

ALLOW CLERKS TO MAIL ABSENTEE APPLICATION TO VOTERS 60 & OVER WITHOUT A REQUEST

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

House Bill 4553 as passed by the House
Sponsor: Rep. Marc Corriveau
Committee: Ethics and Elections

First Analysis (1-15-08)

BRIEF SUMMARY: The bill would allow local election clerks to mail absent voter ballot application forms to voters who are 60 years of age or older, without being asked by the voter to do so.

FISCAL IMPACT: There would be no fiscal impact on state government. There would be additional mailing costs for local units of government if clerks choose to forward the absent voter ballot application forms and hadn't been doing so already.

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 in which he or she is 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, a voter who applies for an absentee ballot must explain the reason for his 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.

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 senior citizens 60 years of age or older who are registered to vote in their jurisdictions. According to press reports and committee testimony during the last legislative session (see *BACKGROUND INFORMATION* below), this is the practice in the cities of 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.

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 then 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.

On October 25, 2007, the Michigan Court of Appeals ruled against automatic absentee voter lists, in *Taylor v. Currie*, COA docket No. 269684 (see *BACKGROUND INFORMATION*, below). In a split opinion, the majority held that city clerks have no authority to automatically mail unsolicited absentee voter ballot applications, noting that the law's language requires a clerk to provide applications "upon written or verbal request," thus precluding mass mailing applications.

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, fear they, too, may be found guilty of violating the law. To avoid that possibility, legislation has been proposed that would allow local election clerks to forward absent voter ballot applications to all registered voters 60 years of age or older.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law to allow (but not require) a clerk of a city, township, or village to forward an absent voter ballot application form to all qualified and registered electors who are 60 years of age or older, ***even if the elector has not requested an absent voter ballot application.***

MCL 168.759

BACKGROUND INFORMATION:

During the 2005-2006 legislative session, the House of Representatives passed House Bill 4228 which would have prohibited a local election official from furnishing an absent voter ballot application to an elector, ***unless the elector had requested one.*** However, under that bill, a state or local election official could give electors a form (prescribed by the secretary of state) to request an application, and any request would be for all elections designated by the elector. House Bill 4228 of 2005 died in the Senate Government Operations Committee at the end of the legislative session.

During committee testimony in the last legislative session, a spokesman for the Michigan Townships Association observed that lists of regular absent voters can grow large, and are costly to mail. The association suggested an amendment to the bill then under consideration, House Bill 4228, which would allow a local clerk to remove an absent voter's name from a mailing list if the voter had failed to vote in two consecutive general (November) elections.

During committee testimony this session on House Bill 4553, a spokesman for the Michigan Association of Municipal Clerks shared that organization's position statement concerning permanent absentee voter lists--what the clerks call PAV lists. According to the spokesman, both county and municipal clerks believe that "all clerks who administer elections should be required to maintain a permanent AV list which must be used for all elections." The clerks note: "This uniformity will guarantee equal access for voters across the state." The clerks continue: "We suggest requiring a written request from voters to be added to the list, while 'grandfathering' those who are already on the lists. We also believe the state Qualified Voter File should be modified so the PAV status follows the voter if they move within Michigan. Finally, we support having criteria so that people who are not voting can be removed from the PAV list."

Taylor v Currie, COA docket No. 269684. To read the 10-page opinion in its entirety, visit the Michigan Court of Appeals website at <http://www.courtofappeals.mijud.net> Select "Resources" from the top menu bar; click on "Court Opinions, then "Search Options"; select "Docket Number" as a search method, and type 269684.

ARGUMENTS:

For:

Many local clerks maintain a list of permanent absent voters over the age of 60, and automatically send the absent voters an application to vote absentee without visiting the polls before every election. Recently 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. In October 2007, the Michigan Court of Appeals, in a split decision, ruled against automatic absentee voter lists, noting that city clerks have no authority to automatically mail unsolicited absentee voter ballot applications, since the law's language says that a clerk shall provide applications "upon written or verbal request," thereby precluding the mass mailing of applications.

Proponents of this bill argue that senior citizens should be able to vote absentee during every election, as a matter of convenience. In order to provide this service, local election officials must be able to tally the names and addresses of absentee voters, 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 senior citizens in their communities.

Against:

Opponents of this bill argue that increasing voting by mail could increase the chances of fraud, cause more spoiled ballots, and actually decrease turnout by decreasing mobilization efforts aimed at getting voters out on Election Day. For example, one opponent cites a national study which finds that "no reason" absentee voting and "early voting" (which generally means being able to cast a ballot up to two weeks before election day at the clerk's office) have actually proven to lower voter turnout for two reasons: first, the emphasis on getting people out to vote on one specific day is lessened; and second, when people are given a window of time in which to vote, they are more likely to forget to mail in a ballot, hence missing the deadline to have their votes counted.

POSITIONS:

The Michigan League of Women Voters of Michigan supports the bill. (7-24-07)

The Michigan Campaign Finance Network supports the bill. (6-19-07)

The Service Employees International Union supports the bill. (6-19-07)

The Michigan Townships Association supports the bill. (7-24-07)

The Service Employees International Union (SEIU) supports the bill. (7-24-07)

The Michigan Association of County Clerks supports the bill. (7-24-07)

The Michigan Association of Municipal Clerks supports the bill. (7-24-07)

Legislative Analyst: J. Hunault
Fiscal Analyst: Robin 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.