

Legislative Analysis



UNIFORMED SERVICE MEMBER ABSENTEE BALLOT

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<http://www.house.mi.gov/hfa>

Senate Bill 8 (S-1) as passed by the Senate
Sponsor: Sen. Paul Wojno

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

Senate Bill 311 (proposed substitute H-1)
Sponsor: Sen. Ruth Johnson

House Committee: Elections and Ethics [Discharged]
Senate Committee: Elections
Complete to 9-28-22

SUMMARY:

Senate Bill 311 would amend the Michigan Election Law to require the secretary of state (SOS) to create a process to allow certain uniformed service members and members of the merchant marine to return ballots to their local clerks electronically, beginning on January 1, 2024.

Currently, federal¹ and state² law require that ballots must be electronically transmitted or mailed to active duty members of the military at least 45 days before an election.

Under the bill, beginning January 1, 2024, a member of a uniformed service on active duty or a member of the merchant marine who, because of active duty or service, is absent from the U.S. and does not expect to return to the residence where he or she is otherwise qualified to vote before an election could electronically return a voted ballot to the appropriate city or township clerk to be counted under rules developed by the SOS as provided below.

The bill would require the SOS to do all of the following:

- Promulgate rules that establish policies and procedures for the electronic return of voted ballots by *eligible members* (defined as members of the military on active duty or members of the merchant marine).
- In promulgating rules, require the eligible member to use a U.S. Department of Defense verified electronic signature, so that the identity of the eligible member can be verified. (A member who was unwilling to provide the Department of Defense verified electronic signature would be ineligible to vote electronically.)
- Take reasonable efforts to ensure the integrity and secrecy of those ballots.
- By January 1, 2024, promulgate rules to implement these requirements, in accordance with the Administrative Procedures Act.
- By the 2024 statewide presidential primary election, allow for the electronic return of voted ballots by eligible members.

¹ The Uniformed and Overseas Citizens Absentee Voting Act, as amended in 2010 by the Military and Overseas Voter Act, <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act>

² MCL 168.759a, codified into section 4 of Article II of the Michigan Constitution by Proposal 3 of 2018. HFA summary of Proposal 3: http://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2018-3_Promote_The_Vote.pdf

The SOS could develop and maintain a secure web portal on the SOS website to facilitate the electronic return. Only the SOS or the SOS's duly authorized agent, city and township clerks or deputy clerks, and sworn members of a clerk's staff would be authorized to access the portal.

The bill would remove references to villages and village clerks, and it would remove a provision requiring county, city, or township clerks receiving an absent voter ballot application from a uniformed services or overseas voter to send village clerks and school district election coordinators information that would enable those officials to forward future absentee ballot applications to the voter for the rest of that year.

MCL 168.759a

Senate Bill 8 would amend the Michigan Election Law to define a *U.S. Department of Defense verified electronic signature*, for purposes of the act, as the certificate-based digital identification code issued to qualified personnel by the U.S. Department of Defense as part of the Common Access Card (CAC), or its successor.

Proposed MCL 168.18a

The bills are tie-barred together, which means that neither could take effect unless both were enacted.

BACKGROUND:

The bills are similar to Senate Bill 117 of the 2019-20 legislative session.³ SB 117 would have provided for the electronic return of ballots by certain members of the military and also would have allowed electronic voting by their spouses (in the House-passed H-6 substitute). As passed by the Senate, the bill required use of the DOD verified electronic signature, but that requirement was removed in the H-6 substitute passed by the House. While that version of the bill was passed by both houses, its enrollment was later vacated.

FISCAL IMPACT:

The bills would have no direct fiscal impact on the state or local units of government. The bills would permit, but not require, the SOS to develop and maintain a secure web portal on the SOS website. The cost of developing the portal has not yet been determined. If the department chooses to implement the secure web portal on its website, it is not yet known whether the one-time development costs could be supported through the department's ongoing appropriations for information technology and election administration or an additional appropriation would be needed.

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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.

³ House Fiscal Agency analysis of SB 117 of 2019-20: <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-0117-3E9B818B.pdf>