

ALLOW ABSENTEE BALLOT PRE-PROCESSING AND REQUIRE COUNTY CLERKS TO REMOVE DECEASED VOTERS FROM QUALIFIED VOTER FILE

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House Bill 4491 (S-1) as passed by the Senate
Sponsor: Rep. Andrew Fink
House Committee: Elections and Ethics
Senate Committee: Elections
Complete to 9-28-22

(Enacted as Public Act 195 of 2022)

SUMMARY:

House Bill 4491 would amend the Michigan Election Code to require county clerks to update the qualified voter file (QVF) to cancel the registration of deceased electors in their counties at least *monthly*. It would also allow local clerks to begin processing absentee ballots two days before an election.

Voter registration and QVF updates

The QVF was mandated by 1994 PA 441 and implemented January 1, 1998. It lists all individuals who are registered to vote in Michigan, including their names, current addresses, address histories, and other identifying information. The QVF is especially important in Michigan's highly decentralized election system, where voter records are managed by over 1,700 local officials.

Under current law, county clerks forward a list of potential voters (individuals over 18 years of age) who have died to city and township clerks at least on a monthly basis, and those local clerks are responsible for canceling the voter registration of all deceased voters.

The bill would instead generally shift this responsibility to county clerks.

Beginning January 1, 2023, each time the county clerk updated the QVF to cancel the registration of deceased potential voters (under the bill, those over 17-1/2 years of age), the secretary of state (SOS) would have to send an electronic notification to the applicable city or township clerk within 24 hours. City and township clerks would then complete the cancellation. At a minimum, the bill would require county clerks to update the QVF themselves to account for these deaths by at least the second business day of each month (with more frequent updates as Election Day approaches; see below).

Additionally, if the SOS updated the QVF to cancel the registration of a deceased voter, the SOS would have to send an electronic notification to the applicable city or township clerk within 24 hours. The SOS would have to notify city and township clerks of any voter registrations that need to be canceled after 4 p.m. on the day before an election so that the clerk can cancel the registration.

Beginning January 1, 2023, between the first Friday in July before an August election and 16 days before that election, and between the first Friday in October before a November election and 16 days before that election, each county clerk would have to update the QVF to remove deceased voters weekly, by the close of business on Friday. Between 15 days and one day before an election, each county clerk would have to update the QVF daily by close of business. The county clerk would have to notify city and township clerks of any voter registrations that need to be canceled after 4 p.m. on the day before an election so that the clerk can cancel the registration.

After receiving notice that a voter was issued an absentee ballot before passing away, the appropriate city or township clerk would have to make a good-faith effort to remove the absent voter ballot return envelope or returned ballot from processing and spoil that ballot.

Pre-processing on the Sunday and Monday before Election Day

Additionally, House Bill 4491 would remove a 2020 sunset on provisions that allowed 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 gave notice of that action to the SOS at least 20 days before Election Day. These provisions currently only applied for activities relating to the November 2020 general election, but the bill would enact these provisions indefinitely for all primary and general elections. The minimum population would also be reduced from 25,000 to 10,000.

City and township clerks would have to post the notice they provided to the SOS on that city's or township's website at least seven business days before the relevant election. If the location or hours of the pre-processing activities change from what was listed in the original posting, the local clerk would have to post a new notice at least 24 hours before pre-processing begins. The SOS would have to post any notices received from local clerks regarding pre-processing for the November 2022 election to the Department of State's website by October 29, 2022. Any notice regarding pre-processing for future elections (starting January 1, 2023) would have to be posted within seven days after receipt from the local clerk.

Clerks or designees would be allowed to open the outer/return envelopes containing an absentee ballot inside a secrecy sleeve between 7 a.m. and 8 p.m. on the Sunday and Monday 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 opened on the Sunday before Election Day.
- The number of AV ballot return envelopes opened on the Monday 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. The board would have to appoint at least one election inspector from each major political party and as close to an equal number of inspectors from each major party as possible. At least one inspector from each major party would have to be present at the pre-processing 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.

A political party, incorporated organization, or organized committee of interested citizens could designate one election challenger for every six election inspectors serving at each pre-processing location. If there are fewer than five inspectors serving at a pre-processing location, then one of these entities could designate one challenger for the location. Election challengers would have the same rights and obligations that currently apply to challengers serving at polling places and counting boards on Election Day.

A voter who returned an absentee ballot would have until 5 p.m. on the Friday before an election, rather than 10 a.m. on the day before an election, to spoil that ballot and cast a new one.

AV ballot secrecy envelope containers

Under the Michigan Election Law, AV ballot secrecy envelope containers must be submitted to and approved by the SOS before they can be sold to a city or township for use at an election. To be approved, the container must be capable of being sealed and made of a tamper-resistant metal, plastic, fiberglass, or other material. Clerks may either procure these approved AV ballot secrecy envelope containers at their own expense or use traditional ballot containers as described in the code.

House Bill 4491 would require that, before October 20, 2022, each board of county canvassers would have to examine the AV ballot secrecy envelope containers to be used during the November 8, 2022, general election and determine whether they meet the requirements listed above. If a city or township does *not* use these containers, that local unit's board of county canvassers would have to examine any AV ballot secrecy envelope containers to be used in a 2024 August and/or November election by June 1, 2024.

By June 1, 2026, and by June 1 every four years thereafter, each board of county canvassers would have to reexamine the secrecy envelope containers to be used at the upcoming August and/or November election.

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 Sunday before Election Day.
- Count and record the number of AV ballot return envelopes opened by inspectors on the Monday before Election Day.
- Count and record 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 Sunday before Election Day, and set aside to be processed on Election Day.
- Count and record the number of AV ballot return envelopes that were challenged, not opened by inspectors on the Monday before Election Day, and set aside to be processed on Election Day.

AV ballot drop boxes

The Michigan Election Law currently requires AV ballot drop boxes ordered or installed after October 1, 2020, to meet the following criteria:

- 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 currently apply to an outdoor AV drop box ordered or installed after October 1, 2020:

- The drop box must be securely locked and bolted to the ground or another stationary object.
- The drop box must 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 must be securely locked.
- The city or township clerk must use video monitoring of that drop box.
- The drop box must be in a public, well-lit area with good visibility.
- The city or township clerk must report immediately to local law enforcement any vandalism involving the drop box or any suspicious activity occurring in the immediate vicinity.

Drop boxes that were not ordered and installed in a city or township before October 1, 2020, are currently exempt from the above requirements.

House Bill 4491 would provide that *all* drop boxes must generally meet the requirements by October 20, 2022. However, drop boxes ordered or installed after October 1, 2020, would have to be equipped with video monitoring by January 1, 2023, while drop boxes

ordered or installed before this deadline would remain exempt from the video monitoring requirement.

Beginning October 20, 2022, and until the 2022 November general election, a city or township clerk, deputy clerk, or sworn staff member would have to regularly inspect each drop box to confirm that it complies with this section's requirements. Beginning January 1, 2023, these individuals would have to regularly inspect the drop boxes starting 75 days before each Election Day and up through the election. Starting 15 days before Election Day, they would have to collect any deposited election materials from the drop box on any day that the clerk's office is open for business.

When a clerk, deputy clerk, or sworn staff member collects absent voter ballot return envelopes, that individual would have to immediately return the envelopes to the clerk's office unless travelling to another drop box. All absent voter ballot return envelopes would have to be transported in an approved ballot container or AV ballot secrecy envelope container.

Beginning October 20, 2022, city and township clerks would have to record each time absentee ballot return envelopes are collected from a drop box in that city or township, except for drop boxes that are located on the grounds of a clerk's office or a satellite office that is staffed by the clerk's employees. Clerks would have to maintain this documentation for at least 22 months after the election, which would have to include:

- The date the return envelopes were collected from the drop box.
- The number of return envelopes collected from the drop box.
- The names of the individuals who collected the return envelopes.
- The location in the city or township of the drop box.

Currently, clerks are required to post the number of AV ballots distributed to absentee voters and the number of AV ballot return envelopes received by and on Election Day.

House Bill 4491 would require local clerks to maintain a record of received AV ballots that reconciles the number of AV ballots received by the clerk as recorded in the QVF with the number of AV ballots that were tabulated at the polling places or absent voter counting boards in that city or township.

SOS legislative report on pre-processing

On March 1, 2023, and every two years thereafter, 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 Sunday before Election Day.
- The total number of AV ballot return envelopes that were opened on the Monday 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 Sunday and Monday before Election Day matched the number of secrecy envelopes delivered to the AV counting board on Election Day.

House Bill 4491 is tie-barred to Senate Bills 8 and 331, which means that it would not take effect unless both SB 8 and SB 311 were enacted.

MCL 14b et al.

BACKGROUND:

The absentee ballot pre-processing provisions are generally an extension of changes made to the Michigan Election Law by 2020 PA 177 to address the projected increase in absentee ballots for the November 3, 2020, general election.¹ For that election only, the act granted local clerks one day of pre-processing and created requirements for ballot drop boxes (exempting those ordered and installed before October 1, 2020). House Bill 4491 would enact the expired changes indefinitely for future elections while adding additional security and documentation requirements.

FISCAL IMPACT:

House Bill 4491 could result in marginal election administration costs to certain cities and townships. The bill could require certain municipalities with limited staff to hire an additional limited-term staff person to cover election administration responsibilities otherwise performed by qualified members of the clerk's staff that are required by the bill to collect absent voter ballots daily at each absent voter drop box in that municipality.

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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.

¹ <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-0757-059CD2C3.pdf>