

Legislative Analysis



UNIFORMED SERVICE MEMBER ABSENTEE BALLOT

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Senate Bill 117 (H-2) as referred to second House committee
Sponsor: Sen. Ruth Johnson

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

Senate Bill 297 as referred to second House committee
Sponsor: Sen. Paul Wojno

1st House Committee: Elections and Ethics
2nd House Committee: Ways and Means
Senate Committee: Elections
Complete to 3-20-20

BRIEF SUMMARY: Senate Bill 117 would allow certain members of the military to return ballots to their local clerks electronically, using a *U.S. Department of Defense verified electronic signature*. Senate Bill 297 would define that term.

FISCAL IMPACT: The bills 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 bills 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.

THE CONTENT OF THE BILLS:

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 member of the merchant marine 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 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 develop policies and procedures for the electronic return of voted ballots by eligible members of the military that do all of the following:

- Allow use of a *U.S. Department of Defense verified electronic signature* for verification purposes.
- Provide that a member who is unwilling or unable to provide such a signature is ineligible for electronic return.

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

- 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.
- 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.

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. Electronic return by those individuals would have to be available no later than the 2020 August primary election.

MCL 168.759a

Senate Bill 297 would amend the Michigan Election Law to define *U.S. Department of Defense verified electronic signature*, for purposes of the Law, as a certificate-based digital identification code issued to qualified personnel by the U.S. Department of Defense (DoD) as part of the Common Access Card (CAC card), or its successor.

[Note: The Common Access Card is a "smart" card, about the size of a credit card, that serves as the standard identification for active duty uniformed Service personnel, Selected Reserve, DoD civilian employees, and eligible contractor personnel. It also provides access to buildings and controlled spaces as well as DoD computer networks and systems.]

Proposed MCL 168.18a

The bills are tie-barred together, meaning neither can take effect unless both are enacted.

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.

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>

HOUSE COMMITTEE ACTION:

The House Elections and Ethics committee adopted an H-2 substitute for SB 117. The substitute does all of the following:

- Expands the definition of *eligible member* (and uses that term throughout the bill).
- Requires the SOS to establish policies and procedures for implementation of the bills (instead of promulgating rules to establish policies and procedures).
- Requires the SOS to include additional security features as needed.
- Provides that a ballot returned by 8 p.m. on Election Day be considered received on that day.
- Ensures that city and township clerks inform their respective county clerks of all ballots received in this manner.
- Removes an implementation date of no later than the August 2020 primary election.

ARGUMENTS:

For:

Proponents advanced the bills 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 CAC card would ensure that the elections are run securely, while also making them more accessible to service members.

Against:

The Secretary of State testified in support of the bills but stated that the scope was too narrow. Although the bills include service members, they exclude 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 bills would.

Others argued that the use of CAC cards 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 bills, do not have CAC cards.

POSITIONS:

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

The following entities indicated support for the bills (3-4-20):

Michigan Association of Municipal Clerks
Council of Election Officials
Michigan Association of County Clerks

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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.