



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 117 (Substitute S-1 as reported)
Senate Bill 297 (as reported without amendment)
Sponsor: Senator Ruth Johnson (S.B. 117)
 Senator Paul Wojno (S.B. 297)
Committee: Elections

Date Completed: 8-1-19

RATIONALE

Generally, a member of a uniformed service who is serving overseas and is absent on the date of an election is still able to vote in that election. Upon request, a service member is sent a ballot electronically 45 days in advance of the election date, and he or she must print out and mail a physical copy back to their local clerk in Michigan by 8 PM on the election date. The perceived issue with this process is that members who are serving overseas do so in remote locations with limited access to mail, printers, and the internet. This makes it more difficult for service members to submit their ballots on time, which may lead to disenfranchisement if those individuals believe their ballots will not be received on time and are discouraged from voting. To address these issues, it has been suggested that certain individual serving overseas be allowed to submit their ballots electronically.

CONTENT

Senate Bill 117 (S-1) would amend the Michigan Election Law to do the following:

- **Allow a member of a uniformed service or the Merchant Marine who, by reason of his or her service, was absent on the date of an election from the place of residence where he or she otherwise was qualified to vote to return a voted ballot electronically.**
- **Require Secretary of State (SOS) to promulgate rules that established policies and procedures for the electronic return of voted ballots by eligible members.**

Senate Bill 297 would amend the Michigan Election law to define "United States Department of Defense verified electronic signature" as the certificate-based digital identification code issued to qualified personnel by the U.S. Department of Defense as part of the CAC, or its successor.

Senate Bill 117 and Senate Bill 297 are tie-barred.

Senate Bill 117 (S-1) is described below.

Electronic Return of Voted Ballot; Uniformed Services Voter

The Michigan Election Law allows an absent uniformed services voter or an overseas voter to use the Federal write-in absentee ballot, in accordance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), at a regular election or special election to vote for a local, State, or Federal office or on a ballot question. An absent uniformed services voter or an overseas voter who uses the Federal write-in absentee ballot must return his or her voted Federal write-in absentee ballot by mail to the appropriate clerk.

"Uniformed services" means the Army, Navy, Air Force, Marine Corps, or Coast Guard, the Commissioned Corps of the Public Health Services, the Commissioned Corps of the National Oceanic and Atmospheric Administration, a reserve component of a uniformed service, or the Michigan National Guard.

The Law also requires the clerk of a county, city, township, or village, upon the request of an absent uniformed services voter or overseas voter, to electronically transmit an absent voter ballot to the voter. The voter must print the absent voter ballot and return the voted ballot by mail to the appropriate clerk.

The bill would allow a member of a uniformed service on active duty, by reason of being on active duty, or a member of the Merchant Marine, by reason of service in the Merchant Marine, who was absent from the United States and did not expect to return to the residence where the member otherwise was qualified to vote before an election to return a voted ballot electronically to the appropriate city or township clerk to be counted under the policies and procedure established by the SOS.

Promulgation of Rules

The Secretary of State would have to promulgate rules that established policies and procedures for the electronic return of voted ballots by eligible members. In doing so, the SOS would have to require an eligible member to use a U.S. Department of Defense verified electronic signature, so that the identity of the eligible member could be verified using those policies and procedures. A member who was unable or unwilling to provide a U.S. Department of Defense-verified electronic signature would not be eligible to return a voted ballot electronically. "Eligible member" would mean a member of a uniformed service on active duty or a member of the Merchant Marine.

The Secretary of State would have to take reasonable steps to ensure the integrity and secrecy of voted ballots returned electronically. The Secretary of State could develop and maintain a secure web portal on the SOS website to facilitate the electronic return of voted ballots by eligible members. The Secretary of State would have to promulgate the rules to implement the bill by January 1, 2020, and would have to allow for the electronic return of voted ballots by eligible members no later than the 2020 August primary election.

MCL 168.759a (S.B. 117)
Proposed MCL 168.18a (S.B. 297)

BACKGROUND

The Uniformed and Overseas Citizens Absentee Voting Act

The UOCAVA was signed into law in 1986, and was implemented in 1988. The Act provides resources to overseas absentee voters and enables them to use the Federal Write-In Absentee Ballot if they have not received a ballot from their local clerk in a timely manner. The Act established the Federal Voting Assistance Program, which implements the UOCAVA through the Department of Defense. The Program gives resources and information to overseas voters to assist them in the voting process. The Act also established the Federal Post Card Application as a method to apply for an absentee ballot or to register to vote while overseas.

The Military and Overseas Voter Empowerment (MOVE) Act

The Michigan Constitution and statute now reflect the changes that were made under the Federal MOVE Act. The MOVE Act, enacted in 2009, amended the UOCAVA to update the process of overseas voting. The Act requires clerks to transmit ballots to overseas voters electronically if requested to do so by a voter. The Act also requires clerks to send validly requested absentee ballots to UOCAVA voters at least 45 days before the election date for each election. The Act maintains postal mail as the default method for returning ballots.

Registering for Overseas Voting

Each year, a service member must go to the Federal Voting Assistance Program website and submit a completed Federal Post Card Application to request an absent voter ballot, which may be sent by electronic mail, fax, or regular mail. This allows the service member to receive a ballot to vote in all elections during that calendar year. Under the MOVE Act, states must ensure the service member receives a ballot at least 45 days in advance of the corresponding election. If a service member applies within that timeframe, he or she does not receive his or her ballot 45 days before the election, but the clerk must still send the member a ballot as soon as possible.

Common Access Card (CAC)

Every service member is issued a CAC. The CAC is the size of a credit card with a similar circuit chip and stores 144 kilobytes of data and memory. The CAC meets or exceeds applicable privacy laws and Geneva Convention requirements. The information stored on the CAC cannot be retrieved without a personal identification number and the appropriate system access to secure CAC applications necessary to interpret the data. All service members must use their CAC to gain access to the internet, e-mail, and other computer services at overseas bases. Two-factor authentication also is required for access to e-mail. The Department of Defense issues a verified electronic signature for each service member. This electronic signature is a certificate-based digital identification code issued to qualified personnel by the U.S. Department of Defense as part of the CAC.

Electronic Ballot Submission in Other States

According to the National Conference of State Legislatures, as of July 2018, 19 states, including Michigan, currently do not allow the electronic submission of ballots. Voters in these states must use postal mail for any absentee voting, including overseas service members. Twenty-three other states allow the submission of ballots by e-mail for overseas service members.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The return rate of completed ballots for overseas service members is too low. Of the service ballots that are requested from each city clerk, many ballots are received late or are not received at all. Those not received may have been lost in the mail or may never have been sent because the voters believed that their ballots would not reach the clerk in time to count. Service members should be allowed to return their ballots electronically to increase the return rate for overseas service ballots.

Service members often are serving in remote areas with limited access to the internet. Internet connections in these areas can be faulty, so attachments may be difficult to open. Beyond that, these individuals may not have access to paper and a printer. All of these circumstances make it more difficult for uniformed members serving overseas to vote. Unexpected circumstances, delays, or routine rotations can isolate members for weeks or months without mail. The mail leaves every couple of weeks and must travel through several local posts before heading overseas. The complications of navigating international mail in remote locations make it difficult for service members to return their ballot by mail. Electronic mailing would make it easier for overseas service members to vote.

Response: Receiving late ballots is not unique to ballots mailed from service members; it is an issue with all absentee ballots. Accordingly, the bill's scope is too narrow as it would address only service member ballots. Instead, the bill should address the concerns of all absentee ballot voters.

Alternatively, the bill should be expanded to allow military spouses, U.S. personnel, and civilians working overseas to submit their ballots electronically, as these citizens also may have difficulty in navigating international mail to return ballots on time.

Furthermore, the low return rate for overseas service member ballots could be the result of a disinterest in voting after viewing the ballot or other reasons not related to a lack of resources. More evidence is needed to show that allowing the electronic submission of ballots would be an effective solution to increase the return rate of ballots from overseas service members.

Legislative Analyst: Carlee Knott

FISCAL IMPACT

There could be additional costs for the Department of State to promulgate rules to establish policies and procedures for the electronic return of voted ballots by eligible members. The bill also authorizes the Department to develop and maintain a secure web portal on its website to facilitate the electronic return of voted ballots by eligible members. The Department's costs to promulgate rules should be minimal and would be absorbed within its annual appropriations. The costs for developing a web portal could require additional appropriations, however, the bill makes this optional for the Department. The Department's ability to absorb the cost within current appropriations would depend on the actual costs of developing the web portal and on its capabilities to add this portal to its current website.

Fiscal Analyst: Joe Carrasco

SASVA1920\117a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.