

Legislative Analysis



PERMANENT ABSENT VOTER LIST

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House Bill 5456 (Substitute H-4)
Sponsor: Rep. Fred Miller
Committee: Ethics and Elections

First Analysis (2-1-10)

BRIEF SUMMARY: The bill would require each city and each township clerk to maintain a permanent absent voter list of electors asking that their names be kept on the list, and send the voters on that list an application for an absent voter ballot for each election.

FISCAL IMPACT: House Bill 5456 would have an indeterminate fiscal impact on local units of government. Any fiscal impact would be the result of increased administrative costs in administering and maintaining a permanent absent voter list and sending an application to all electors on the permanent absent voter list.

THE APPARENT PROBLEM:

Currently under the law, a voter may, at any time during the 75 days before a primary election, special primary election, or general election (but not later than 2 pm on the Saturday immediately before the election), apply for an absent voter ballot.

The elector must apply in person or by mail with the clerk of the township, city, or village where registered. The application for an absent voter ballot is made by a signed written request, on an application form, or on a federal postcard application. Clerks must have forms available at all times, and furnish them to anyone who makes a verbal or written request.

Further, voters who applies for an absentee ballot must explain the reason for their absence, selecting any one of the grounds listed in statute, including: absence from the community; physically unable to attend the polls without the assistance of another; unable to attend the polls because of religious beliefs; appointment as an election precinct inspector in a precinct other than where the voter resides; 60 years of age or older; or unable to attend the polls because of incarceration. A person who makes a false statement is guilty of a misdemeanor. See *Background Information*.

It has become customary in many Michigan counties for local election officials—city, township, and county clerks—to automatically mail absent voter ballot applications to all those 60 years of age or older who are registered to vote in their jurisdictions. According to press reports and committee testimony since 2005, this is the practice in cities like Rochester, Rochester Hills, Troy, Huntington Woods, Pontiac, Farmington Hills, Bloomfield Hills, and Detroit. The local clerks mail the absent voter ballot applications as a courtesy and service to the elders in their communities, enabling those over 60 years old to vote from their residences and mail in their ballots, rather than going to the polls to

vote on Election Day. In the City of Detroit, the practice of mailing absent ballot applications is a 30-year old tradition.

However, the Michigan Election Law does not authorize this practice. Indeed, following the August 2005 primary election for city council members in Detroit, a failed candidate, Maureen Taylor, filed a lawsuit claiming that unsolicited ballot applications could lead to election fraud. On September 1, Wayne County circuit judge Mary Beth Kelly issued an order to investigate why the city clerk, Jackie Currie, sent out the ballot applications, and named two monitors to investigate why the ballot applications were mailed. She also said absent ballot applications should not be sent out. Despite that order, Currie mailed 132,000 absent ballot applications before the November 2005 general election. As a result, she was fined \$250 and ordered to come up with a plan to better supervise the counting of absentee ballots in the city's November 8th election.

Many local election officials who keep a list of those 60 years of age and older, and then mail absentee ballot applications to those on that list before every election, feared they, too, could be found guilty of violating the law. To guide the local election clerks, the Bureau of Elections in the Department of State has issued a guideline advising clerks that they cannot unilaterally develop or deliver ballots to a permanent absent voter list. However, the Secretary of State, Terri Lynn Land, has developed a 20-point plan to make Michigan elections easier for voters. Point 6 of the plan, entitled "Senior & Disabled Voters," recommends that clerks be able to create permanent absentee voter lists. See *Background Information*.

To avoid the possibility that local election officials will violate the law, legislation has been introduced to require all city and township clerks to maintain a permanent absent voter list comprising the names of all electors who have asked to be included on the list, and then to send all voters on that list an application for an absent voter ballot at each election.

THE CONTENT OF THE BILL:

House Bill 5456 (H-4) would amend the Michigan Election Law to require all city and township clerks to maintain a permanent absent voter list and send the voters on that list an application for an absent voter ballot for each election.

Under the bill, qualified and registered electors could request to be placed on the permanent absent voter list in the jurisdiction where they were registered to vote. A request to be placed on the list would be made to the appropriate clerk in person or by telephone, fax, electronic mail, or first-class mail. The clerk would then send to each elector on the list an application for an absent voter ballot for each election.

A registered elector could request to be removed from the permanent absent voter lists of the city or township, by making a request to the city or township clerk in person, or by telephone, fax, email, or first-class mail.

Every January, the city or township clerk could remove an elector from the permanent absent voter lists if the elector had not requested an absent voter ballot in any election held in the previous four years.

If an elector was on a permanent absent voter list and changed residence, then the request would automatically continue, and the elector would be listed on the permanent absent voter list of the city or township in which he or she was registered to vote.

The bill specifies that the request of each registered and qualified elector to be placed on the permanent absent voter list would be entered in the qualified voter file, in the same manner as data are entered for a new elector.

If a city or township clerk maintained a permanent absent voter list on or before the effective date of this legislation, the clerk could continue to maintain that list.

Finally, the bill requires that each voter registration application produced by the State of Michigan include a space for the elector to mark if the elector wishes to be listed on the permanent absent voter list of the city or township where he or she is registered to vote. In addition, each absent voter ballot application, as prescribed under Section 759 of the act and distributed by a county, city, township, or village clerk would have to include a space for the elector to mark if he or she wished to be listed on the permanent absent voter list.

MCL 168.759e

BACKGROUND INFORMATION:

"No Reason" Absentee Voting. Voting on Election Day while the polls are open is difficult for many registered voters. For example, those experiencing difficulty include stay-at-home parents without childcare; those having to leave town on short notice; those working long shifts; even, according to committee testimony, those local election clerks who work from sun-up to midnight, in order to ensure smoothly run elections.

Michigan law allows voters to make an application for an absentee ballot if they need to vote before Election Day. However, at each election, absent voters must justify a request to vote absentee, by making application and marking one of six reasons on an application. The absent voter must attest to having a physical disability that requires assistance when attending the polls; having religious tenets that prohibit attendance at the polls; being an election precinct inspector in another precinct; being 60 years of age or older; planning to be absent from home on election day; or being in jail awaiting arraignment or trial. After attesting to one of these reasons on the application and returning that application to the clerk, the voter is mailed an absentee ballot, votes that ballot, and then returns the completed ballot by mail to the local elections clerk.

In order to apply for an absentee ballot, election clerks report that many registered voters "stretch the truth" when they must select a reason (from the six provided on their application forms), knowing full-well that no reason on the list really applies. Critics of the current policy say voters do this in order to overcome the justification barrier that the

law puts in their way because they are determined to exercise their voting rights as citizens in a participatory democracy.

Legislation has been introduced to eliminate the justifications, or reasons, that are now required under the law when applying to vote absentee before Election Day. That bill--House Bill 4367--passed the House of Representatives on April 30, 2009 by a vote of 79 to 30, and awaits consideration by the Senate Committee on Government Operations and Reform.

Create Permanent Absentee Voter Lists. To review Secretary of State Terri Lynn Land's 20-Point Plan for Michigan Elections, visit http://www.michigan.gov/sos/0,1607,7-127-1633_8722_8832-135185--,00.html

Point 6 of the 20-Point Plan for Michigan Elections reads as follows:

One of the issues brought to light during the Detroit elections in 2005 was the use of "permanent absentee voter lists." Election officials use these lists to routinely send out absentee ballot applications to seniors and others within their jurisdictions as a courtesy. Certain criteria are used to determine these lists, such as all registered voters within a jurisdiction that are 60 years or older, disabled or have voted absentee in the previous election. Although this practice is not exclusive to Detroit, the questionable manner in which absentee ballot applications were distributed led to a Circuit Court ruling holding permanent absentee voter lists are not permitted under law. Secretary Land calls for establishing uniform permanent absentee voter lists where voters can request to automatically receive absentee ballot applications for all elections. Only voters requesting to be on the list would be included.

ARGUMENTS:

For:

Until the general election in 2005, many local clerks maintained a list of permanent absent voters over the age of 60, and automatically sent the absent voters an application to vote absentee without visiting the polls before every election. This practice was challenged in a lawsuit brought by a failed Detroit City Council candidate who charged that the practice invited voter fraud during the August 2005 primary election. In early September 2005, a Wayne County Circuit Judge issued an order to appoint two monitors to revise the process, and to stop the automatic mailings, saying that absent ballot applications must be requested by voters. When the city clerk's office mailed 132,000 absent voter applications later that month, the judge found the city clerk in criminal contempt, and fined her \$250.

All citizens, including senior citizens, should be able to vote absentee upon request. In order to accomplish this, local election officials must be able to tally their names and addresses, and mail them ballot applications. This bill sets up a standardized process that can be followed statewide, allowing local clerks to provide an automatic absent ballot application service to the citizens in their communities who asked that their names be

placed on a permanent absent voter list. The bill also allows citizens to remove their names from the list, and requires that local city and township clerks update their lists in January each year.

For:

Proponents of this legislation note several advantages to a permanent absent voter list. Voters will not need to "stretch the truth" when requesting a ballot for each election. Once they have received one absent ballot, they will automatically receive absent ballot applications for all future elections. If they wish to vote in person, they can do so by not returning the application for a ballot.

Proponents of the legislation also note that the opportunity to vote absentee reduces lines at polling places on Election Day. Further, there is evidence that the ease of obtaining an absent voter ballot increases voter turnout. After the 2000 election, the Michigan League of Women Voters undertook a survey of local election officials in order to ascertain the needs of Michigan's election system. The number one need was encouraging and training qualified poll workers; the second was broadening access to absentee ballots. The League found that when absentee ballots were used by more voters in a jurisdiction, the overall election turnout was also higher.

The Macomb County Clerk has noted: "In our fast-paced lives with more and more time spent at work, commuting, and taking care of children and elderly parents, it's becoming harder to attend the polls during the 13 hours they are open on Election Day." This bill would make voting absentee easier for busy electors.

Finally, during the 2008 presidential election, the Michigan Election Coalition ran an election protection program designed to assist voters and collect information about Michigan's elections. In March 2009, the Coalition released its first Post-Election Report. The report highlighted the fact that despite being ranked seventh in the nation in a state-by-state comparison of voter turnout, Michigan's electorate still faces unnecessary barriers when exercising the right to vote. A common barrier was the amount of time voters had to await to vote on Election Day. For example, Precinct 17 in Ypsilanti, and Precincts 27 and 30 in Detroit had more than three-hour wait times. The Coalition argues that absentee voting would be a viable solution to this problem. This bill would advance that aim.

Against:

Opponents of this bill argue that increasing voting by mail could increase the chances of fraud and cause more spoiled ballots, as well as increase costs for local clerks. Further, some argue voting by mail could actually suppress turnout by decreasing mobilization efforts aimed at getting voters out to the polls on Election Day.

For example, during the last legislative session when a bill that would have allowed "no reason" absentee voting passed in the House of Representatives, an opponent cited a national study which found that absentee voting had actually proven to lower voter turnout for two reasons: first, the emphasis on getting people out to vote on one specific day was lessened; and second, when people were given a window of time in which to

vote, they were more likely to forget to mail in the ballot, hence missing the deadline to have their votes counted.

Response:

With respect to cost, proponents of the bill note that the compilation of a permanent absent voter list would allow local election clerks to mail their absent ballots all at once and at the bulk rate, rather than individually at the first-class rate--a savings of 33 percent. Proponents also argue that a modernized absent voter application process causes voter participation to go up, with no evidence of increased fraud.

POSITIONS:

The Kent County Clerk/Register of Deeds supports the bill. (1-27-10)

The Michigan Association of County Clerks supports the bill. (1-27-10)

The Michigan Association of Municipal Clerks supports the bill. (1-27-10)

The Michigan Nonprofit Association supports the bill. (1-27-10)

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■ 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.