

Legislative Analysis



LOCAL BALLOT QUESTIONS: EARLIER FILING DEADLINES

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House Bill 4393 (Substitute H-1)
Sponsor: Rep. Dave Pagel

House Bill 4396 (Substitute H-1)
Sponsor: Rep. Rick Outman

House Bill 4394 (Substitute H-1)
Sponsor: Rep. Martin Howrylak

House Bill 4397 (Substitute H-1)
Sponsor: Rep. Rob VerHeulen

House Bill 4395 (Substitute H-1)
Sponsor: Rep. Robert L. Kosowski

Committee: Elections and Ethics
First Analysis (4-22-13)

(Enacted as Public Acts 253-257 of 2013)

BRIEF SUMMARY: The bills would modify various laws to require that local ballot questions be filed not later than 4 p.m. on the twelfth Tuesday before an election date, moving the current deadline back two weeks.

FISCAL IMPACT: The bills would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

Since August 1986, United States citizens living overseas have been ensured the opportunity to vote in stateside elections by the federal Uniform and Overseas Citizens Absentee Voting Act (P.L. 99-410). However, access to absentee ballots were often been difficult, because the un-voted ballots were slow in arriving at the potential voters' overseas addresses, victims of the global mail system and late distribution dates stateside. See *Background Information*.

To improve the voting process overall, the Help America Vote Act was signed into law by President Bush on October 29, 2002. The federal law created many mandates for state and local governments, all designed to improve their voting processes, in order to establish fairness and uniformity in voting practices, and to ensure that consistent standards apply to all qualified electors nationwide.

Section 242 of the federal Help America Vote Act (HAVA) requires that states facilitate voting by absent uniformed services voters; that is, citizens serving in the branches of the military services. Among the act's provisions are those that require U. S. citizens living or working abroad, including those in the armed services, to have access to their absentee voter ballots 45 days before the election in which the ballot must be cast by return mail.

In April 2010, the legislature enacted two new laws, Public Acts 50 and 51 of 2010. The first law allows local clerks to send absent voter ballots to overseas voters via electronic mail; the second law standardizes, at 45 days before any election, the deadline by which

local clerks must have absentee ballots on hand. Before these laws were enacted, local clerks estimated that it took 57 days to certify, mail, and receive a returned overseas ballot. With the new laws which allow the electronic transmission of a blank ballot, but require that the voted ballot be returned by mail, local elections clerks testified they could cut the ballot transmission time in half, and allow overseas voters to cast their ballots within Michigan's 45-day limit.

Now, in order to meet the 45-day HAVA limit, the election clerks who serve in cities, villages, townships, and counties have proposed an earlier filing deadline for the language of local millage requests and ballot proposals. Clerks have testified they must know the actual language that will appear on their local ballots earlier in order to have them available for distribution in a timely manner. Earlier filing deadlines would enable them to get the ballots printed and mailed to absent voters overseas, while keeping within the HAVA 45-day requirement.

Legislation has been introduced to require that local ballot questions be filed 14 days earlier than is now customary, moving the filing deadline from 70 days before an election to 84 days before an election.

THE CONTENT OF THE BILLS:

Generally speaking, the five bills would modify various laws related to elections so as to require that *local ballot questions* be filed not later than 4 p.m. on the 12th Tuesday before the election date rather than 70 days before the election date.

The bills would take effect 120 days after enactment.

House Bills 4394-4397 are tie-barred to House Bill 4393, so that none of those bills could go into effect unless House Bill 4393 is also enacted into law.

A more detailed description of each bill follows.

House Bill 4393 (H-1) would amend the Michigan Election Law (MCL 168.312 & 168.646a) to require that a school board certify its ballot question language to the local election coordinator (that is, a local clerk) not later than 4 p.m. on the 12th Tuesday before the election date, rather than 70 days before the election, as is now the requirement. Further, the bill would require the election coordinator to send a copy of the ballot question language to the county clerk of each appropriate county not less than 82 days before the election, rather than 68 days, as is now the requirement. The bill would require the same changes for all local, school district, or county ballot questions that will be voted on.

House Bill 4394 (H-1) would amend RS 16 of 1846, which concerns the election duties of township officers (MCL 41.8), to require that when a township board submits a ballot question concerning the re-establishment of its annual meeting of electors, it do so by filing a resolution with the township clerk "not later than 4 p.m. on the 12th Tuesday before the election date," rather than 70 days before the election, as is now required.

House Bill 4395 (H-1) would amend Public Act 425 of 1994 (MCL 123.1073), which provides for the creation of community swimming pool authorities, to require that authority officials file their resolutions calling for millage elections with the clerk of any participating municipality "not later than 4 p.m. on the 12th Tuesday" before the date of election, rather than 70 days before the election, as is now the requirement.

House Bill 4396 (H-1) would amend Public Act 31 of 1948 (MCL 123.958b), which provides for the creation of transportation and recreation authorities by local governments and school districts. Currently the law allows any governing body creating an authority, by a majority vote on a written resolution, to authorize the execution of a full faith and credit general obligation contract of lease with the authority, and also to submit that contract to a vote of the electors for approval. Now under the law, when this occurs, the contract must be submitted to the voters at the next general or primary election to be held not less than 70 days after the date of the resolution. House Bill 4396 would require, instead, that such contracts be submitted at the next appropriate election to be held "not earlier than the 12th Tuesday" after the date of the resolution.

House Bill 4397 (H-1) would amend the Metropolitan Councils Act (MCL 124.677) to prohibit a proposal for a tax authorized for levy by a metropolitan council from being placed on a ballot unless the proposal had been adopted by a resolution and then certified by the council not later than "4 p.m. on the 12th Tuesday" before the election, rather than not later than 70 days before the election, as is now the case. (The resolutions are certified, for inclusion on the ballot, to the county clerk of each county in which all or part of a participating city, village, or township is located.)

BACKGROUND INFORMATION:

Federal Uniformed and Overseas Citizens Absentee Voting Act

Under the Uniformed and Overseas Citizens Absentee Voting Act, passed by the U. S. Congress in 1986, an estimated six million military and overseas civilian voters gained the right to cast absentee ballots in America's federal elections.

Historically, many overseas voters face procedural hurdles and tight deadlines when they cast their ballots. According to the PEW Center on the States and the federal Election Assistance Commission, an estimated one million ballots were distributed for the 2006 election, yet only one-third were cast or counted. Further, researchers found a large discrepancy when they compared the percentages of civilians and military personnel who participated in elections. The report found: "Across the board, voter participation among military personnel is starkly lower than the participation rates for their civilian counterparts. In part, this is due to the fact that the voting process they are forced to navigate is overly complex and subject to substantial mail delays. As a result, only 22 percent of citizens serving abroad in the military voted in 2006, as compared to roughly 40 percent of the general population."

At the earlier election in 2004, the PEW "No Time to Vote Report" stated that fully 30 percent of overseas military personnel reported that their ballots arrived late or not at all.

Another 28 percent said they did not know how to get a ballot, found the process too complicated, or were unable to register.

The report concluded that 25 states and the District of Columbia needed to improve their absentee voting process for overseas military voters. Most states (including Michigan before 2010) did not provide enough time to return the ballot. When a state's process relied entirely or partially on mail delivery, military voters needed more time to complete all the steps required, and were less likely to have time to vote.

According to the Michigan Bureau of Elections, the voting process in Michigan takes 45 days. Further, the Heritage Foundation's report "America's Military Voters: Re-enfranchising the Disenfranchised" found that "based on surveys of the U.S. Postal Service and of military postal authorities, ballots should be mailed to overseas addresses at least 45 days prior to an election in order to ensure adequate time for a ballot to reach a voter and be returned." However, until Michigan's state statutes were changed in 2010, state law did not require that local clerks have absent ballots on hand 45 days before every election. For some elections, including all local elections, only 22 days were required.

In states that have allowed the electronic transmission of a blank absent voter ballot to their overseas voters for several election cycles, as Minnesota has, participation rates for military voters increased over 400 percent between 2006 and 2008. In addition, where the state previously saw 19 percent of its ballots returned, it now sees a response rate of up to 61 percent.

To review the PEW Center on the States 47-page report, "No Time to Vote: Challenges Facing America's Overseas Military Voters," visit:

http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf

Who is an overseas voter?

Michigan law defines "overseas voter" to mean any of the following: (1) An absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of an election; (2) a person who resides outside of the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (3) a person who resides outside of the United States and who, but for such residence outside of the United States, would be qualified to vote in the last place in which he or she was domiciled before leaving the United States.

As used in this section of the code, "absent uniformed services voter" is defined to mean any of the following: (1) a member of a uniformed services on active duty who, by reason of being on active duty, is absent from the place of residence where the member is otherwise qualified to vote; (2) a member of the Merchant Marine who, by reason of services in the Merchant Marine, is absent from the place of residence where the member is otherwise qualified to vote; or (3) a spouse or dependent of a member referred to in (1) or (2) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

The law defines "uniformed services" to mean the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, the commissioned corps of the National Oceanic and Atmospheric Administration, a reserve component of a uniformed service, or the Michigan National Guard as defined in Section 105 of the Michigan Military Act.

ARGUMENTS:

For:

Proponents of the bills note that during the 2009-2010 legislative session, two laws were enacted to increase the participation rates for overseas voters. First, Public Act 50 of 2010 allows local clerks to send absent voter ballots to overseas voters via electronic mail. Second, Public Act 51 of 2010 standardizes, at 45 days before any election, the deadline by which local clerks must have absentee ballots on hand. These laws were enacted to comply with Section 242 of the federal Help America Vote Act—sometimes called HAVA—which requires that U. S. citizens living or working abroad, including those in the armed services, have access to their absentee voter ballots 45 days before the election in which the ballot must be cast by return mail.

Before these laws were enacted, local clerks estimated that it took 57 days to verify, mail, and receive a returned overseas ballot. With the new laws (which allow the electronic transmission of a blank ballot, but require that the voted ballot be returned by mail), local elections clerks have been able to cut the ballot transmission time in half, and allow overseas voters to cast their ballots within Michigan's 45-day limit.

However, more statutory changes are needed, for two reasons: First, in order to meet the 45-day HAVA limit and ensure full compliance with the federal law, these bills would require an earlier filing deadline for local millage requests and ballot proposals. With these changes, clerks can know the actual language that will appear on their local ballots earlier, in order to get the ballots printed and distributed, while keeping within the HAVA 45-day requirement. Second, according to committee testimony, the earlier deadline is also needed in order to prohibit last-minute additions to the ballot which require costly, last-minute reprogramming changes in the computer software that is used statewide to complete Election Day tallies.

Response:

These bills will require that local ballot questions be filed 14 days earlier than is now customary, moving the filing deadline from 70 days before an election to 84 days before an election. Although this uniform deadline is a good idea, the Michigan Township Association observes that it will make more difficult some second efforts to renew local millages. A spokesman for the association notes that township officials sometimes schedule a millage election during the August primary election, and if the millage fails but the vote is close, they will reschedule the millage proposal for the November general election, allowing voters a second chance to fund township services. However, the new deadline for a November general election will fall less than one week after an August

primary; this is likely not enough time to certify the primary election results and place the matter before the voters once again, in November.

Reply:

Proponents of the bills acknowledge the difficulty, but argue that there are adequate options for township officials to consider. They note that a millage question can be placed before the voters on any of the four consolidated election days allowed in Michigan: those falling in February, May, August, or November.

POSITIONS:

The Secretary of State supports the bills. (4-16-13)

The Michigan Association of Municipal Clerks supports the bills. (4-16-13)

The Michigan Association of County Clerks supports the bills. (4-16-13)

The Michigan Townships Association is neutral on the bill. (4-16-13)

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■ 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.