

**SUBSTITUTE FOR
HOUSE BILL NO. 5123**

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
by amending section 765a (MCL 168.765a), as added by 2018 PA 123.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 765a. (1) **If a city or township has only 1 election**
2 **precinct and that city or township decides to use an absent voter**
3 **counting board, the board of election commissioners of that city or**
4 **township shall establish the absent voter counting board for the**
5 **election day precinct in that city or township. Except as otherwise**
6 **provided in this subsection, if a city or township has only 2**
7 **election precincts, the board of election commissioners of that**
8 **city or township shall establish an absent voter counting board for**
9 **both election day precincts in that city or township. If a city or**



1 township has only 2 election precincts, that city or township is
2 not required to establish an absent voter counting board for both
3 election day precincts in that city or township if the city or
4 township has less than 6,000 registered electors. If a city or
5 township ~~decides to use absent voter counting boards,~~ has 3 or more
6 election precincts, the board of election commissioners of that
7 city or township shall establish an absent voter counting board for
8 each election day precinct in that city or township. The ballot
9 form of an absent voter counting board must correspond to the
10 ballot form of the election day precinct for which it is
11 established. After the polls close on election day, the county,
12 city, or township clerk responsible for producing the accumulation
13 report of the election results submitted by the boards of precinct
14 election inspectors shall format the accumulation report to clearly
15 indicate all of the following:

16 (a) The election day precinct returns.

17 (b) The corresponding absent voter counting board returns.

18 (c) A total of each election day precinct return and each
19 corresponding absent voter counting board return.

20 (2) The board of election commissioners shall establish the
21 absent voter counting boards. The board of election commissioners
22 shall appoint the election inspectors to those absent voter
23 counting boards not less than 21 days or more than 40 days before
24 the election at which they are to be used. Sections 673a and 674
25 apply to the appointment of election inspectors to absent voter
26 counting boards under this section. The board of election
27 commissioners shall determine the number of ballots that may be
28 expeditiously counted by an absent voter counting board in a
29 reasonable period of time, taking into consideration the size and



1 complexity of the ballot to be counted pursuant to the guidelines
2 of the secretary of state. Combined ballots must be regarded as the
3 number of ballots as there are sections to the ballot.

4 (3) If more than 1 absent voter counting board is to be used,
5 the city or township clerk shall determine the number of electronic
6 voting systems or the number of ballot boxes and the number of
7 election inspectors to be used in each of the absent voter counting
8 boards and to which absent voter counting board the absent voter
9 ballots for each precinct are assigned for counting.

10 (4) In a city or township that uses absent voter counting
11 boards under this section, absent voter ballots must be counted in
12 the manner provided in this section and absent voter ballots must
13 not be delivered to the polling places. The board of election
14 commissioners shall provide a place for each absent voter counting
15 board to count the absent voter ballots. Section 662 applies to the
16 designation and prescribing of the absent voter counting place or
17 places in which the absent voter counting board performs its duties
18 under this section, except the location may be in a different
19 jurisdiction if the county provides a tabulator for use at a
20 central absent voter counting board location in that county. The
21 places must be designated as absent voter counting places. Except
22 as otherwise provided in this section, laws relating to paper
23 ballot precincts, including laws relating to the appointment of
24 election inspectors, apply to absent voter counting places. The
25 provisions of this section relating to placing of absent voter
26 ballots on electronic voting systems apply. More than 1 absent
27 voter counting board may be located in 1 building.

28 (5) The clerk of a city or township that uses absent voter
29 counting boards shall supply each absent voter counting board with



1 supplies necessary to carry out its duties under this act. The
2 supplies must be furnished to the city or township clerk in the
3 same manner and by the same persons or agencies as for other
4 precincts.

5 (6) Absent voter ballots received by the clerk before election
6 day must be delivered to the absent voter counting board by the
7 clerk or the clerk's authorized assistant at the time the election
8 inspectors of the absent voter counting boards report for duty,
9 which time must be established by the board of election
10 commissioners. Absent voter ballots received by the clerk before
11 the time set for the closing of the polls on election day must be
12 delivered to the absent voter counting boards. Absent voter ballots
13 must be delivered to the absent voter counting boards in the sealed
14 absent voter ballot return envelopes in which they were returned to
15 the clerk. Written or stamped on each of the return envelopes must
16 be the time and the date that the envelope was received by the
17 clerk and a statement by the clerk that the signatures of the
18 absent voters on the envelopes have been checked and found to agree
19 with the signatures of the voters on the registration cards or the
20 digitized signatures of voters contained in the qualified voter
21 file as provided under section 766. If a signature on the
22 registration card or a digitized signature contained in the
23 qualified voter file and on the absent voter ballot return envelope
24 does not agree as provided under section 766, if the absent voter
25 failed to sign the envelope, or if the statement of the absent
26 voter is not properly executed, the clerk shall mark the envelope
27 "rejected" and the reason for the rejection and shall place his or
28 her name under the notation. An envelope marked "rejected" must not
29 be delivered to the absent voter counting board but must be



1 preserved by the clerk until other ballots are destroyed in the
2 manner provided in this act. The clerk shall also comply with
3 section 765(5).

4 (7) This chapter does not prohibit an absent voter from voting
5 in person within the voter's precinct at an election,
6 notwithstanding that the voter may have applied for an absent voter
7 ballot and the ballot may have been mailed or otherwise delivered
8 to the voter. The voter, the election inspectors, and other
9 election officials shall proceed in the manner prescribed in
10 section 769. The clerk shall preserve the canceled ballots for 2
11 years.

12 (8) The absent voter counting boards shall process the ballots
13 and returns in as nearly as possible the same manner as ballots are
14 processed in paper ballot precincts. The poll book may be combined
15 with the absent voter list or record required by section 760, and
16 the applications for absent voter ballots may be used as the poll
17 list. The processing and tallying of absent voter ballots ~~may~~**must**
18 **not** commence ~~at~~**earlier than** 7 a.m. on the day of the election.

19 (9) An election inspector, challenger, or any other person in
20 attendance at an absent voter counting place at any time after the
21 processing of ballots has begun shall take and sign the following
22 oath that may be administered by the chairperson or a member of the
23 absent voter counting board:

24 "I (name of person taking oath) do solemnly swear (or affirm)
25 that I shall not communicate in any way any information relative to
26 the processing or tallying of votes that may come to me while in
27 this counting place until after the polls are closed."

28 (10) The oaths administered under subsection (9) must be
29 placed in an envelope provided for the purpose and sealed with the



1 red state seal. Following the election, the oaths must be delivered
2 to the city or township clerk. Except as otherwise provided in
3 subsection (12), a person in attendance at the absent voter
4 counting place shall not leave the counting place after the
5 tallying has begun until the polls close. A person who causes the
6 polls to be closed or who discloses an election result or in any
7 manner characterizes how any ballot being counted has been voted in
8 a voting precinct before the time the polls can be legally closed
9 on election day is guilty of a felony.

10 (11) Voted absent voter ballots must be placed in an approved
11 ballot container, and the ballot container must be sealed in the
12 manner provided by this act for paper ballot precincts. The seal
13 numbers must be recorded on the statement sheet and in the poll
14 book.

15 (12) Subject to this subsection, a local election official who
16 has established an absent voter counting board, the deputy or
17 employee of that local election official, an employee of the state
18 bureau of elections, a county clerk, an employee of a county clerk,
19 or a representative of a voting equipment company may enter and
20 leave an absent voter counting board after the tally has begun but
21 before the polls close. A person described in this subsection may
22 enter an absent voter counting board only for the purpose of
23 responding to an inquiry from an election inspector or a challenger
24 or providing instructions on the operation of the counting board.
25 Before entering an absent voter counting board, a person described
26 in this subsection must take and sign the oath prescribed in
27 subsection (9). The chairperson of the absent voter counting board
28 shall record in the poll book the name of a person described in
29 this subsection who enters the absent voter counting board. A



1 person described in this subsection who enters an absent voter
2 counting board and who discloses an election result or in any
3 manner characterizes how any ballot being counted has been voted in
4 a precinct before the time the polls can be legally closed on
5 election day is guilty of a felony. As used in this subsection,
6 "local election official" means a county, city, or township clerk.

7 (13) The secretary of state shall develop instructions
8 consistent with this act for the conduct of absent voter counting
9 boards. The secretary of state shall distribute the instructions
10 developed under this subsection to city and township clerks 40 days
11 or more before a general election in which absent voter counting
12 boards will be used. A city or township clerk shall make the
13 instructions developed under this subsection available to the
14 public and shall distribute the instructions to each challenger in
15 attendance at an absent voter counting board. The instructions
16 developed under this subsection are binding upon the operation of
17 an absent voter counting board used in an election conducted by a
18 county, city, or township.

