

BACKGROUND BRIEF



ABSENTEE VOTING IN THE POST-PROPOSAL 3/COVID-19 ERA

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FAST FACTS

- In 2018, Michigan joined 34 states and the District of Columbia in allowing “no-reason absentee voting.”
- At least 3.0 million of the state’s 7.7 million registered voters are expected to vote absentee in the 2020 election. (Almost 1.0 million had submitted their absentee ballots as of October 14.)
- Voters can apply for an absentee ballot, find the location of a ballot drop box, and check the status of their absentee ballot at Michigan.gov/Vote.

WHY ABSENTEE VOTING?

Since the 1920s—following limited use during the Civil War—the number of states that allow some form of remote voting has grown. Federal law requires all states and territories to send absentee ballots to military and overseas voters for federal elections.¹ All states allow absentee voting (AV), also called advance, mail-in, or by-mail voting. Sixteen states enumerate allowable reasons for requesting an absentee ballot, which typically include age, incapacity, and being outside the district on Election Day. Until Proposal 3 passed in 2018, Michigan was among these states. The remaining 34 states and Washington, D.C., do not require a reason from those who wish to vote absentee.² Five of these states—Colorado, Hawaii, Oregon, Utah, and Washington—conduct their elections entirely by mail, which means that ballots are automatically sent to all registered voters. These measures represent an effort by states to address real or perceived barriers to voting in-person on Election Day.

In 2018, Michigan joined the states that allow all voters to request an AV ballot and return that ballot on or by Election Day. In 2020, due to the COVID-19 pandemic and concerns surrounding gatherings of people and face-to-face contact, more voters than ever are expected to use absentee voting. In response, many states have temporarily modified AV procedures, including extending deadlines for requesting ballots, suspending eligibility requirements, and mailing applications or ballots to all registered voters.³

WHAT WAS THE RULE FOR ABSENTEE VOTING IN MICHIGAN?

Until Proposal 3 was approved in the 2018 November election, a Michigan voter could request an absentee ballot only if he or she met one of the following six criteria for being an “absent voter”:

- At least 60 years old.
- Unable to vote without assistance at the polls.

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 Rhode Island lists several reasons, but also specifies “no specific reason necessary,” and is classified by the National Conference of State Legislatures and [vote.org](https://elections.ri.gov/voting/mailballot.php) as a no-reason absentee voting state. <https://elections.ri.gov/voting/mailballot.php>

³ [https://ballotpedia.org/Changes_to_absentee/mail-in_voting_procedures_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020](https://ballotpedia.org/Changes_to_absentee/mail-in_voting_procedures_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020)

- Expecting to be out of town on Election Day.
- In jail awaiting arraignment or trial.
- Unable to attend the polls due to religious reasons.
- Appointed to work as an election inspector in a precinct outside his or her precinct of residence.

Even before 2018, there was interest in expanding the opportunities to obtain an absentee ballot. In 2008, a ballot proposal by a group known as “Reform Michigan Government Now!” proposed a number of changes to the state constitution, including reducing the size of the legislature by nearly a third, reducing the number of Supreme Court justices and Court of Appeals judges, and reforming the state’s election processes.⁴ Supporters collected a sufficient number of signatures to place the proposal on the November ballot, but the Michigan Court of Appeals found that it was a “general revision” of the constitution, which can be effected only through a constitutional convention and not a ballot initiative.⁵ Still, some of the proposed changes generated significant interest, among them no-reason absentee voting. In September 2008, the House passed House Bill 4048, which also would have provided for no-reason absentee voting.⁶

More recently, in 2015 House Bill 4724 proposed “secured” no-reason absentee voting. The bill would have allowed a voter to obtain an absentee ballot without giving a reason, but required the voter to apply for the ballot in person with the local clerk by providing a driver’s license, an official state ID card, or another generally recognized picture identification card.⁷ That bill was also passed by the House but was not formally considered by the Senate.

In July 2018, the Promote the Vote (PTV) ballot committee submitted more than 430,000 signatures in support of a constitutional amendment to add eight voting-related rights to the Michigan Constitution. One of these rights was no-reason absentee voting. This initiative, placed on the November 2018 ballot as Proposal 3, was approved by voters by a two-to-one margin.

WHAT ARE THE RULES SINCE PROPOSAL 3?

There are now several options for a voter who chooses not to vote in person on Election Day. These depend on whether the person was previously registered, how the person requests the ballot, where the person chooses to complete the ballot, and how the person wishes to return the ballot. Michigan’s election framework is the most decentralized in the country, with 83 county clerks, 280 city clerks, and 1,240 township clerks administering elections. This means that, while there are often model forms and rules (for instance, the model AV ballot application⁸), there is some variation at the local level. Generally, however, the rules are as follows:

Register to vote

A person cannot vote in an election unless he or she is registered to do so. In addition to no-reason absentee voting, Proposal 3 instituted same-day voter registration in Michigan. A person can register in person up to and including Election Day with proof of residency “to an election official responsible for maintaining custody

⁴ [https://ballotpedia.org/Michigan_Legislative_and_Judicial_Restructuring_Initiative_\(2008\)](https://ballotpedia.org/Michigan_Legislative_and_Judicial_Restructuring_Initiative_(2008))

⁵ Michigan Constitution of 1963, Art 12, section 3: <http://legislature.mi.gov/doc.aspx?mcl-Article-XII-3>

⁶ House Fiscal Agency analysis of HB 4048 of 2007-08: <http://www.legislature.mi.gov/documents/2007-2008/billanalysis/House/pdf/2007-HLA-4048-4.pdf>

⁷ House Fiscal Agency analysis: <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4724-A00D70E6.pdf>

⁸ Model Michigan AV ballot application: https://www.michigan.gov/documents/sos/AVApp_535884_7.pdf

of the registration file where the person resides, or their deputies.” Without proof of residency, a person can register in person up to and including 15 days before Election Day.

Nineteen states and the District of Columbia currently allow in-person voter registration up to and including Election Day.⁹ Additionally, North Carolina makes same-day registration possible for a portion of their early voting periods, but not on Election Day. New Mexico has enacted same-day registration, but it will not take effect for Election Day until 2021. (It will be available during the early voting period in 2020.) North Dakota does not have voter registration, instead requiring that valid proof of ID and residency be brought to the polls on Election Day.

Request an AV ballot

Registered voters may request an AV ballot by completing an online application at www.Michigan.gov/Vote or by submitting an application, large-print application, letter, or postcard to their local clerk. Requests may be submitted by hand, mail, fax, or email, as long as the voter’s signature is visible. Requests to have a ballot mailed to a voter must be received by 5 p.m. on the Friday before the election. However, if a voter is already registered at his or her current address, the voter may apply for an AV ballot in person (and receive and complete the ballot at that time) until 4 p.m. on the day before the election.

Complete the ballot, place it in the secrecy sleeve and return envelope, and sign the envelope

A voter’s ballot is not counted unless his or her signature is on the return envelope and matches the signature on file. (If the voter has received assistance voting the ballot, the signature of the person assisting must also be on the envelope.)

The signature on file is acquired when a person registers to vote or receives a driver’s license and may differ from the signature on an application or ballot for a number of reasons, including the passage of time and a changing signature, the care taken when signing, the angle and height of the writing surface, and the instrument used to sign. While these may seem like minor issues, they may result in the rejection of an application or ballot. 2020 PA 177 (Senate Bill 757)¹⁰ introduced new notice requirements when the signature on a person’s application or AV ballot does not agree sufficiently with the signature on file. Under that act, if the rejection occurs before 8 p.m. on the day before Election Day, the city or township clerk who rejected the signature must notify the voter by mail, telephone, or email within 48 hours or by 8 p.m. on the day before Election Day, whichever is earlier.

Return the ballot

Clerks begin mailing out absentee ballots 45 days before the election. Voters can put a first-class stamp on their envelope and return it through the mail, return it to their respective clerk’s office, or return it to a drop box in their community. As of August 27, 2020, there were at least 756 ballot drop box locations in Michigan, with 695 of those available for dropoff 24 hours a day, 7 days a week.¹¹ It is estimated that there will be at

⁹ California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Michigan, Minnesota, Montana, Nevada, New Hampshire, Utah, Vermont, Washington, Wisconsin, and Wyoming. <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>

¹⁰ House Fiscal Agency analysis of 2020 PA 177 (SB 757): <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-0757-84AF46A0.pdf>

¹¹ https://www.michigan.gov/documents/sos/Ballot_Dropbox_Locations_697191_7.pdf

least 1,000 drop boxes available before the November 2020 election.¹² 2020 PA 177 put into law requirements that drop boxes be secured, video-monitored, and in well-lit public areas with good visibility.

A voter may track his or her ballot to see if it has been received by the clerk at Michigan.gov/VOTE

ABSENTEE VOTING SINCE PROPOSAL 3

At least 3.0 million of the state's 7.7 million registered voters are expected to vote absentee in the 2020 election.¹³ Roughly 2.5 million people voted in the August 2020 primary, surpassing the previous primary record of 2.2 million voters in August 2018. AV ballots accounted for more than 60% of the ballots cast. Historically, there has been even higher turnout for general elections than primary elections.

ABSENTEE VOTING DURING THE COVID-19 PANDEMIC

The May 5, 2020, municipal elections took place about seven weeks after the state shut down for the coronavirus pandemic. The secretary of state (SOS) mailed absentee ballot applications to 740,000 registered voters in the 33 Michigan counties considering ballot questions, which mostly focused on school millages and bond questions. Nearly 25% of eligible voters participated, with 99% of those voters casting absentee ballots.¹⁴ Many communities moved non-time-sensitive ballot questions to the August primary election, eliminating their need for May 2020 elections.

On May 19, 2020,¹⁵ Michigan's SOS Jocelyn Benson announced that AV ballot applications would automatically be sent to all 7.7 million registered Michigan voters for the August primary and November general election. Some believe that this is a worthwhile use of the \$11.2 million in federal CARES Act funding appropriated to Michigan for elections-related issues. Others worry that she is overstepping her authority by sending unsolicited applications and that possible irregularities in the Qualified Voter File (the database of Michigan's registered voters) will result in ballots being sent to incorrect addresses or to voters whose entries should have been purged because they died or moved out of state.

On May 26, 2020, three voters brought suit separately in the Michigan Court of Claims,¹⁶ alleging that the SOS lacked authority to mail unsolicited AV ballot applications statewide and seeking a preliminary injunction to prevent her from doing so. Citing a 2007 case¹⁷ in which the Michigan Court of Appeals found that the Detroit City Clerk lacked the authority to mail AV ballot applications to all voters over 60 (as had occurred there and in suburban Detroit communities for approximately 30 years), the plaintiffs argued that the request for an AV ballot must be initiated by the registered voter.

On June 18, 2020, Judge Cynthia Stephens denied the request for a preliminary injunction. The judge found no irreparable harm since the constitutionally guaranteed decision of whether and how to vote an AV ballot was maintained, given that the voter simply could decide not to complete and return the application or apply for an AV ballot independently. On August 25, 2020, Judge Stephens granted the SOS's request to dismiss the case,

¹² An up-to-date list of drop box locations in your community may be obtained by selecting "Who is my clerk" and typing in your address: <https://mvlc.sos.state.mi.us/> Voters Not Politicians, the group behind Proposal 3 of 2018, also has a drop box locator: <https://michigandropbox.com/counties.html>

¹³ <https://www.bridgemi.com/michigan-government/absentee-ballot-drop-boxes-boom-michigan-despite-controversy-elsewhere>

¹⁴ <https://content.govdelivery.com/accounts/MISOS/bulletins/28a393c>

¹⁵ https://www.michigan.gov/sos/0,4670,7-127-1640_9150-529536--,00.html

¹⁶ <https://courts.michigan.gov/Courts/MichiganSupremeCourt/PublicInfoOffice/Documents/20-000091-MM%20and%2020-000096-MZ%20OPN%20and%20Order.sec.pdf>

¹⁷ *Taylor v Currie*, 277 Mich App 85 (2007) <https://caselaw.findlaw.com/mi-court-of-appeals/1086888.html>

finding that the SOS's authority as the state's chief election officer outranked that of a city clerk and that the passage of Proposal 3 (and the increased access to AV ballots it placed in the constitution) changed the context under which the SOS sent the applications.

2020 PA 177 (SENATE BILL 757)

On October 7, 2020, the governor signed enrolled Senate Bill 757, which took effect immediately as 2020 PA 177. In addition to the changes described throughout this brief, such as notification of an insufficient signature and required drop box security, the act introduced two significant processes to address the expected increase in absentee voting.

First, for the November 2020 election only, "pre-processing" activities may begin the day before Election Day. Clerks or their designees in cities or townships with a population of at least 25,000 may do all of the following between 10 a.m. and 8 p.m. the day before Election Day:

- Open the outer/return envelopes.
- Verify that the ballot number on the ballot stub agrees with the ballot number on the AV ballot return envelope label.
- Remove the secrecy sleeve from the outer envelope for storage in a secure container.

Second, election inspectors on AV counting boards in cities or townships will be allowed to work in shifts. A second shift of AV board workers may begin at any time on Election Day as provided by the city or township clerk. However, after the tallying begins an election inspector cannot leave the counting place until the polls close. (In other words, a fresh set of workers may relieve the original workers, but the original workers must remain sequestered at the polling location until the polls close.) Also, there cannot be a gap between shifts, and the AV ballots can never be left unattended. At all times, at least one election worker from each major political party must be present at the AV counting place, and applicable policies and procedures must be followed.