

**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 amended by 2020 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 765a. (1) **Subject to section 764d, if a city or township**
2 **has only 1 election precinct and that city or township decides to**
3 **use an absent voter counting board, the board of election**
4 **commissioners of that city or township shall establish the absent**
5 **voter counting board for the election day precinct in that city or**
6 **township. Except as otherwise provided in this subsection and**
7 **subject to section 764d, if a city or township has only 2 election**
8 **precincts, the board of election commissioners of that city or**
9 **township shall establish an absent voter counting board for both**



1 election day precincts in that city or township. Subject to section
2 764d, if a city or township has only 2 election precincts, that
3 city or township is not required to establish an absent voter
4 counting board for both election day precincts in that city or
5 township if the city or township has fewer than 6,000 registered
6 electors. Subject to section 764d, if a city or township ~~decides to~~
7 ~~use absent voter counting boards,~~ **has 3 or more election precincts,**
8 the board of election commissioners of that city or township shall
9 establish an absent voter counting board for each election day
10 precinct in that city or township. **If the clerk of a city or**
11 **township enters into an agreement under section 764d, that**
12 **satisfies the requirement for the city or township to establish an**
13 **absent voter counting board under this subsection.** The ballot form
14 of an absent voter counting board must correspond to the ballot
15 form of the election day precinct for which it is established.
16 After the polls close on election day, the county, city, or
17 township clerk responsible for producing the accumulation report of
18 the election results submitted by the boards of precinct election
19 inspectors shall format the accumulation report to clearly indicate
20 all of the following:

- 21 (a) The election day precinct returns.
22 (b) The corresponding absent voter counting board returns.
23 (c) A total of each election day precinct return and each
24 corresponding absent voter counting board return.
- 25 (2) Subject to section 764d, the board of election
26 commissioners shall establish the absent voter counting boards.
27 Subject to section 764d, the board of election commissioners shall
28 appoint the election inspectors to those absent voter counting
29 boards not less than 21 days or more than 40 days before the



1 election at which they are to be used. Sections 673a and 674 apply
2 to the appointment of election inspectors to absent voter counting
3 boards under this section. The board of election commissioners
4 shall determine the number of ballots that may be expeditiously
5 counted by an absent voter counting board in a reasonable period of
6 time, taking into consideration the size and complexity of the
7 ballot to be counted pursuant to the guidelines of the secretary of
8 state. Combined ballots must be regarded as the number of ballots
9 as there are sections to the ballot.

10 (3) If more than 1 absent voter counting board is to be used,
11 the city or township clerk shall determine the number of electronic
12 voting systems or the number of ballot boxes and the number of
13 election inspectors to be used in each of the absent voter counting
14 boards and to which absent voter counting board the absent voter
15 ballots for each precinct are assigned for counting.

16 (4) In a city or township that uses absent voter counting
17 boards under this section, absent voter ballots must be counted in
18 the manner provided in this section and, except as otherwise
19 provided in section 764d, absent voter ballots must not be
20 delivered to the polling places. Subject to section 764d, the board
21 of election commissioners shall provide a place for each absent
22 voter counting board to count the absent voter ballots. Section 662
23 applies to the designation and prescribing of the absent voter
24 counting place or places in which the absent voter counting board
25 performs its duties under this section, except the location may be
26 in a different jurisdiction if the county provides a tabulator for
27 use at a central absent voter counting board location in that
28 county. The places must be designated as absent voter counting
29 places. Except as otherwise provided in this section, laws relating



1 to paper ballot precincts, including laws relating to the
2 appointment of election inspectors, apply to absent voter counting
3 places. The provisions of this section relating to placing of
4 absent voter ballots on electronic voting systems apply. More than
5 1 absent voter counting board may be located in 1 building.

6 (5) The clerk of a city or township that uses absent voter
7 counting boards shall supply each absent voter counting board with
8 supplies necessary to carry out its duties under this act. The
9 supplies must be furnished to the city or township clerk in the
10 same manner and by the same persons or agencies as for other
11 precincts.

12 (6) Subject to section 764d, absent voter ballots received by
13 the clerk before election day must be delivered to the absent voter
14 counting board by the clerk or the clerk's authorized assistant at
15 the time the election inspectors of the absent voter counting
16 boards report for duty, which time must be established by the board
17 of election commissioners. Except as otherwise provided in section
18 764d, absent voter ballots received by the clerk before the time
19 set for the closing of the polls on election day must be delivered
20 to the absent voter counting boards. Except as otherwise provided
21 in section 765(6), absent voter ballots must be delivered to the
22 absent voter counting boards or combined absent voter counting
23 boards in the sealed absent voter ballot return envelopes in which
24 they were returned to the clerk. Written or stamped on each of the
25 return envelopes must be the time and the date that the envelope
26 was received by the clerk and a statement by the clerk that the
27 signatures of the absent voters on the envelopes have been checked
28 and found to agree with the signatures of the voters on the
29 registration cards or the digitized signatures of voters contained



1 in the qualified voter file as provided under section 766. If it is
2 determined after 8 p.m. on the day before election day that a
3 signature on the registration card or a digitized signature
4 contained in the qualified voter file and on the absent voter
5 ballot return envelope does not agree as provided under section
6 766, if it is determined after 8 p.m. on the day before election
7 day that the absent voter failed to sign the envelope, or if the
8 statement of the absent voter is not properly executed, the clerk
9 shall mark the envelope "rejected" and the reason for the rejection
10 and shall place his or her name under the notation. An envelope
11 marked "rejected" must not be delivered to the absent voter
12 counting board or combined absent voter counting board but must be
13 preserved by the clerk until other ballots are destroyed in the
14 manner provided in this act. If before 8 p.m. on the day before
15 election day the clerk of a city or township rejects an absent
16 voter ballot return envelope because the signature on the absent
17 voter ballot return envelope does not agree sufficiently with the
18 signature on the master card or the digitized signature contained
19 in the qualified voter file so as to identify the elector or
20 because the elector failed to sign the absent voter ballot return
21 envelope, the city or township clerk shall as soon as practicable,
22 but in no event later than 48 hours after determining the
23 signatures do not agree sufficiently or that the signature is
24 missing, or by 8 p.m. on the day before election day, whichever
25 occurs first, notify the elector of the rejection by mail,
26 telephone, or electronic mail. The clerk shall also comply with
27 section 765(5).

28 (7) This chapter does not prohibit an absent voter from voting
29 in person within the voter's precinct at an election,



1 notwithstanding that the voter may have applied for an absent voter
 2 ballot and the ballot may have been mailed or otherwise delivered
 3 to the voter. The voter, the election inspectors, and other
 4 election officials shall proceed in the manner prescribed in
 5 section 769. The clerk shall preserve the canceled ballots for 2
 6 years.

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

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

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

25 (10) The oaths administered under subsection (9) must be
 26 placed in an envelope provided for the purpose and sealed with the
 27 red state seal. Following the election, the oaths must be delivered
 28 to the city or township clerk. Except as otherwise provided in
 29 subsection (12), a person in attendance at the absent voter



1 counting place or combined absent voter counting place shall not
2 leave the counting place after the tallying has begun until the
3 polls close. Subject to this subsection, the clerk of a city or
4 township may allow the election inspectors appointed to an absent
5 voter counting board in that city or township to work in shifts. A
6 second or subsequent shift of election inspectors appointed for an
7 absent voter counting board may begin that shift at any time on
8 election day as provided by the city or township clerk. However, an
9 election inspector shall not leave the absent voter counting place
10 after the tallying has begun until the polls close. If the election
11 inspectors appointed to an absent voter counting board are
12 authorized to work in shifts, at no time shall there be a gap
13 between shifts and the election inspectors must never leave the
14 absent voter ballots unattended. At all times, at least 1 election
15 inspector from each major political party must be present at the
16 absent voter counting place and the policies and procedures adopted
17 by the secretary of state regarding the counting of absent voter
18 ballots must be followed. A person who causes the polls to be
19 closed or who discloses an election result or in any manner
20 characterizes how any ballot being counted has been voted in a
21 voting precinct before the time the polls can be legally closed on
22 election day is guilty of a felony.

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

28 (12) Subject to this subsection, a local election official who
29 has established an absent voter counting board or combined absent



1 voter counting board, the deputy or employee of that local election
2 official, an employee of the state bureau of elections, a county
3 clerk, an employee of a county clerk, or a representative of a
4 voting equipment company may enter and leave an absent voter
5 counting board or combined absent voter counting board after the
6 tally has begun but before the polls close. A person described in
7 this subsection may enter an absent voter counting board or
8 combined absent voter counting board only for the purpose of
9 responding to an inquiry from an election inspector or a challenger
10 or providing instructions on the operation of the counting board.
11 Before entering an absent voter counting board or combined absent
12 voter counting board, a person described in this subsection must
13 take and sign the oath prescribed in subsection (9). The
14 chairperson of the absent voter counting board or combined absent
15 voter counting board shall record in the poll book the name of a
16 person described in this subsection who enters the absent voter
17 counting board or combined absent voter counting board. A person
18 described in this subsection who enters an absent voter counting
19 board or combined absent voter counting board and who discloses an
20 election result or in any manner characterizes how any ballot being
21 counted has been voted in a precinct before the time the polls can
22 be legally closed on election day is guilty of a felony. As used in
23 this subsection, "local election official" means a county, city, or
24 township clerk.

25 (13) The secretary of state shall develop instructions
26 consistent with this act for the conduct of absent voter counting
27 boards or combined absent voter counting boards. The secretary of
28 state shall distribute the instructions developed under this
29 subsection to county, city, and township clerks 40 days or more



1 before a general election in which absent voter counting boards or
2 combined absent voter counting boards will be used. A county, city,
3 or township clerk shall make the instructions developed under this
4 subsection available to the public and shall distribute the
5 instructions to each challenger in attendance at an absent voter
6 counting board or combined absent voter counting board. The
7 instructions developed under this subsection are binding upon the
8 operation of an absent voter counting board or combined absent
9 voter counting board used in an election conducted by a county,
10 city, or township.

