

PROVISIONAL BALLOTS

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Senate Bill 303 (H-1) as reported from House committee
Sponsor: Sen. Tom Barrett

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

Senate Bill 304 (H-1) as reported from House committee
Sponsor: Sen. Curtis S. VanderWall

House Committee: Elections and Ethics
Senate Committee: Elections
Complete to 6-24-21

SUMMARY:

Senate Bills 303 and 304 would each amend the Michigan Election Law. Senate Bill 303 would provide that a voter must vote a provisional ballot if he or she does not have his or her ID or if his or her signature is determined not to match the digitized signature in the electronic poll book on election day. Senate Bill 304 would require a voter of a provisional ballot to verify his or her voter registration record or establish his or her identity and residence within six days after the election for his or her vote to be counted.

Senate Bill 303 would eliminate the current requirement that a voter who does not have his or her *identification for election purposes* at the polls must sign an affidavit to that effect and be subject to challenge under section 727 of the act. Instead, a voter without his or her ID would have to vote a provisional ballot to be processed after the election (see the description of Senate Bill 304, below).

Identification for election purposes means any of the following:

- A driver's license or enhanced driver's license issued by this state.
- An official state personal identification card or enhanced official state personal identification card issued by this state.
- A current driver's license issued by another state.
- A current state personal identification card issued by another state.
- A current photo identification card issued by a state government.
- A current United States passport or a current photo identification card issued by the federal government.
- A current military photo identification card.
- A current tribal photo identification card.
- A current student photo identification card issued by a high school in this state or an accredited degree- or certificate-granting college or university, junior college, or community college located in this state.

The bill also would revise procedures regarding voters' signatures, including requiring the electronic poll book to include digitized signatures, requiring election officials to compare those signatures with the signature on the voter's application to vote, and requiring voters to vote a provisional ballot if their signatures are determined not to match.

Currently, if a voter's signature in the qualified voter file (QVF) is available in the polling place, the election official must compare it to the signature on the voter's application to vote. If the signatures do not match, the voter's vote is automatically challenged and the procedures for challenging a voter must be followed.

The bill instead would require a voter's digitized signature to be included in the electronic poll book used in the polling place, and the election official would have to compare it to the voter's signature on the application to vote. If the signatures were determined not to match, the voter would have to vote a provisional ballot to be processed after the election (see SB 304, below).

MCL 168.523

Senate Bill 304 would modify the procedures regarding a provisional ballot that is not counted on election day but is secured for verification after the election. This type¹ of provisional ballot is now issued under the following circumstances:

- The voter is not listed on the voter registration list, is not in the correct precinct, and refuses to go to the correct precinct.
- The voter is not listed on the voter registration list and has affirmed on a sworn statement that he or she has registered and is eligible to vote, but the election inspector cannot contact the city or township clerk to verify the statement.
- The voter is not listed on the voter registration list and is unable to present valid identification with a current residential address.
- The voter is not listed on the voter registration list and presents identification that does not have his or her current residential address as well as a document that does have his or her current address (which can include a utility bill, bank statement, paycheck, government check, or other government document).

As described above, Senate Bill 303 would require issuance of this type of *provisional ballot* to voters who are listed on the voter registration list but who do not have their ID or whose ballot application signature is judged not to match their signature in the electronic poll book.

Provisional ballot is defined in the act as a special ballot utilized for an individual who is not listed on the voter registration list at the polling place that is tabulated only after verification of the individual's eligibility to vote.

Currently, a provisional ballot is put in a provisional ballot envelope and delivered to the city or township clerk after polls close. For this type of provisional ballot, the election inspector must provide the voter with a notice that the voter's information will be verified within six days after the election to determine whether the ballot will be counted and, if not, to determine why it was not counted.

The bill would add that the notice also must indicate that the provisional ballot will only be counted if, within six days after the election, the voter verifies his or her voter registration record or establishes his or her identity and residence with the appropriate city or township

¹ A voter who is not listed on the voter registration list who affirms on a sworn statement that he or she has registered and is eligible to vote and who presents valid identification with a current address can vote a provisional ballot that is processed on election day as a challenged ballot if the relevant city or village clerk, when contacted by the election official, verifies the voter information and information in the sworn statement.

clerk. The voter could establish identity and residence by using the required identification for election purposes and, if that ID does not include the voter's current address, a current utility bill, bank statement, paycheck, government check, or other government document.

The notice also would have to indicate that individuals can obtain, for free, an official state personal identification card that can be used to establish their identity and residence with the proper city or township clerk. (These cards can now be obtained for free only under certain specified circumstances. However, House Bill 5007, which must be enacted for SB 304 to become law, would eliminate the fees for obtaining a new or renewal state personal ID card.)

Under both current law and the bill, within six days after an election, the city or township clerk must determine whether each person who voted a provisional ballot was eligible to vote.

Provisional ballots are currently tabulated by the city or township clerk after they are verified as valid. The bill would provide for the board of county canvassers to tabulate the provisional ballots. A city or township clerk would have to forward verified valid ballots to the board of county election canvassers within seven days after the election.

The board of county canvassers could not count a provisional ballot unless the voter had verified his or her valid voter registration record to the city or township clerk or established his or identity using identification for election purposes (and, if that ID does not have the voter's current address, a current utility bill, bank statement, paycheck, government check, or other government documents).

The board of county canvassers would have to maintain the secrecy of the ballot when counting provisional ballots. The bill would require the secretary of state to establish procedures by rule for a board of county canvassers to follow in counting provisional ballots.

Finally, the bill would remove references to the affidavit that voters now must sign if they do not have ID with them at the polls. The bill would eliminate provisions that require a city or township clerk to report to the county clerk the number of those affidavits signed by voters and that require the county clerk to report the number of such affidavits to the secretary of state.

MCL 168.523a, 168.813, and 168.829

Enacting provisions

Senate Bills 303 and 304 are tie-barred to one another, and SB 304 is also tie-barred to House Bill 5007. A bill cannot take effect unless each bill it is tie-barred to is also enacted into law.

[As described above, House Bill 5007 would amend 1972 PA 222, the official state personal identification card act, to eliminate fees for getting or renewing an official state personal identification card.²]

² <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-5007-4CE39938.pdf>

FISCAL IMPACT:

Senate Bills 303 and 304 would have no fiscal impact on the state or local units of government.

POSITIONS:

A representative of the Secure Elections Project testified with no position on the bills. (6-23-21)

Representatives of the following entities testified in opposition to the bills (6-23-21):

- Department of State
- Michigan Association of Municipal Clerks
- Michigan Democratic Party
- ACLU of Michigan

The following entities indicated opposition to the bills (6-23-21):

- Michigan Association of County Clerks
- Promote the Vote
- Wayne County Executive
- Michigan State Employee Retirees Association
- American Association of University Women of Michigan
- Michigan Anti-Defamation League
- Sierra Club
- Clean Water Action
- Michigan League of Conservation Voters

Legislative Analysts: Jenny McInerney
Rick Yuille
Fiscal Analyst: Michael Clossen

■ 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.