

PRE-PROCESSING ABSENT VOTER ENVELOPES BEFORE ELECTION DAY

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Senate Bill 757 (H-7) as reported from House committee

Sponsor: Sen. Ruth Johnson

1st House Committee: Elections and Ethics

2nd House Committee: Ways and Means

Senate Committee: Elections

Revised 9-24-20

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

(Enacted as Public Act 177 of 2020)

SUMMARY:

Senate Bill 757 would amend the Michigan Election Law to allow clerks in cities or townships with a population of at least 25,000 to perform certain absent voter (AV) ballot pre-processing activities prior to Election Day, as long as they give notice of that action to the Secretary of State (SOS) at least 20 days before Election Day. This provision would apply only for the November 3, 2020, general election. The Department of State would have to post any written notices on its website, and the clerk would have to post the notice on the city or township website. The bill would also allow election inspectors on AV counting boards in cities or townships to work in shifts. Additionally, it would provide requirements for AV ballot drop boxes and notification requirements for AV ballot applications and ballots that were rejected for missing a signature or having one that did not match the signature on file.

Pre-processing on the day before Election Day

Currently, an AV ballot is placed in a secrecy envelope, which in turn is sent through the mail in an AV ballot return envelope (see **Background**, below). According to Senate testimony, it takes a few minutes to check the voter's signature on the return envelope, open the return envelope, remove the secrecy envelope, open the secrecy envelope, flatten the folded AV ballot, and feed the AV ballot into the tabulator.

The bill would allow the clerk or a designee to open the outer/return envelopes between 10 a.m. and 8 p.m. the day before Election Day, to verify that the ballot number on the ballot stub agrees with the ballot number on the AV ballot return envelope label, and to remove the secrecy sleeve from the outer envelope for storage in a secure container, as described below.

The election inspectors would have to record all of the following in the poll book:

- The number of AV ballot return envelopes open on the day before Election Day.
- The number of AV ballot return envelopes delivered to inspectors that did not contain a voter's signature and that were returned to the city or township clerk.
- The number of AV ballot return envelopes that were challenged, not opened by inspectors, and set aside to be processed by inspectors on Election Day.

The board of election commissioners would have to appoint election inspectors to the AV ballot pre-processing location between 21 and 40 days before the day they would be used. Inspectors could be appointed before the written notice was provided to the SOS. At least one inspector from each major political party would have to be present at the location at all times, and the SOS's policies and procedures regarding the handling of AV ballot return and secrecy envelopes would have to be followed. The inspectors could never leave the AV ballot secrecy envelopes unattended.

Pre-election day rejection of an AV ballot or application due to signature

If, before 8 p.m. on the day before Election Day, the clerk of a city or township rejected an AV ballot application or AV ballot return envelope because the signature on the application or envelope did not agree sufficiently with the signature in the qualified voter file (QVF) or because the voter failed to sign the application or envelope, the clerk would have to notify the voter within 48 hours or before 8 p.m. on the day before Election Day, whichever occurred first. The notification could take place by mail, telephone, or email.

AV ballot secrecy envelope container

After opening the outer envelopes the day before Election Day, the clerk or designee would have to then store, secure, and seal all secrecy envelopes in an *absent voter ballot secrecy envelope container* (or a traditional ballot container). The clerk would have to record the seal number in the poll book, or an addendum to the poll book, which would be signed by one inspector from each major political party present at the location on the pre-processing day. The container would have to be stored in a secure location until Election Day. If, upon opening an outer envelope, the clerk or designee discovered that the voter had inserted the AV ballot directly into the outer envelope (and had not included a secrecy envelope), the clerk or designee would have to immediately insert the AV ballot into a secrecy envelope.

Absent voter ballot secrecy envelope container would mean a ballot bag, box, transfer case, or other container used to store and secure AV ballot secrecy envelopes.

AV ballot secrecy envelope containers would have to be submitted to and approved by the SOS before they could be sold to a city or township for use at an election. To be approved, the container would have to be capable of being sealed and made of a tamper-resistant metal, plastic, fiberglass, or other material.

By October 15, 2020, each Board of County Canvassers would have to examine the containers to be used in the November 3, 2020, general election and determine whether they meet the requirements listed above. AV ballot secrecy envelopes could not be stored and secured in a container that was not approved. Clerks could either procure these approved AV ballot secrecy envelope containers at their own expense or use traditional ballot containers as described in the code.

Use of a container other than an approved AV ballot secrecy envelope container or ballot container by a city or township clerk would be a misdemeanor. Unless otherwise provided, a misdemeanor violation of the Election Law is punishable by a fine of up to \$500 or

imprisonment for up to 90 days, or both.¹ These 2020 provisions would not apply after December 31, 2020.

AV counting board procedures

Inspectors appointed to an AV counting board on Election Day would have to do all of the following:

- Verify the seal number recorded in the poll book, or an addendum to the poll book, for any AV ballot secrecy envelope container delivered to the counting board.
- Count and record the number of AV ballot return envelopes opened by inspectors on the day before Election Day and the number of AV ballot secrecy envelopes delivered to the counting board on Election Day.
- Count and record the number of AV ballot return envelopes that were challenged, not opened by inspectors on the day before Election Day, and set aside to be processed on Election Day.

AV ballot drop boxes

The bill would provide that only a city or township clerk, deputy clerk, or a sworn member of the clerk's staff, is authorized to collect AV ballots from an AV ballot drop box.

The following would not apply to AV ballot drop boxes ordered or installed in a city or township before October 1, 2020. However, if the drop box was ordered but not installed before October 1, the city or township would have to make every reasonable effort to comply.

Under the bill, an AV ballot drop box would have to meet all of the following requirements:

- Be clearly labeled as an AV ballot drop box.
- Whether indoors or outdoors, be securely locked and be designed to prevent the removal of AV ballots when locked.
- If located in an area that is not continuously staffed, be secured to prevent the removal of the AV drop box from its location.

The following would apply to an outdoor AV drop box:

- The drop box would have to be securely locked and bolted to the ground or another stationary object.
- The drop box would have to be equipped with a single slot or mailbox-style lever to allow AV ballot return envelopes to be placed in the drop box, and all other openings on the drop box would have to be securely locked.
- The city or township clerk would have to use video monitoring of that drop box.
- The drop box would have to be in a public, well-lit area with good visibility.
- The city or township clerk would have to report immediately to local law enforcement any vandalism involving the drop box or any suspicious activity occurring in the immediate vicinity.

¹ MCL 168.934: <http://legislature.mi.gov/doc.aspx?mcl-168-934>

SOS legislative report on pre-processing

Under the bill, by March 1, 2021, the SOS would have to provide a report to the House and Senate Elections committees that included all of the following:

- The number of cities and townships that performed AV ballot pre-processing activities and the names of those cities and townships.
- All of the following for each participating city or township:
 - Number of registered voters.
 - Number of active registered voters.
 - Number of voters who voted by AV ballot.
 - Number of voters who voted in person on Election Day.
 - Number of AV ballots that were not returned.
 - Number of voters on a permanent AV list, if applicable.
 - Number of ballots that had to be duplicated.
- The total number of AV ballot return envelopes that were opened on the day before Election Day.
- The total number of AV ballot return envelopes delivered to the inspectors that did not contain a voter's signature and that were returned to the city or township clerk.
- The total number of AV ballot return envelopes that were challenged, not opened by inspectors, and set aside to be processed by the inspectors on Election Day.
- The total number of AV ballot secrecy envelopes that were stored in an AV ballot secrecy envelope container.
- For each city or township that performed AV ballot pre-processing activities, whether the number of return envelopes opened on the day before Election Day matched the number of secrecy envelopes delivered to the AV counting board on Election Day.

Ballot spoilage

Senate Bill 757 would also amend the timeline for ballot spoilage. Currently, if a voter submits an AV ballot, he or she has until 4 p.m. on the day before an election to appear in person at the city or township clerk's office to submit a request that the original AV ballot be spoiled and vote a new AV ballot. To allow for the pre-processing of AV ballots, the bill would change the deadline to 10 a.m. on the day before the election.

Additionally, the current deadline for a voter who has lost his or her AV ballot or who has not received the AV ballot in the mail to submit a written request to spoil the initial ballot and provide or mail a new AV ballot is 2 p.m. on the Saturday before the election. The bill would change that deadline to 5 p.m. on the Friday before the election.

These provisions would apply beyond the November 2020 general election.

Allow election inspectors to work in shifts

Finally, the bill would allow election inspectors on AV counting boards in cities or townships to work in shifts. A second shift of AV board workers could begin at any time on Election Day as provided by the city or township clerk. However, an election inspector could not leave the voter counting place after the tallying had begun until the polls closed. (In other words, a fresh set of workers could relieve the original workers, but the original workers would still need to remain sequestered at the polling location until the polls close.)

Also, there could be no gap between shifts, and the AV ballots could never be left unattended. At all times, at least one election worker from each major political party would have to be present at the AV counting place, and applicable policies and procedures would have to be followed.

MCL 168.759 et seq. and proposed MCL 168.14b, 168.24k, and 168.761d

BACKGROUND:

A voter who has requested an absentee ballot will receive all three of the envelopes pictured below, along with the AV ballot itself. The envelope on the left is the outside envelope that voters will see initially; after voting, the voter would have to place the ballot in the secrecy sleeve, seal it, place that sleeve in the return envelope on the right, and put it in the mail. Under the bill, clerks would be able to remove the secrecy sleeves from the return envelopes and place them in a container for overnight storage, but would not be able to open the sleeves or remove the ballots. This is intended to expedite the counting process while maintaining election security.



FISCAL IMPACT:

The bill would result in indeterminate and varying fiscal impacts to cities and townships as well as a potential increase in expenditures from federal funds appropriated to the Michigan Department of State. Costs would vary based on the particular population size, existing resources, and needs of each local unit of government and how the requirements in the bill affect each of them specifically. The varying cost impact would be associated

with the capacities of each local unit to accommodate the increased use of absentee voter ballots for their voting districts and jurisdictions and their required administrative requirements associated with it for the 2020 November general election.

The bill would require the use of AV ballot secrecy envelope containers to store AV secrecy envelopes that have been removed from the AV ballot return envelopes during the early processing period provided for in the bill. These containers would be substantially similar to those containers currently required for storage of in-person ballots required under section 24k of the Michigan Election Law. The bill would permit, but not require, a city or township to procure additional containers for AV ballots from their own funds. However, if a city or township does not have an adequate number of containers for AV ballots for the general election, they will be required to purchase or obtain additional containers from their own resources.

The bill would also require the appointment of election inspectors of each political party to be present at each pre-processing site when AV ballots are being pre-processed. Each election inspector would be required to be reasonably compensated by the city or township under which they serve as provided for in sections 682 and 683 of the Michigan Election Law. Any increase in election inspector work hours and compensation would result in increased expenses to the cities and townships to which they work.

By allowing cities and townships to pre-process AV ballots and for election workers to work in shifts, the bill would alleviate processing time constraints from the increased use of AV ballots anticipated for the 2020 general election. Cities and townships may be able to realize reduced costs to the extent that these provisions would enable them to process AV ballots using existing personnel and to not seek additional paid workers.

Additionally, the bill would require AV ballot drop boxes ordered by, or installed after, October 1, 2020, to comply with a list of security-related requirements, including the requirements for cities and townships to secure and bolt the drop box to the ground or a stationary object and to ensure effective video monitoring of the drop box if it is located outdoors. If a city or township has not done so already, the bill would likely result in additional expenses to those local governments for purchasing the materials, equipment, technology, and personnel resources needed to comply with these requirements.

House Bill 4396 (S-1), which provides the annual state appropriations for FY 2020-21, contains language in boilerplate section 601 of Article 14 that requires not less than \$200,000 of federal funds for election security grants to be used to reimburse local and county elections clerks for election drop box security for the November 2020 general election. It is not yet known if this appropriation will cover all costs of local governments in complying with the bill.

The federal funds authorized for AV ballot drop boxes in House Bill 4396 are a part of one of three federal Help America Vote Act (HAVA) Election Security grants awarded to Michigan since 2018, totaling \$34.1 million, that are to be used to improve the administration and security of elections for federal office. From the grants, a balance of

approximately \$25.0 million remains unexpended. Any costs to local units or to the state would be eligible to be covered by these HAVA grants with authorization from the federal Election Assistance Commission (EAC). Other than funding earmarked for AV drop box security, money from the grants is not allocated to any of the costs mentioned above according to the spending plans for each grant submitted to the EAC by the Department of State.

POSITIONS:

Representatives of the following entities testified in support of the bill (9-22-20):

- Department of State
- Michigan Association of Municipal Clerks and the Council of Election Officials

The following entities indicated support for the bill:

- Michigan League of Conservation Voters (9-24-20)
- League of Women Voters (9-21-20)
- Michigan Townships Association (9-22-20)
- Secure Democracy (9-22-20)
- National Vote at Home Institute (9-22-20)

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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.