



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bills 8 and 311 (as enacted)  
House Bill 4491 (as enacted)  
Sponsor: Senator Paul Wojno (S.B. 8)  
Senator Ruth Johnson (S.B. 311)  
Representative Andrew Fink (H.B. 4491)  
Senate Committee: Elections  
House Committee: Elections and Ethics

**PUBLIC ACTS 196 and 197 of 2022**  
**PUBLIC ACT 195 of 2022**

Date Completed: 2-15-23

**CONTENT**

**House Bill 4491** amended the Michigan Election Law to do the following:

- Require a county clerk to forward a list of individuals over 17 and one-half years of age who have died in the county to the clerk of each city or township in the county at least monthly.
- Require each county clerk to update the qualified voter file (QVF) at least monthly to cancel the voter registration of all individuals over 17 and one-half years of age who have died in the county.
- Require the Secretary of State (SOS) to send, within 24 hours after the QVF is updated, an electronic notification to the appropriate city or township clerk regarding each canceled voter registration in that city or town each time a county clerk updates the QVF.
- Require each county clerk to update, at specified times before an election, the QVF to initiate the cancellation of the voter registration of all individuals over 17 and one-half years of age who have died in the county.
- Require each county clerk to update the QVF daily, beginning 15 days before each August and November election.
- Modify requirements for an absent voter ballot drop box.
- Require an authorized individual to collect daily on any day in which the city or township clerk's office is open for business, beginning 15 days before an election, the election materials deposited in a drop box in the city or township, and require all absent voter ballot return envelopes collected to be transported in an approved ballot container.
- Require a city or township clerk to document each time ballot return envelopes are collected from a drop box.
- Require a city or township clerk to maintain a record of the absent voter ballots received that reconciles with the number of absent voter ballots received as recorded in the QVF.
- Allow the preprocessing of absent voter ballots in cities or townships with a population of at least 10,000 if the clerk sent written notice to the SOS at least 20 days before election day.
- Require elections inspectors to record in the poll book the number of absent voter ballot return envelopes that were opened on the Monday before election day.
- Modify requirements for spoiling an absent voter ballot.

**Senate Bill 311 amended Section 759a of the Michigan Election Law to do the following:**

- Allow a member of a uniformed service on active duty or a member of the Merchant Marine, by reason of being on active duty, absent from the United States, and otherwise qualified to vote, to electronically return a voted ballot to the appropriate city or township clerk, beginning January 1, 2024.**
- Require the SOS to promulgate rules establishing policies and procedures for the electronic return of voted ballots by eligible members.**
- Require the SOS to require an eligible member to use a US Department of Defense verified electronic signature to electronically return a voted ballot.**
- Require the SOS to promulgate rules to implement the bill by January 1, 2024.**
- Require the SOS to allow the electronic return of voted ballots by eligible members starting no later than the 2024 statewide presidential primary election.**
- Delete references to villages throughout Section 759a.**

**Senate Bill 8 amended the Michigan Election Law to define "United States Department of Defense verified electronic signature" as the certificate-based digital identification code issued to qualified personnel by the US Department of Defense as part of the Common Access Card, or its successor.**

The bills took effect on October 11, 2022.

House Bill 4491 and Senate Bill 311 are described in greater detail below.

### **House Bill 4491**

#### **Absent Voter Ballot Secrecy Envelope Containers: Examination**

Section 24k of the Law specifies that an absent voter ballot secrecy envelope container includes a ballot bag, box, transfer case, or other container used to store and secure absent voter ballot secrecy envelopes. "Absent voter ballot secrecy envelope container" means a container described in Section 24k that is used for storing and securing absent voter ballot secrecy envelopes that are removed from the absent voter ballot return envelopes on the Sunday and Monday before election day. (Previously, the term referred to the *day* before election day.)

Previously, before October 15, 2020, each board of county canvassers had to examine the absent voter ballot secrecy container to be used at the November 3, 2020, general election. Instead, under the bill, except as otherwise provided, beginning January 1, 2023, by June 1, 2026, and not later than June 1 every four years after that, each board of county canvassers must examine the absent voter ballot secrecy envelope containers to be used at the August primary election or at the general November election that follows an August primary election. If a city or township does not use absent voter ballot secrecy envelope containers at the November 8, 2022, general election, the board of county canvassers of the county in which that city or township is located must, by June 1, 2024, and then by June 1, 2026, and not later than June 1 every four years after that, examine the absent voter ballot secrecy envelope containers to be used at the August primary election or at the general November election that follows the August primary election.

Formerly, Section 24k did not apply after December 31, 2020. The bill deletes this provision.

## Deceased Electors: Cancellation of Registration

Previously, Section 510 of the Law required county clerks to forward, at least once a month, a list of the last known address and birth date of all individuals over 18 years of age who had died in the county to the clerk of each city or township within the county. The city or township clerk had to compare the list with the registration records and cancel the registration of all deceased electors.

Instead, under the bill, until December 31, 2022, at least once a month, the county clerk must forward a list of the last known address and birth date of all individuals over 17 and one-half years of age who have died in the county to the clerk of each city or township in the county. The city or township clerk must compare this list with the registration records and cancel the registration of deceased electors.

Beginning January 1, 2023, and except as otherwise provided, at least once a month, and not later than the second business day of each month, each county clerk must update the QVF to initiate the cancellation of the voter registration of all individuals over 17 and one-half years of age who have died in the county.

Beginning January 1, 2023, each time a county clerk updates the QVF as required under Section 510, the Secretary of State must send, within 24 hours after the QVF is updated, an electronic notification to the appropriate city or township clerk regarding each initiated cancellation of voter registration in that city or township.

Beginning January 1, 2023, after receiving an electronic notification, the city or township clerk must compare it with the voter registration records in that city or township and complete the cancellation of the voter registration of each deceased elector in that city or township.

Beginning January 1, 2023, if the SOS updates the QVF to cancel the voter registration of any deceased elector, the SOS must send, within 24 hours after the QVF is updated, an electronic notification to the appropriate city or township clerk regarding each canceled voter registration in that city or township. The SOS must notify each appropriate city or township clerk of any voter registration that needs to be canceled after 4 PM on the day before an election so that the city or township clerk can cancel it.

Beginning January 1, 2023, on the first Friday in July before an August election, or on the first Friday in October before a November election, and continuing until 16 days before that respective election, each county clerk must update the QVF by the close of business each Friday before the election to initiate the cancellation of the voter registration of all individuals over 17 and one-half years of age who have died in the county.

Beginning January 1, 2023, 15 days before each August and November election and continuing until the day before each of those elections, each county clerk must update the QVF by the close of business each business day before those elections to initiate the cancellation of the voter registration of all individuals over 17 and one-half years of age who have died in the county. Each county clerk must notify each appropriate city or township clerk in the county of any voter registration that needs to be canceled after 4 PM on the day before an election so that the city or township clerk can cancel it.

After receiving notice that an elector in the city or township has died and determining that the elector was issued an absent voter ballot, the clerk of that city or township must make his or her best effort to remove the ballot return envelope or any ballot returned by that elector from processing and spoil the ballot for that elector.

## Absent Voter Ballot Drop Boxes

Previously, under Section 761d of the Law, except as otherwise provided, if an absent voter ballot drop box was ordered or installed in a city or township before October 1, 2020, that drop box was exempt from the requirements of Section 761d. If a drop box was ordered, but not installed in, a city or township before October 1, 2020, the clerk of that city or township had to make every reasonable effort to have that drop box comply with Section 761d. The bill deletes these requirements.

Under Section 761d, an absent voter ballot drop box must meet all of the following requirements:

- Be clearly labeled as an absent voter ballot drop box.
- Whether located indoors or outdoors, be securely locked and be designed to prevent the removal of ballots when locked.
- If located in an area that is not continuously staffed, be secured to prevent the removal of the drop box from its location.

If an absent voter ballot drop box is located outdoors, all of the following requirements apply:

- The drop box must be securely locked and bolted to the ground or to another stationary object.
- The drop box must be equipped with a single slot or mailbox-style lever to allow ballot return envelopes to be placed in the drop box, and all other openings on the drop box must be securely locked.
- The drop box must be in a publicly accessible, well-lit area with good visibility.
- The city or township clerk must immediately report to local law enforcement any vandalism involving the drop box or any suspicious activity occurring in its immediate vicinity.

Under the bill, the requirements described above must be met by October 20, 2022.

Also, Section 761d requires the city or township clerk to use video monitoring of a drop box to ensure effective monitoring of that drop box. Under the bill, this provision applies to a drop box located outdoors that was not ordered or installed in a city or township before October 1, 2020.

Beginning October 20, 2022, and until the 2022 general November election day, an individual who is authorized to collect absent voter ballots from an absent voter ballot drop box must inspect each drop box used in that city or township regularly to confirm that the drop box complies with Section 761d. Beginning January 1, 2023, 75 days before each election and until election day, an authorized individual must inspect each drop box used in that city or township regularly to confirm that it complies with all of the requirements under Section 761d.

Beginning 15 days before each election and until election day, an authorized individual must collect, on any day in which the city or township clerk's office is open for business, the election materials deposited in an absent voter ballot drop box located in the city or township.

When an authorized individual collects absent voter ballot return envelopes from an absent voter ballot drop box, that individual, unless traveling from one drop box to another drop box, must immediately return those collected absent voter ballot return envelopes to the city or township clerk's office.

All absent voter ballot return envelopes collected from an absent voter ballot drop box must be transported in an approved ballot container or in an absent voter ballot secrecy envelope container.

Beginning October 20, 2022, except for an absent voter ballot drop box that is located on the grounds of a city or township clerk's office, or in an official satellite office of the city or township clerk that is staffed by employees of the city or township clerk, the city or township clerk must document each time absent voter ballot return envelopes are collected from an absent voter ballot drop box in that city or township. The documentation must be preserved and maintained by the city or township clerk for at least 22 months following the election for which the ballot return envelopes were collected and must include all of the following:

- The date the ballot return envelopes were collected from the drop box.
- The total number of ballot return envelopes collected from the drop box.
- The name of the individual who collected the ballot return envelopes from the drop box.
- The location in the city or township of the drop box.

#### Absent Voter Ballots: Reporting

Section 765 of the Law prescribes certain reporting requirements for a city or township clerk who receives absent voter ballots.

The bill requires the city or township clerk to maintain a record of the absent voter ballots received by the city or township clerk that reconciles the number of absent voter ballots received by the city or township clerk as recorded in the QVF with the number of absent voter ballots tabulated at the polling place locations or absent voter counting board locations in that city or township.

#### Pre-Processing of Absent Voter Ballots

Previously, under Section 765, if the clerk of a city or township with a population of at least 25,000 provided written notice to the SOS 20 days or more before election day, that city or township clerk, or the clerk's authorized designee could perform, between the hours of 10 AM and 8 PM on the day before election day, certain absent voter ballot pre-processing activities.

Instead, under the bill, if the clerk of a city or township with a population of at least 10,000 provides written notice in compliance with this provision to the SOS 20 days or more before election day, that city or township clerk, or the clerk's authorized designee, may between the hours of 7 AM and 8 PM on the Sunday and Monday before election day perform certain absent voter ballot pre-processing activities.

Under the Law, the written notice provided to the SOS must include the location and hours that the absent voter ballot return envelopes will be opened in that city or township. Under the bill, for the November 8, 2022, general election only, the SOS must post any written notice received by the clerk of a city or township on the Department of State website by October 29, 2022. Beginning January 1, 2023, after receiving a written notice from a city or township clerk, within seven days after receiving it, the SOS must post the notice on its website.

Previously, the Law required the clerk of a city or township to post the written notice provided to the SOS on the city or township website. Under the bill, the clerk of the city or township must, as soon as possible, but within seven business days before the election, post the written notice provided to the SOS on the city or township website.

If the location and hours of the pre-processing activities change from the location and hours provided in the original written notice to the SOS, the city or township clerk must post a revised notice on the city or township website.

### Election Inspectors

The Law requires the board of election commissioners to appoint election inspectors to the location where absent voter ballot return envelopes will be opened in that city or township within 21 and 40 days before the day at which they are to be used. Under the bill, the board of election commissioners must appoint at least one election inspector from each major political party and must appoint, as nearly as possible, an equal number of election inspectors from each major political party.

Previously, all requirements for election inspectors appointed to an absent voter counting board under Section 765a applied to election inspectors appointed Section 765. The bill deletes this provision.

### Election Challengers

The bill allows a political party, incorporated organization, or organized committee of interested citizens to designate one challenger for every six election inspectors serving at a pre-processing location. If there are five or fewer election inspectors serving at a pre-processing location, a political party, incorporated organization, or organized committee of interested citizens may designate one challenger at the pre-processing location. Challengers present at a pre-processing location have, as applicable, all of the rights and obligations that apply to challengers under Sections 730, 731, 733, and 734.

Election inspectors who are appointed must record in the poll book, or an addendum to the poll book, all of the following:

- The number of ballot return envelopes that were opened on the Sunday before election day (previously, the Law referred to the day before election day).
- The number of ballot return envelopes delivered to the election inspectors that did not contain an elector's signature and that were returned to the city or township clerk.
- The number of ballot return envelopes that were challenged, not opened by the election inspectors, and set aside to be processed by the election inspectors on election day.

Under the bill, election inspectors also must record in the poll book, or an addendum to the poll book, the number of ballot return envelopes that were opened on the Monday before election day.

The Law requires election inspectors who are appointed to an absent voter counting board on election day to verify the seal number recorded in the poll book, or an addendum to the poll book, for any absent voter ballot secrecy envelope container delivered to the absent voter counting board and to count and record in the poll book, or an addendum to the poll book, all of the following:

- The number of ballot return envelopes opened by the election inspectors on the Sunday before election day.
- The number of ballot secrecy envelopes delivered to the absent voter counting board on election day.
- The number of ballot return envelopes that were challenged, not opened by the election inspectors on the Sunday before election day, and set aside to be processed by the election inspectors on election day.

(Previously, the Law referred to the *day* before election day.)

The bill also requires election inspectors to count record in the poll book, or an addendum to the poll book, the number of absent voter ballot return envelopes opened by election inspectors on the Monday before election day and the number of absent voter ballot return envelopes that were challenged, not opened by the election inspectors on the Monday before election day, and set aside to be processed by the election inspectors on election day.

### Report

The Law requires the SOS to provide, by March 1, 2021, a written report to the House and Senate committees dealing with elections that contains all of the following information:

- The number of cities and townships that performed absent voter ballot pre-processing activities.
- The names of the cities and townships that performed absent voter ballot pre-processing activities and specified information for each of those cities and townships.
- The total number of absent voter ballot return envelopes that were opened on the Sunday before election day.
- The total number of ballot return envelopes delivered to the election inspectors that did not contain an elector's signature and that were returned to the city or township clerk.
- The total number of ballot return envelopes that were challenged, not opened by the election inspectors, and set aside to be processed by the election inspectors on election day.
- The total number of ballot secrecy envelopes that were stored in an absent voter ballot secrecy envelope container.
- For each city or township that performed absent voter ballot pre-processing activities, whether the number of ballot return envelopes opened on the Sunday and Monday before election day matched the number of absent voter ballot secrecy envelopes delivered to the absent voter counting board on election day.

(Previously, the Law referred to the *day* before election day.)

The bill requires the report to be provided to the Legislature by March 1 every two years and that it include the total number of ballot return envelopes that were opened on the Monday before election day.

### Spoiling an Absent Voter Ballot

Under the bill, an elector who has returned an absent voter ballot may, before 5 PM on the Friday immediately before an election, appear in person at his or her city or township clerk's office to spoil the elector's absent voter ballot by submitting a signed, written statement to the city or township clerk indicating that the elector wishes to have his or her absent voter ballot spoiled and to vote a new absent voter ballot in the clerk's office.

(Previously, the Law allowed an elector to spoil his or her absent voter ballot before 10 AM on the day before an election, except Sunday or a legal holiday.)

## **Senate Bill 311**

### Electronic Return of Voted Ballot; Uniformed Services Voter

Section 759a of the Michigan Election Law allows an absent uniformed services voter or an overseas voter to use the Federal write-in absentee ballot, in accordance with the Uniformed

and Overseas Citizens Absentee Voting Act, at a regular election or special election to vote for a local, State, or Federal office or on a ballot question. An absent uniformed services voter or an overseas voter who uses the Federal write-in absentee ballot must return his or her voted Federal write-in absentee ballot by mail to the appropriate clerk. "Uniformed services" means the Army, Navy, Air Force, Marine Corps, or Coast Guard, the Commissioned Corps of the Public Health Services, the Commissioned Corps of the National Oceanic and Atmospheric Administration, a reserve component of a uniformed service, or the Michigan National Guard.

Also, under the Law, the clerk of a county, or city must, upon the request of an absent uniformed services voter or overseas voter, to electronically transmit an absentee ballot to the voter. The voter must print the absentee ballot and return it by mail to the appropriate clerk.

(Previously, Section 759a prescribed certain requirements for the clerk of a village. The bill deleted references to villages throughout Section 759a.)

Under either of the above circumstances, the bill allows, beginning January 1, 2024, a member of a uniformed service on active duty, by reason of being on active duty, or a member of the Merchant Marine, by reason of service in the Merchant Marine, who is absent from the US and does not expect to return to the residence where that member otherwise is qualified to vote before an election to return a ballot voted electronically to the appropriate city or township clerk to be counted under the rules promulgated by the SOS.

Previously, a county, city, or township clerk receiving an absent voter ballot application from an absent uniformed services voter or overseas voter had to transmit to a village clerk and the school district election coordinators, where applicable, the necessary information to enable the village clerk and the school district election coordinators to forward an absent voter ballot for each applicable election in that calendar year to the absent voter. The bill deleted this provision.

#### Rule Promulgation

The bill requires the SOS to promulgate rules that establish policies and procedures for the electronic return of voted ballots by eligible members. ("Eligible member" means a member of a uniformed service on active duty or a member of the Merchant Marine, as described above.) In doing so, the SOS must require an eligible member to use a US Department of Defense verified electronic signature, so that the identity of the eligible member may be verified using those policies and procedures. A member who is unable or unwilling to provide that signature is not eligible to return a voted ballot electronically.

The SOS must take reasonable steps to ensure the integrity and secrecy of voted ballots returned electronically. The SOS may develop and maintain a secure web portal on its website to facilitate the electronic return of voted ballots by eligible members. Only the SOS or his or her duly authorized agent, a city or township clerk, the clerk's deputy clerk, or a sworn member of the clerk's staff is authorized to access the secure web portal.

By January 1, 2024, the SOS must promulgate rules pursuant to the Administrative Procedures Act to implement this provision, and the SOS must allow for the electronic return of voted ballots by eligible members starting no later than the 2024 statewide presidential primary election.

MCL 168.18a (S.B. 8)  
MCL 168.759a (S.B. 311)  
MCL 168.14b et al. (H.B. 4491)



## **BACKGROUND**

In 2018, Michigan voters approved Proposal 2, which, among other things, allowed a voter to obtain an absent voter ballot without providing a reason.<sup>1</sup> Public Act 177 of 2020 allowed the clerk of a city or township with a population of at least 25,000 to perform certain absent voter ballot pre-processing activities; however, this authority only applied during the 2020 November general election. According to the Department of State, approximately 3.3 million electors voted by absent voter ballot (out of 5.5 million total ballots cast) in the 2020 November general election. By comparison, in the 2016 November general election, 1.3 million electors cast absent voter ballots (with an overall turnout of 4.8 million voters). For the 2022 November general election, approximately 1.9 million electors voted by absent voter ballot (out of approximately 4.5 million total ballots cast).

Legislative Analyst: Stephen P. Jackson

## **FISCAL IMPACT**

### **Senate Bill 8**

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

### **Senate Bill 311**

The bill may have a negative fiscal impact in the form of additional costs for the Department of State to promulgate rules to develop policies and procedures for the electronic return of voted ballots by eligible members. The bill also authorizes the Department to develop and maintain a secure web portal on its website to facilitate the electronic return of voted ballots by eligible members. The Department's costs to promulgate rules likely will be minimal and will be absorbed within its annual appropriations. The costs for developing a web portal may require additional appropriations; however, the bill makes this optional for the Department. The Department's ability to absorb the cost within current appropriations will depend on the actual costs of developing the web portal and on its capabilities to add this portal to its current website.

### **House Bill 4491**

The bill may have costs for local units of government; however, the cost is indeterminate and should be minimal. A local unit may incur additional expenditures if it is required to upgrade or modify an existing drop box to comply with the bill. Additionally, a local unit may need to hire some limited-time employees to comply with the required updating of the QVF which will incur additional costs. The cost is indeterminate and depends on the number of limited-time hires a local unit may have to employ.

Fiscal Analyst: Joe Carrasco, Jr.

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<sup>1</sup> Previously, Michigan law allowed a voter to obtain an absent voter ballot only if he or she were unable to attend the polls on election day because of a physical disability; were unable to attend the polls on election day because of his or her religion; were unable to attend the polls on election day because he or she was an election precinct inspector in another precinct; were 60 years of age or older; expected to be absent from the city or township in which he or she resided during the entire period the polls were open on election day; or were unable to attend the polls on election day because of being confined in jail awaiting arraignment or trial. MCL 168.758 (repealed 2018).

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.