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Senate Bill 259 (as enacted)
Sponsor: Senator Paul Wojno
Senate Committee: Elections and Ethics
House Committee: Elections

PUBLIC ACT 25 of 2023

Date Completed: 5-3-23

RATIONALE

Absent uniformed services voters and overseas voters may vote in local, State, and Federal elections through the absent ballot system. Absent uniformed services voters may vote by mail or, beginning January 1, 2024, may electronically return a voted ballot to the appropriate city or township clerk. Overseas voters, such as family members of absent uniformed services voters or Federal employees, may vote by mail. These voters may reside in locations without internet access or proper postal infrastructure, or they may experience problems with international postage. These circumstances may lead to mailing delays that prevent absent overseas voter ballots from reaching an election clerk by 8 p.m. on election day. In November 2022, Proposal 2 addressed this concern by amending the State Constitution to extend the ballot receipt deadline by six days for absent overseas voter ballots. With several municipalities holding elections in May, August, and November, it was suggested that the Law be amended to reflect the provisions of Proposal 2.

CONTENT

The bill amended Chapter 28 (Holding of Elections) of the Michigan Election Law to do all the following:

- **Modify the timeline for the return of absent uniformed services voter and overseas voter ballots postmarked on or before election day to agree with changes made to the timeline by Proposal 22-2 (see BACKGROUND).**
- **Require a city or township clerk to deliver absent overseas voter return envelopes with missing or unclear postmarks to the appropriate county clerk, who must determine if those ballots are timely received and, if they are, count and tabulate them accordingly.**
- **Require each city or township clerk, within seven days after election day, to deliver absent overseas voter ballots received within the six-day extension to the county clerk without opening them.**
- **Require the county clerk to tabulate absent overseas voter ballots considered timely received in a meeting of the board of county canvassers.**
- **Require that each absent uniformed services voter and overseas voter who requests an absentee overseas voter ballot receive a set of instructions reflecting the bill's provisions.**

The bill took effect May 1, 2023.

Definitions

An "overseas voter" means any of the following:

- 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.
- An individual who resides outside of the United States and is qualified to vote in the last place in which the individual resided before leaving the United States.
- An individual 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 the individual was domiciled before leaving the United States.

An "absent uniformed services voter" means a member of a uniformed service on active duty, a member of the merchant marine, or a spouse or dependent of a member of the uniformed service or merchant marine, who, by reason of the active duty or service of the member, is absent from the place of residence where he or she is otherwise qualified to vote.

The "uniformed services" means the Army, Navy, Air Force, Marine Corps, Space Force, or 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 Army National Guard or Air National Guard.

A "member of the merchant marine" means an individual, other than a member of a uniformed service or an individual employed, enrolled, or maintained on the Great Lakes or the inland waterways, who is either of the following:

- Employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States.
- Enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States, or a vessel of foreign-flag registry under charter to or control of the United States.

A "postmark" means any type of mark applied by the United States Postal Service or any delivery service to a ballot return envelope, including a bar code or any tracking marks, which indicates when a ballot was mailed.

Absentee Overseas Voter Ballots

Among other things, Chapter 28 of the Michigan Election Law prescribes the process for an overseas voter or absent uniformed services voter to request, fill out, and return an absentee overseas voter ballot. At least 45 days before an election, a county, city, or township clerk must electronically transmit or mail as appropriate an absentee overseas voter ballot to each absent uniformed services voter or overseas voter who applied for an absentee overseas voter ballot 45 days or more before an election. Proposal 22-2 (see **BACKGROUND**) amended the State Constitution to require an absentee overseas voter ballot be tabulated if it was postmarked by election day and the appropriate election official received it within six days after the election.

The bill added the following provision to the Law's current timeline to agree with Proposal 22-2's amendments. If a city or township clerk receives an absentee overseas voter ballot within six days after the election, and the ballot return envelope for an absent uniformed services voter or overseas voter is postmarked on or before election day, the clerk must consider the ballot as timely received and count and tabulate the ballot.

Under the bill, if an absentee overseas voter ballot return envelope is received by mail by the city or township clerk within six days after the election and the postmark on the envelope is missing or unclear, the city or township clerk must deliver that envelope to the clerk of the county in which the city or township is located. If the county clerk determines that the absent voter ballot return envelope or the voter certificate inside the envelope was dated on or before election day by the military or overseas voter, the county clerk must consider that absent overseas voter ballot as timely received.

Within seven days after election day, each city or township clerk must, without opening the absent overseas voter ballot return envelopes, deliver the absent overseas voter ballots received within six days after the election to the county clerk. The absent voter ballots considered timely received must be tabulated by the county clerk in a meeting of the board of county canvassers.

Absentee Ballot Instructions

The Law requires specified instructions be included with every absentee ballot. Under the bill, an additional set of instructions must be furnished to an absent uniformed services voter or overseas voter. The instructions are as follows:

"For an absent uniformed services voter or overseas voter, the absent voter ballot return envelope containing a marked absent voter ballot must be postmarked on or before election day and must reach the clerk or authorized assistant of the clerk within 6 days after the election. If the absent voter ballot return envelope containing an absent voter ballot for an absent uniformed services voter or overseas voter is received by mail by the clerk or authorized assistant of the clerk more than 6 days after the election or is postmarked after election day, the absent voter ballot will not be counted."

MCL 168.759a & 168.764a

BACKGROUND

In July 2022, Promote the Vote, a coalition of Michigan organizations active in elections, circulated a petition proposing several constitutional amendments concerning voting rights. Among other amendments, the Proposal included a requirement that military and overseas ballots be counted if the clerk received the ballots within six days after the election, and they were postmarked on or before election day. Promote the Vote submitted the petition to the Michigan Bureau of Elections after gathering enough signatures for the ballot initiative that became Proposal 22-2. Proposal 22-2 passed with 59.99% of the vote during the 2022 November general election.¹

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

Expanding the window during which an absent overseas voter ballot can be counted will prevent military and overseas voters from being disenfranchised. Many of those living and working abroad do so in service of the country; however, the nature of their work often places them in situations where internet and postal services are unavailable or difficult to access. In these circumstances, returning an absent overseas voter ballot by mail or electronically

¹ "2022 Michigan Election results," Elections, Michigan Department of State. Retrieved on 4-11-23.

(beginning for absent uniformed services voters in 2024) in a timely manner can be unpredictable. For example, during the 2020 presidential election, 4.6% of Michigan absent overseas voter ballots were not counted, compared to less than 1% of all absentee ballots.² Extending the ballot receipt deadline for absent overseas voter ballots gives absent uniformed services and overseas voters a grace period so that, even if their mail is delayed, they can exercise their right to vote.

This six-day extension is guaranteed under the State Constitution due to the passage of Proposal 22-2. In November 2022, Michigan voters overwhelmingly approved confirming this right for military and overseas voters. Thus, it is necessary to update Michigan law to align with the changes made to the State Constitution by Proposal 22-2.

Response: The provisions of the bill extend beyond the scope of Proposal 22-2. The text of Proposal 2 regarding absent overseas voter ballots stated, "This proposed constitutional amendment would[...] Require military or overseas ballots be counted if postmarked by election day." Michigan voters did not express their approval of allowing ballots with a missing or unclear postmark to be counted within the six-day extension.

Opposing Argument

Allowing an absent overseas voter ballot to be counted even if it has a missing or unclear postmark erodes the integrity of Michigan elections. Proposal 22-2 required that military and overseas ballots be counted if they were postmarked by election day. Reportedly, the bill's provisions may allow a fraudulent voter to submit a ballot with an unclear postmark, or no postmark at all, and have it counted. Counting absentee overseas voter ballots with missing or unclear postmarks exposes Michigan elections to fraud.

Response: The bill provides guidance on how an election clerk may handle an absent overseas voter return envelope with a missing or unclear postmark. It is not prescriptive. A city or township clerk who receives such a ballot will deliver it to the county clerk, who will determine whether the ballot will or will not be counted.

Legislative Analyst: Abby Schneider

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.

² Cappelletti, Joey, "Michigan expands absentee voting for military members," Marine Corps Times, May 1, 2023.