

# Legislative Analysis

---



## ABSENT VOTER MUST ACKNOWLEDGE ASSISTANCE

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 6028 as introduced**  
**Sponsor: Rep. Ruth Johnson**  
**Committee: Local Government and Urban Policy**  
**First Analysis (6-30-04)**

**BRIEF SUMMARY:** The bill would amend the Michigan Election Law to require that an elector who received assistance in marking an absentee ballot acknowledge that assistance by signing a statement on the back of the envelope that encloses the ballot. The assistance would have to be given in the “physical presence” of the absentee ballot voter.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or on local units of government.

### **THE APPARENT PROBLEM:**

Under Michigan’s election laws, absentee voters are allowed to have another person assist them when voting. If assistance is used, the person providing the assistance must sign a statement that he or she helped the voter “pursuant to his or her directions,” and affirm that the “ballot was inserted in the return envelope without being exhibited to any other person.” There is no requirement under the law that the actual marking of the ballot be done in the presence of the absentee voter. Customarily, this provision of the law is used by people who are disabled, and who, as a result, cannot vote without the assistance of a family member or friend.

Recently in Brandon Charter Township, a father assisted his able-bodied daughter, an airline flight attendant, by completing her absentee ballot when she was suddenly called to work by her employer, causing her to leave the state before she could vote her absentee ballot. According to committee testimony, the father voted the ballot, sealed it, and signed her name on the envelope. The incident was prosecuted as a case of voter fraud, in which the prosecutor argued that the signature was a forgery, and the father voted his daughter’s ballot without consulting her. The father claimed otherwise, noting that his daughter had asked his assistance with voting, and had instructed him how to vote the ballot. The judge who heard the case decided in favor of the father, lauded his action, and noted that Michigan’s election law was “vague and confusing.”

Those who side with the father note that “physically unable” to vote could be interpreted to mean being physically away from the area of the ballot. In order to clarify the election law, and make certain that “physically unable” does not mean “physically away,” legislation has been introduced that would require the absentee ballot to be marked by the person offering assistance, within the physical presence of the absentee ballot voter.

## ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Election Law to ensure that an elector who received assistance in marking an absentee ballot acknowledge that assistance by signing a statement on the back of the envelope that encloses the ballot. The assistance would have to be given in the “physical presence” of the absentee ballot voter.

Currently under the law, the back of an envelope that encloses an absentee ballot has a statement that an elector signs to assert that he or she is a qualified and registered elector, and is returning the ballot personally. (An absent voter who knowingly makes a false statement is guilty of a misdemeanor.) Further, if the voter is assisted in voting by another person, the person providing the assistance signs a statement that he or she assisted the elector to vote, “pursuant to his or her directions,” and that the “ballot was inserted in the return envelope without being exhibited to any other person.” (If the person who assists the elector knowingly makes a false statement, then he or she is guilty of a felony.) House Bill 6028 would retain both of these provisions, but add that the person who assisted the elector did so “according to his or her directions and in his or her physical presence.” Further, the bill would require the elector to acknowledge that assistance, and sign a statement that would read:

“I hereby acknowledge that I was assisted in marking this ballot by the above named person who was in my physical presence when I marked the ballot.”

Finally, the bill would eliminate an out-of-date provision concerning voter ballot envelope stock purchased before March 28, 1996.

MCL 168.761

## ***ARGUMENTS:***

### ***For:***

The Michigan Election Law should be clarified so that when an absentee ballot voter who is “physically unable” to vote receives assistance with voting, that assistance is offered in the physical presence of the voter, and then acknowledged to the election officials. Historically, “physically unable” to vote has meant that an elector is physically or somewhat mentally incapacitated. In contrast, some have argued that the phrase “physically unable to vote” could be interpreted to mean being physically away from the area of the ballot—say, for example, suddenly leaving town, and leaving the absent ballot behind, un-cast. Under that interpretation, any elector could collect ballots from registered voters who were out of town, and vote them. Such an action would violate important tenets of the electoral system which upholds the principles of ‘privacy,’ and ‘one person, one vote’. This bill is needed, in order to clarify the election law, and make certain that “physically unable” does not mean “physically away,” by requiring that all absentee ballots marked by the people offering assistance, be marked within the physical presence of the absentee ballot voters.

***Against:***

Recent federal law, the Help America to Vote Act of 2002, sometimes called HAVA, was enacted to make it *easier* for people to vote. Instead, this bill offers more restrictions. Certainly those whose occupations require them to travel without much notice—for example, flight attendants, physicians, and traveling sales reps who are suddenly called away on business—should be able to cast their ballots absentee with the assistance of a family member or a friend, as long as that is done with the absent voter’s guidance. Voter participation is at an historic low, and continues to decline as the lifestyles of many Americans assume a high level of mobility. This bill will likely exacerbate the downward voting trend, denying those who are unexpectedly called away from the polls their right to vote. What we need more than this legislation are new laws that clarify who can assist others to vote as absentee voters and protections for those who provide assistance. That way we would ensure that no one ever has to endure an unjust and costly prosecution for voter fraud.

***POSITIONS:***

The Brandon Township Clerk supports the bill. (6-29-04)

The Michigan Townships Association supports the bill. (6-29-04)

Two citizens from Brandon Township opposed the bill. (6-29-04)

Legislative Analyst: J. Hunault  
Fiscal Analyst: R. Risko

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.