV ballot return envelope is received after the polls closed by mail, telephone, or email that their AV ballot was not tabulated for that reason.

A city or township clerk would have to review each received AV ballot return envelope to determine whether the ballot is approved for tabulation by verifying the signature on the envelope and verifying that the individual has not already voted. If an AV ballot is approved for tabulation, the clerk would have to write or stamp the date that the envelope was received and indicate that the ballot is approved. If the envelope was received on election day, the clerk would also have to write or stamp the time of receipt.

If a signature on an AV ballot return envelope is missing or insufficient, the clerk would have to reject the ballot, notify the voter, and provide the voter with an opportunity to cure the deficiency. If an envelope has been approved for tabulation by a clerk, a precinct board of election inspectors or an AVCB could not make any further signature verifications for an AV ballot return envelope.

Additionally, if a city or township does not process and tabulate AV ballots before election day, the clerk would have to appoint at least one team of two election inspectors no more than seven days before an election, with one inspector from each major political party, to assist the clerk in determining whether ballots received from overseas and military voters are approved for tabulation. Teams of election inspectors would open any envelopes that do not have the voter's signature on the outside, remove the signed voter certificate, and leave the ballot in the envelope. The clerk would then copy the certificate, and the election inspectors would put the certificate back in the envelope and reseal it. Using the copy of the certificate, the clerk would determine whether the ballot is approved for tabulation.

Absent voter counting board agreements

Currently, if a city or township clerk enters into an agreement to establish a combined absent voter counting board (CAVCB) with other participating cities or townships, to allow the clerk of another city or township located in the same county to count AV ballots for both municipalities, or to allow the county's AVCB to count AV ballots for the city or township, any AV ballot received by that clerk after 4:00 p.m. on the day before an election cannot be delivered to the CAVCB or AVCB and must instead be delivered to the voter's precinct on election day for processing and tabulation.

Under the bill, the board of election commissioners of a city or township that enters into one of the agreements listed above could authorize the use of an AVCB that only processes and tabulates AV ballots approved and received between the 4:00 p.m. on the day before the election and 8:00 p.m. on election day. The city or township would have to notify the appropriate county clerk at least 60 days before the election.

If a city or township does not enter into such an agreement and has established its own AVCB, AV ballots that are received by the appropriate clerk by 8:00 p.m. on election day and that are approved for tabulation would have to be delivered to the appropriate AVCB.

AV ballot delivery

If a city or township establishes an AVCB, and subject to the city or township's participation in early AV processing and tabulation or to an agreement with another municipality or county, the clerk of that city or township would generally have to deliver the AV ballots that have been approved for tabulation to the AVCB by the time the election inspectors for that AVCB report for duty on election day. All ballots received by the clerk by 8:00 p.m. on election day would also have to be delivered to the AVCB.⁵

If a city or township does *not* establish or participate in an AVCB for an election, the city or township clerk would have to deliver the approved AV ballot return envelopes and their list or record of the absent voters whose ballots were approved and delivered for tabulation to a board of election inspectors at an election day precinct. The board of election inspectors could not tabulate the ballots until the polls open on election day. The list or record of voters would also have to be kept in the clerk's office and available for public inspection during regular business hours, along with the clerk's received AV ballot applications.

Absent voter counting boards

The bill would remove provisions that require a city or township board of election commissioners to establish the AVCBs for that city or township and determine the number of ballots that can be counted by an AVCB in a reasonable period of time, pursuant to secretary of state (SOS) guidelines. It would also remove current provisions pertaining to delivering ballots to AVCBs, rejecting AV ballots for signature issues, allowing an individual to vote in person after applying for and receiving an AV ballot, and regulating local election officials entering and leaving an AVCB or CAVCB.

Instead, the bill would provide that ballots could not be left unattended during transitions between election inspector shifts or during any point after AV ballots are returned from their envelopes before being sealed in a ballot container. An election inspector from each major political party would have to be present, and all policies and procedures must be followed, at all times while AV ballots are being processed and tabulated.

There would be no limit on the number of AVCBs that could be assigned to a building, and the Board of State Canvassers could approve high-speed tabulators and supporting software for use as a component of an electronic voting system that could be used to tabulate AV ballots in an AVCB.

Under House Bill 4766, a city or township that has at least 250 precincts could establish at least one AVCB for each ballot form containing identical offices and candidate names, rather than one AVCB for each precinct.

Processing and tabulation before election day

The board of election commissioners of a city or township with a population of at least 5,000 or of a county that establishes an AVCB to count AV ballots for a city or township could authorize the establishment of AVCBs to process and tabulate AV ballots between 7:00 a.m. and 8:00 p.m. on any of the eight days before election day.

⁵ This provision would not apply if a city or township establishes a separate AVCB for ballots received between 4:00 p.m. on the day before election day and 8:00 p.m. on election day, as described above.

The board of election commissioners of any city or township, regardless of population, could authorize and establish an AVCB to process and tabulate AV ballots between 7:00 a.m. and 8:00 p.m. on the Monday before election day.

In order to tabulate AV ballots before election day, a county, city, or township clerk would have to submit a written notice to the SOS at least 28 days before election day. At least 20 days before an election, the SOS would have to publish on the Department of State's website a list of the cities and townships that have notified the SOS of their intent to process and tabulate AV ballots before election day. If the city or township has a website, the clerk would have to post a notice at least 18 days before the election that includes the location, dates, and hours of the AV counting place, in addition to the number of election inspectors who will process and tabulate AV ballots at the counting place.

If the location, dates, hours, or number of inspectors changes, the clerk would have to post a revised notice that includes the updated information on the website as soon as possible, but at least eleven days before the election. This notice would also have to be posted in the clerk's office. If the clerk changes the number of election inspectors after tabulation has begun, the clerk would have to post the updated number on the website and in their office by 10:00 a.m. on the day that the changes occur. If the clerk reduces the number of election inspectors but fails to post a timely notice, the number of challengers allowed at the location would have to remain the same as before the reduction in inspectors.

For each day of AV ballot processing and tabulation that occurs before election day, a participating city or township clerk would have to deliver the ballots approved for tabulation to an AVCB. A clerk could not deliver any AV ballots received on a day that early voting is conducted to an AVCB for processing or tabulation until the following day. An AV ballot could only be tabulated after the receipt of that ballot appears on the registration list (or an addendum to the list) in an early voting site and after the voter history of individuals who cast an early voting ballot on the previous day is recorded in the Qualified Voter File. If an absentee voter cast a ballot at an early voting site, the voter's AV ballot would have to be cancelled.

Each political party, incorporated organization, or organized committee of interested citizens could designate one challenger for every eight election inspectors serving at an AV counting place. If there are seven or fewer inspectors serving at a counting place, then each entity could designate one challenger. Election officials would have to follow all instructions and procedures adopted by the SOS, and the ballots would have to be processed and tabulated in the same manner and under the same requirements as election day AV ballot processing and tabulation.

The board of election inspectors would have to verify that an AV ballot return envelope is signed by the voter and that the statement determining that the ballot is approved for tabulation has been completed by the city or township clerk. If the voter's signature is missing or the statement is incomplete, the board of election inspectors would have to immediately contact the clerk.

If the voter's signature is present and the statement is complete, the board of election inspectors would have to open the envelope, remove the ballot, and compare the ballot number on the stub with the number on the face of the AV ballot return envelope without unfolding the ballot. If the ballot numbers match, the board of election inspectors would have to detach the stub and

prepare the ballot for tabulation according to the secretary of state's directions. Each approved AV ballot would then have to be inserted into the tabulator.

Once tabulation is complete for the day, election inspectors would have to secure tabulated ballots in a sealed container and then complete the poll book summary to account for all return envelopes and ballots processed and tabulated on that day.⁶ The poll book (or an addendum) would have to be signed and dated by one inspector from each major political party present at that location. The city or township clerk would have to post the number of AV ballots tabulated each day in the clerk's office and, if available, on the city or township's website.⁷ However, results could not be generated, printed, or reported before 8:00 p.m. on election day.

(Processing and tabulation at an AVCB *on* election day would begin at the time set by the board of election commissioners, but no earlier than 7 a.m.)

Photography and recording

The oath taken by any individual in attendance at an AVCB or CAVCB would have to include a statement that the individual will not photograph or otherwise record within the counting place anything other than publicly posted election results. The bill would allow the clerk or a member of the clerk's staff to administer the oath, in addition to a member of the AVCB or CAVCB.

An individual would generally be prohibited from photographing or recording anything inside an AV counting place other than posted election results. A clerk or clerk's employee, assistant, or consultant who photographs or records inside the AV counting place in fulfilling their official duties would be exempted. Additionally, an individual in charge of an ACVB could authorize news media to take wide-angled photographs or video inside the counting place if the recording were far enough away as not to disclose the face of any marked ballot. An individual in violation of these provisions would be expelled from the counting place and would be guilty of a misdemeanor.

AV ballot drop-off

House Bill 4756 would allow an absentee voter to bring their AV ballot to their polling place on election day or to their early voting site to put the ballot into a tabulator. The instructions provided with an AV ballot would have to instruct voters of the option to personally tabulate ballots at a polling place or an early voting site and of the process a voter would have to follow to do so, including the requirement to bring election for identification purposes or sign an affidavit if they do not have such identification before being allowed to tabulate their ballot.

To insert their AV ballot into a tabulator, the voter would have to put the ballot in the secrecy sleeve, bring the ballot in the secrecy sleeve to an election location, and provide all identification required of an in-person voter to the appropriate election official. If the voter

⁶ The seal number for a ballot container containing tabulated AV ballots, which must currently be recorded on the statement sheet and in the poll book, would also have to be recorded on the ballot container certificate.

⁷ City and township clerks are currently required to post the number of AV ballots received on election day and delivered to the appropriate board of election inspectors, in addition to the total number of AV ballots received and delivered to a board of election inspectors or to a AVCB before and on election day, by 9:00 p.m. on election day. HB 4756 would remove this provision.

does not bring a secrecy sleeve, an election inspector would have to provide one and instruct the voter to place their ballot in the secrecy sleeve.

If an absentee voter drops off their ballot into a tabulator, the election inspectors processing that voter would have to note that the voter returned their ballot to the election location, and that the ballot was tabulated, in the poll book.

After the polls close on election day, the board of election inspectors for each precinct would have to place the ballots in the ballot containers before sealing the container and delivering it to the city or township clerk.

If a tabulator at an election day polling place cannot be programmed to accept and tabulate AV ballots, an absentee voter could not tabulate their ballot at the polling place but could instead surrender their voted ballot to an election inspector and be issued a new ballot to be voted at the polling place.

If a city or township with at least 250 precincts is unable to program an election day tabulator to accept an AV ballot for any election in an election year, the appropriate city or township clerk would have to modify the AV ballot instruction form to remove the ability to return a marked AV ballot to an election day polling place for tabulation.

Returned AV ballots for in-person voters

Before voting in person, an absent voter must generally return their AV ballot to the board of election inspectors in their precinct, and the board of election inspectors must cancel the ballot. Under the bill, this provision would not apply to an absent voter who brings their marked AV ballot to be inserted into a tabulator at an election day polling place or an early voting site.

Spoiled ballots

Voters would have to spoil their AV ballots by 5:00 p.m. on the second Friday before an election, rather than the Friday immediately before the election. (The deadline for spoiling a lost or nonreceived AV ballot would remain unchanged.) The bill would also provide that a voter could not spoil a ballot that has been tabulated.

Damaged or defective ballots

If an AV ballot cannot be properly counted by a tabulator because it is damaged or defective, or because it was for the incorrect precinct, election inspectors from different political parties would have to make a duplicate copy of the ballot and substitute it for the damaged or defective ballot. If the original ballot was for the wrong precinct, the election inspectors could only duplicate the ballot for the candidates and proposals that remain the same at both precincts. Duplicate ballots would have to be clearly labeled as such, and the serial numbers on the duplicate ballots would have to be recorded on the original damaged or defective AV ballot.⁸

Unofficial returns

An accumulation report of unofficial results that uses the tabulated votes available after 8:00 p.m. on election day would have to be compiled and published using a format that clearly indicates the election day precinct results, the corresponding AVCB results, the corresponding early voting results, and the sum of each of the above results for each precinct and contest.

⁸ The SOS would be responsible for developing procedures to label duplicated ballots.

If a city or township with at least 250 precincts uses common ballot forms instead of the election day precinct format for AVCBs and early voting sites, the accumulation report would not report results from AVCBs or early voting sites as corresponding to election day precincts. Accumulation reports would instead have to report the results for each election day precinct and separately report the results of each AVCB and corresponding early voting results. Each common ballot form could constitute at least one separate AVCB and early voting precinct.

Repealed sections

Finally, House Bill 4756 would repeal sections 14b, 24k, and 767 of the Michigan Election Law. Sections 14b and 24k pertain to absent voter ballot secrecy envelope containers, and Section 767 pertains to the process of rejecting an AV ballot with an insufficient signature or an otherwise illegal AV ballot.

MCL 168.764a et seq.

House Bill 4755 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 and a subsection removal that would be made by HB 4756. The bill cannot go into effect unless HB 4756 is also enacted.

MCL 777.11d

FISCAL IMPACT:

The bill would result in an indeterminate increase in costs to certain cities and townships with over 500 registered voters related to compensating additional election workers and compensating staff for additional days. Costs would vary depending on the number of days before an election a municipality chooses to begin tabulating votes and the additional number of election staff and election inspectors that are needed. The need for additional election inspectors will likely raise costs to municipalities substantially. In some circumstances, early tabulation of ballots may result in a decrease in costs if it enables a municipality to compensate workers for an amount of time comparable to what is currently required, but without paying overtime wages.

The number of individuals that would photograph or video record a ballot or other election records in an absent voter counting place and subsequently be charged with a misdemeanor is not known. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

BACKGROUND:

Thirty-eight states, in addition to the U.S. Virgin Islands, allow election officials to perform various AV ballot processing duties before election day, and ten states allow tabulation to begin before election day.⁹

POSITIONS:

Representatives of the following entities testified in support of the bills (6-20-23):

- Michigan Secretary of State
- Promote the Vote

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

- American Association of University Women Michigan
- American Civil Liberties Union of Michigan
- Institute for Responsive Government
- Michigan Townships Association
- Voters Not Politicians

The following entities indicated support for House Bill 4756 (6-20-23):

- Common Cause Michigan
- Michigan Association of Municipal Clerks
- Michigan League of Conservation Voters

A representative of Pure Integrity for Michigan Elections testified in opposition to the bills. (6-20-23)

Legislative Analyst: Holly Kuhn
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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.

⁹ For more information of processing and tabulation laws in each state, see: <https://www.ncsl.org/elections-and-campaigns/table-16-when-absentee-mail-ballot-processing-and-counting-can-begin>.