

# Legislative Analysis



## INCLUDE STATE/LOCAL CANDIDATES & QUESTIONS ON FEDERAL WRITE-IN ABSENTEE BALLOT

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

House Bill 5297 (Substitute H-1)

*(Enacted as Public Act 279 of 2012)*

Sponsor: Rep. Rick Outman

Committee: Redistricting and Elections

### First Analysis (3-12-12)

**BRIEF SUMMARY:** The bill would expand the federal write-in absentee ballot to include state and local candidates and ballot questions.

**FISCAL IMPACT:** The bill would require the Secretary of State to make the ballot format, as well as ballot information, available on an internet website, or by electronic mail in the case of the ballot format. While it is unclear what kind of fiscal impact the bill's provisions would have on the Secretary of State, the requirements of the bill could impose certain one-time costs associated with making the changes to the Secretary of State website and could increase ongoing elections administrative costs by requiring certain ballot information to be posted on the Secretary of State website. In addition, local clerks could realize certain increased administrative costs under the provisions of the bills to the extent that they have to ensure the Secretary of State has received ballot and candidate information related to their local elections.

### **THE APPARENT PROBLEM:**

In 1986 the U.S. Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act—sometimes called UOCAVA, or Public Law 99-410. The act is a federal law that requires all states to allow overseas U.S. citizens, military and civilian, to vote by absentee ballot in federal elections. The act provides for an emergency back-up ballot, the Federal Write-In Absentee Ballot (or FWAB), which can be cast by voters who are registered to vote, but have not received their regular ballot in a timely manner.

Three years ago, UOCAVA was amended so that it now includes the Military and Overseas Voter Empowerment Act (or MOVE), signed into law by President Barack Obama on October 28, 2009. This act requires, among other things, that states deliver absentee ballots to overseas voters at least 45 days before an election. Michigan complies with this requirement, the Legislature having made recent changes to state statutes that now allow local election clerks to send absentee ballots electronically, thus ensuring ample time for the voted ballot to be returned in the mail, and counted on Election Day.

The FWAB, which originally allowed overseas citizens to vote in federal elections, is now being expanded to enable voting in state and local elections as well, a 2010 priority of the U. S. Department of Defense.

When using the FWAB ballot, a voter writes in, at the top of the ballot, the names of the voter's preferred candidates who seek to fill the offices of president/vice president, U.S. senator, and U.S representative. Then, voters from the states that allow the FWAB to be used by military and overseas civilian voters in state and local elections can complete the two-column "Addendum" portion of the ballot. (About half of the 50 states allow this, according to committee testimony.) There, the voter simply writes in the name of the office or initiative (e.g. governor, attorney general, mayor, state senator, state representative, Proposal A, etc.) in the left column. Then, on the corresponding lines in the right column, the overseas voter writes in the candidates' names, and/or the party affiliation. If voting a straight ticket, only the party affiliation is written in. When voting on an initiative proposal, the voter simply writes in "yes" or "no," to indicate support or opposition.

The Federal Voting Assistance Program provides voting help for uniformed service members, their families, and other U. S. citizens living outside the United States. That assistance is provided electronically on a website and enables overseas citizens to keep track of federal, state, and local election dates; recommends mailing dates by which voted ballots should be returned; offers mailing instructions to ensure that voted ballots are sent via the military postal service, or American embassy or consulate to appropriate elections clerks stateside; and also provides actual ballot packages in PDF formats that can be downloaded from secretary of state websites in the 50 states. That way, overseas voters can ascertain whether their state allows state and local voting on the FWAB ballot, and they can read the list of candidates seeking office, as well as the text of any ballot proposals. To learn more about the program, see <http://www.FVAP.gov>.

Legislation has been introduced that would enable overseas voters who are Michigan residents and registered to vote, to use the Federal Write-In Absentee Ballot for state and local elections.

### ***THE CONTENT OF THE BILL:***

House Bill 5297 (H-1) would amend the Michigan Election Law (MCL168.759a) to expand the federal write-in absentee ballot to include state and local candidates and ballot questions.

The bill would specify that an absent uniformed services voter, or an overseas voter, could use the federal write-in absentee ballot (in accord with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act), at a regular election or a special election, to vote for a local, state, or federal office, or on a ballot question. Under the bill, the voter who used the ballot would be required to return the voted ballot by mail to the appropriate clerk.

The bill would require the state Bureau of Elections to do both of the following:

- Make the ballot *format* for each election available to absent uniformed services voters and overseas voters by electronic mail or on an internet website maintained by the Department of State.
- Make the ballot *information*, including the offices, names of candidates, and ballot proposals, for each election available to absent uniformed services voters and overseas voters on an internet website maintained by the Department of State.

Under the bill, the clerk of a city, village, or township would be required to submit to the appropriate county clerk a written statement (no later than 45 days before each election) indicating whether absent voter ballots were issued to absent uniformed services voters or overseas voters in compliance with the law. In particular, the local clerks would be required to provide the county clerk with a written explanation describing remedial actions taken if they failed to comply. Not later than 42 days before each election, each county clerk would then be required to submit to the State Bureau of Elections a written report compiled from the local clerks' written statements. That written report would identify the cities, villages, and townships that complied with the 45-day deadline, those that had not complied but had provided a written explanation, and those that had not complied and had not provided a written explanation.

The bill specifies that the State Bureau of Elections could require the clerks that had not complied but who provided a written explanation to provide additional information. Further, the State Bureau of Elections would be authorized to require that the clerks that had not complied and had not provided a written explanation to file that explanation within one business day after being notified to do so.

Currently under the law, an absent uniformed services voter or an overseas voter—whether or not registered to vote—is eligible to apply for an absent voter ballot. In these instances, when a local clerk receives an absent voter ballot application from an unregistered voter, the local clerk is required to forward the absent voter ballot requested, as well as a voter registration form (with instructions), and, if it's available, the ballot. In contrast, if a federal postcard application for an absent ballot is filed, the clerk accepts the federal postcard application as the registration application, and does not send any additional registration forms to the applicant. House Bill 5297 (H-1) would retain these provisions, but expand them to specify that if a federal postcard application *or an application from the official U.S. Department of Defense website*, were filed, then the clerk would be required to accept them as the registration application, and would not send any additional registration forms to the applicant.

Currently, an absent uniformed service voter or an overseas voter who submits an absent voter ballot application is eligible to vote in any local or state election that occurs during the calendar year in which the application is received by the clerk. House Bill 5297 (H-1) would retain this provision, and expand it to also include any *federal* election occurring during the calendar year in which the absent voter ballot application was requested.

***ARGUMENTS:***

***For:***

Enacted in 1986, the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) protects the right of service members and other Americans living overseas to vote in federal elections. This law requires that states and territories allow members of the U.S. Uniformed Services and merchant marine and their family members, and other U.S. citizens residing outside the United States, to register and to vote absentee in elections for federal offices. To ensure this right, there is a Federal Write-In Absentee Ballot (a FWAB) that overseas voters can download, complete, and then mail home to their local election clerks.

This legislation would allow Michigan to expand the FWAB to state and local races, as well as to statewide initiatives and proposals. About half the 50 states already do so, having complied with a 2010 priority of the U.S. Department of Defense. Michigan should join them.

***POSITIONS:***

The Secretary of State supports the bill. (2-7-12)

The Michigan Association of County Clerks supports the bill. (3-6-12)

The Michigan Association of Municipal Clerks supports the bill. (3-6-12)

The Oakland County Clerk supports the bill. (2-7-12)

The Lansing City Clerk supports the bill. (2-7-12)

Legislative Analyst: J. Hunault  
Fiscal Analyst: Ben Gielczyk

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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.