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Senate Bill 369 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Sam Singh  
Committee: Elections and Ethics

Date Completed: 8-30-23

**(COMPANION BILL LINK: [H.B. 4699](#))**

## **RATIONALE**

According to testimony before the Senate Committee on Elections and Ethics, requiring voters to fill out an absent voter ballot application form each time they wish to vote absentee in an election burdens clerks, who must spend time sending and processing each absent voter ballot application. In November 2022, Proposal 2 (see **BACKGROUND**) addressed this concern by amending the State Constitution to allow voters to fill out one application to vote absentee for all future elections. With the presidential primary occurring in February 2024, it has been suggested that the Law be amended to reflect the provisions of Proposal 2 and give clerks the time to prepare.

## **CONTENT**

**The bill would amend Michigan Election law to do the following:**

- **Allow any registered elector to become a permanent mail ballot voter by filling out a single absent voter application to receive absent voter ballots for every future election.**
- **Prescribe the reasons for which an absent voter application for all future elections could be rescinded by the Secretary of State (SOS) or appropriate city or township clerk.**
- **Require each city and township clerk to maintain and track permanent mail ballot voters.**
- **Require the SOS to issue instructions to clerks regarding the discontinuation of any permanent absent voter ballot application list.**
- **Require a city or township clerk or the SOS to notify an elector, upon the elector's change of address, that any prior permanent voter ballot application submitted by the elector would be rescinded and the elector would not be sent an absent voter ballot unless the elector submitted a new absent voter ballot application.**
- **Require the SOS to prescribe the presidential primary ballot selection form and make the form available in person, by mail, and online.**
- **Require each city and township clerk to mail a presidential primary ballot selection form to all permanent mail ballot voters in a city or township who had not made a ballot selection for the presidential primary election at least 60 days before the election.**
- **Require a clerk to notify a permanent mail ballot voter of the time frame to return the ballot to receive a presidential primary election ballot if the elector had not returned the ballot selection form by the fortieth day before a presidential primary election.**
- **Modify the period after an election that returns would have to be preserved from two years to 22 months.**
- **Allow ballots containing a Federal office and all presidential primary ballot selection forms to be destroyed after 22 months.**

## Permanent Mail Ballot Voter

The bill would allow any registered elector to become a permanent mail ballot voter. A permanent mail ballot voter would have to be issued an absent voter ballot for every election. The bill would require each city and township clerk to determine who that clerk's permanent mail ballots voters were and to maintain and track those permanent mail ballot voters through the qualified voter file. The SOS would have to provide instructions to county, city, and township clerks regarding the discontinuation of any permanent absent voter ballot application list maintained by a county, city, or township clerk for electors who automatically received an absent voter ballot application before each election.

(Under the bill, "permanent mail ballot voter" would mean a registered elector who submits a signed absent voter ballot application to receive an absent voter ballot by mail for all future elections and whose application has been verified).

Each city and township clerk would have to issue an absent voter ballot application to any elector who requested one. Once an elector's absent voter ballot application for all future elections had been verified, the elector would become a permanent mail ballot voter and would have to be sent an absent voter ballot before each election unless the application was rescinded. An absent voter ballot application for all future elections could only be rescinded for the following reasons:

- The permanent mail ballot voter submitted a signed request to rescind his or her application to receive an absent voter ballot by mail for all future elections.
- The permanent mail ballot voter was no longer qualified to vote in Michigan.
- The SOS or appropriate city or township clerk received reliable information that the permanent mail ballot voter had moved to another state or had moved within the State without updating the registration address.
- The permanent mail ballot voter did not vote for six consecutive years.

The SOS or the appropriate city or township clerk would have to rescind the absent voter ballot application for all future elections for a permanent mail ballot voter if the SOS or the appropriate clerk received reliable information that the permanent mail ballot voter met any of the above circumstances. If an absent voter ballot application for all future elections were rescinded, the city or township clerk would have to send a notice informing the elector that the absent voter ballot application for all future elections had been rescinded because the elector did not vote for six consecutive years.

A permanent mail ballot voter who changed residence in Michigan and updated the registration address, or who had the voter registration address updated, would continue to be a permanent mail ballot voter. The voter's absent voter ballot would have to be sent to the current registration address until another address was designated by the permanent mail ballot voter.

Generally, a clerk must prepare a voter identification card for an elector upon receiving the elector's registration or change of address. A clerk must also prepare and deliver a corrected voter identification card if an elector is affected by a change in district or precinct. A voter identification card must include the name of an elector, the elector's address, and the elector's district or precinct.

If a clerk receives reliable information, such as change of address information supplied by the United States Postal Service, that an elector has moved within the city or township, the clerk must notify the elector and provide the elector with a postage prepaid and preaddressed

return card upon which the elector may verify or correct the address information and information on how to do so. If a clerk receives reliable information that an elector has moved to another city or township, the clerk must notify the elector, provide the elector with a return card to verify or correct the address information if the elector has not moved, and instructions on how to register to vote in the elector's new city or township if the elector has moved. If the Department of State receives information that an elector has moved out-of-state, the SOS must mail that elector a return card to verify or correct the address information and instructions on how to do so. The bill would require that a change-of-address notice sent to an elector by a clerk or the SOS to include a warning that any prior absent voter ballot application submitted by the elector for all future elections would be rescinded and the elector would not be sent an absent voter ballot for any future elections unless the elector submitted a new absent voter ballot application.

#### Presidential Primary Ballot Selection Form

The bill would require the SOS to prescribe the presidential primary ballot selection form. The form would have to be available in person, by mail, and online. It would have to be submitted to the clerk of the city or township in which an elector resided in person, by mail, or online.

Under the bill, "presidential primary ballot selection form" would mean a form, as prescribed by the SOS, that a permanent mail ballot voter may use to select, or use to change a prior selection of, the political party ballot that the permanent mail ballot voter wishes to receive for a presidential primary election.

At least 60 days before a presidential primary election, each city or township clerk would have to send a presidential primary ballot selection form, with prepaid return postage, to all permanent mail ballot voters in a city or township who had not made a presidential primary ballot selection for the presidential primary election. If a permanent mail ballot voter did not return a presidential primary ballot selection form by the fortieth day before a presidential primary election, the city or township clerk would have to notify that permanent mail ballot voters by telephone, email, and text message, if available, of the requirement to make a political party ballot selection in order to receive a presidential primary election ballot. If the city or township clerk did not have the telephone number or email address of the permanent mail ballot voter, the clerk would have to notify the voter by United States mail. The clerk also could notify the voter by any other available method of contact.

A presidential primary ballot selection form would have to be sent to the address designated by the permanent mail ballot voter to which the voter's absent voter ballot was sent. If an elector became a permanent mail ballot voter after the clerk sent the presidential primary ballot selection forms, and the elector had not made a ballot selection for the presidential primary election, the clerk of the city or township would have to immediately send the voter a presidential primary ballot selection form, with prepaid return postage.

If the presidential primary election ballot contained any office or proposal other than for the office of President of the United States, a ballot with those other offices or proposals would have to be sent to those permanent mail ballot voters who had not made a ballot selection for the presidential primary election. In addition, a ballot sent under these circumstances would have to include a notice on a form as prescribed by the SOS that indicated that the permanent mail ballot voter did not receive a presidential primary election ballot because the voter did not make a presidential primary ballot selection and provided information by which the voter could participate in the presidential primary election.

## Ballot Destruction

Michigan Election Law requires all election returns, including absent voters' return envelopes, to be carefully preserved for two years following the primary or election at which they were used, after which they may be destroyed. The bill would reduce the preservation period to 22 months after the primary or election at which they were used.

Currently, all ballots used at any primary or election may be destroyed after 30 days following the final determination of the Board of Canvassers unless a petition for recount has been filed and not completed or unless the destruction of the ballots is stayed by an order of a court. The bill would exempt ballots containing a Federal office from this provision. It would specify that all ballots containing a Federal office and all presidential primary ballot selection forms could be destroyed after 22 months following the primary or election at which those ballots were cast or forms were used.

MCL 168.509aa et al.

## **PREVIOUS LEGISLATION**

*(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)*

The bill is a companion bill to House Bill 4699, which was signed into law as Public Act 86 of 2023.

## **BACKGROUND**

In July 2022, Promote the Vote, a coalition of Michigan organizations active in elections, circulated a petition proposing several constitutional amendments concerning voting rights. Among other amendments, the Proposal included a requirement that voters be allowed to submit a single application to vote absentee in all future elections. Promote the Vote submitted the petition to the Michigan Bureau of Elections after gathering enough signatures for the ballot initiative that became Proposal 22-2. Proposal 22-2 passed with 59.99% of the vote during the 2022 November general election.<sup>1</sup>

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Due to Proposal 22-2, the State Constitution guarantees the ability for voters to fill out a single absent voter application for all future elections. According to testimony before the Senate Committee on Elections and Ethics, clerks have already begun to offer this ability to voters, with many voters opting to become permanent mail ballot voters. The bill would enact this Constitutional requirement and update the Law to align with the will of the voters.

### **Supporting Argument**

The bill would make the election process smoother for clerks. Previously, clerks had to send out separate absent ballot applications to every voter under their jurisdiction for each election. According to testimony before the Senate Committee on Elections and Ethics, this is a time-intensive process, involving a great deal of paperwork and processing time. Additionally, reducing the number of absent voter ballot applications would save the State return postage. Overall, the bill would alleviate several burdens associated with absent voter ballot applications.

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<sup>1</sup> "2022 Michigan Election results," Elections, Michigan Department of State. Retrieved on 4-11-23.

### **Supporting Argument**

Allowing voters to become permanent mail ballot voters would make it easier to vote and participate in elections. Absentee voting is popular; however, some may forget to fill out an application for each election or encounter other obstacles to doing so. Allowing voters to fill out one application for all ballots could remove some of these obstacles and make voting more convenient. Additionally, clerks would be required to send voters a ballot for each election. This could increase voter participation for elections that are often ignored, such as local elections. Overall, the bill would increase democratic engagement.

### **Opposing Argument**

Among other things, requiring the SOS to prescribe the presidential primary ballot selection form and issue instructions to clerks regarding the discontinuation of any permanent absent voter ballot application list would place too much power in the hands of an executive office. The State Constitution grants the power to regulate the time, place, and manner of all elections to the Legislature, not the SOS. Additionally, the SOS is a partisan office, which may compromise confidence in the permanent mail ballot list. The specifics of these processes should be legislated.

### **Opposing Argument**

The bill could compromise confidence in Michigan elections. For example, the bill would require an absent voter ballot to be sent to a voter's current registration address until another address was designated by the voter. This requirement would not include measures to allow clerks to more easily determine if a voter had moved or require voters to disclose this information to clerks. Additionally, the bill would require a clerk to send absent voter ballots to a non-participating permanent mail voter for six years before the voter's application could be rescinded. This time would be too long and could allow ballots to be used for fraudulent purposes. The process for removing permanent mail ballot voters should be stricter.

### **Opposing Argument**

The bill would require a clerk to send an absent voter ballot for *each* election to a permanent mail voter; however, some voters may not want to participate in every election, such as a special or local election. For such voters, additional ballots could serve as an irritant, while the State would bear the cost of the wasted return postage. Additionally, sending out unwanted, unused ballots could compromise election security. The bill should include a consideration of such voters.

**Response:** The bill would not remove the opportunity for voters to request an absent voter ballot for only one election. A voter who wished to vote only in presidential elections, for example, could request a ballot for each presidential election.

Legislative Analyst: Abby Schneider

### **FISCAL IMPACT**

The bill would have significant costs for both the Department of State and local units of government related to the mailing of absentee voter (AV) applications, ballots, and pre-paid return postage costs. Based on data from the elections held in 2022, there are an estimated 8.2 million registered voters in Michigan, of which 2.2 million voted absentee in November. The bill would require each city and township clerk to issue an absent voter ballot application to any elector who requested an absent voter ballot application, and to then send ballots with pre-paid return envelopes for all future elections to those who registered. Proposal 22-2 requires the State to pay for the costs of pre-paid return postage for AV

applications and AV ballots. Based on the 2022 elections, the costs to the State for pre-paid return postage for AV applications and AV ballots for those elections totaled an estimated \$1.4 million (averaging \$0.64 per parcel) while the average cost to locals for mailing applications and ballots for the November 2022 election totaled \$1.75 million (averaging \$0.80 per parcel). Beginning with the elections in 2024, all costs for pre-paid return postage for AV applications and AV ballots will be paid by the State. The Department of State is currently working with the United States Postal Service to establish a direct billing system for the costs of pre-paid postage. Locals will continue to bear the costs of mailing AV applications and ballots.

Thus, the total cost to the State and local units of government for mailing AV applications and ballots with pre-paid return postage is indeterminate. Based on the average costs stated above, the State would be expected to pay for the costs of pre-paid postage for AV applications and AV ballots at an estimated \$0.64 per parcel while locals would continue to pay the costs of mailing AV applications and ballots at an average cost of \$0.80 per parcel. The Department has estimated annual costs at \$5.2 million beginning in 2024 for costs of pre-paid postage for AV applications and AV ballots as well as presidential primary forms, for all elections in 2024, including the presidential primaries.

Fiscal Analyst: Joe Carrasco, Jr.

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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.