

HOUSE BILL NO. 5447

February 04, 2020, Introduced by Reps. Love, Hope, Tyrone Carter, Guerra, Brenda Carter, Wittenberg, Kennedy, Manoogian, Hood, Sowerby, Sabo, Tate, Cynthia Johnson, Byrd, Garrett, Yancey and Gay-Dagnogo and referred to the Committee on Elections and Ethics.

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
by amending sections 765, 765a, and 765b (MCL 168.765, 168.765a,
and 168.765b), section 765 as amended by 2018 PA 603, section 765a
as added by 2018 PA 123, and section 765b as added by 2018 PA 127.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 765. (1) A—**Except as otherwise provided in subsection**
2 **(6), a** clerk who receives an absent voter ballot return envelope
3 containing the marked ballots of an absent voter shall not open



1 that envelope before delivering the envelope to the board of
2 election inspectors as provided in this section. ~~The~~**Except as**
3 **otherwise provided in subsection (6), the** city or township clerk
4 shall safely keep in his or her office until election day any
5 absent voter ballot return envelopes received by the clerk before
6 election day containing the marked ballots of an absent voter.

7 (2) Before the opening of the polls on election day or as soon
8 after the opening of the polls as possible, the clerk shall deliver
9 the absent voter ballot return envelopes **and absent voter ballots**
10 to the chairperson or other member of the board of election
11 inspectors in the absent voter's precinct, together with the signed
12 absent voter ballot applications received by the clerk from any
13 voters of that precinct and the clerk's list or record kept
14 relative to those absent voters. However, if higher numbered
15 ballots are used under section 717, the clerk shall retain the
16 applications and lists in his or her office and shall keep the
17 applications and lists open to public inspection at all reasonable
18 hours. Absent voter ballots must not be tabulated before the
19 opening of the polls on election day.

20 (3) The city or township clerk, or authorized designee of the
21 clerk, shall call for and receive absent voter ballots from the
22 post office at which the city or township clerk regularly receives
23 mail addressed to the city or township clerk on election day. Any
24 envelopes containing absent voter ballots that are received from
25 the post office or from voters who voted by absentee ballot in
26 person in the clerk's office on election day must be delivered to
27 the board of election inspectors or the absent voter counting
28 boards to be tabulated.

29 (4) If a marked absent voter ballot is received by the clerk



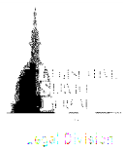
1 after the close of the polls, the clerk shall plainly mark the
2 envelope with the time and date of receipt and shall file the
3 envelope in his or her office.

4 (5) On or before 8 a.m. on election day, the clerk shall post
5 in the clerk's office or otherwise make public the number of absent
6 voter ballots the clerk distributed to absent voters and the number
7 of absent voter ballot return envelopes containing the marked
8 ballots of absent voters received by the clerk before election day
9 and to be delivered to the board of election inspectors or the
10 absent voter counting boards under this act. On or before 9 p.m. on
11 election day, the clerk shall post in the clerk's office or
12 otherwise make public the number of absent voter ballot return
13 envelopes containing the marked ballots of absent voters received
14 by the clerk on election day and delivered to the board of election
15 inspectors, under subsection (3), along with the total number of
16 absent voter ballot return envelopes containing the marked ballots
17 of absent voters received by the clerk both before and on election
18 day and delivered to the board of election inspectors or the absent
19 voter counting boards under this act. As soon as possible after all
20 precincts in the city or township are processed, the clerk shall
21 post in the clerk's office or otherwise make public the number of
22 absent voter ballot return envelopes containing the marked ballots
23 of absent voters received by the election inspectors at the
24 precincts on election day, along with the total number of absent
25 voter ballot return envelopes containing the marked ballots of
26 absent voters received in the city or township for that election.
27 This subsection applies only to elections in which a federal or
28 state office appears on the ballot.

29 (6) If a city or township adopts a resolution at least 40 days

1 before election day to authorize the early processing of absent
2 voter ballots, the clerk of that city or township, or his or her
3 authorized designee, may, beginning at 7 a.m. on the day before
4 election day, open the absent voter ballot return envelopes that
5 the clerk has received and process those absent voter ballots for
6 tabulation on election day. The resolution must include the
7 location and hours that the absent voter ballot return envelopes
8 will be opened and the absent voter ballots processed for
9 tabulation on election day. The opening of absent voter ballot
10 return envelopes and the processing of the absent voter ballots
11 under this subsection must be done at the location designated in
12 the resolution, and the location and processing must be accessible
13 to challengers as described in section 730. Once the absent voter
14 ballot return envelopes have been opened and the absent voter
15 ballots have been processed under this subsection, the absent voter
16 ballots must be stored and secured in a ballot container, as
17 described in section 24j, and sealed. The city or township clerk
18 shall store a ballot container containing the absent voter ballots
19 in a secure location until election day.

20 Sec. 765a. (1) If a city or township decides to use absent
21 voter counting boards, the board of election commissioners of that
22 city or township shall establish an absent voter counting board for
23 each election day precinct in that city or township. The ballot
24 form of an absent voter counting board must correspond to the
25 ballot form of the election day precinct for which it is
26 established. After the polls close on election day, the county,
27 city, or township clerk responsible for producing the accumulation
28 report of the election results submitted by the boards of precinct
29 election inspectors shall format the accumulation report to clearly



1 indicate all of the following:

2 (a) The election day precinct returns.

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

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

6 (2) The board of election commissioners shall establish the
7 absent voter counting boards. The board of election commissioners
8 shall appoint the election inspectors to those absent voter
9 counting boards not less than 21 days or more than 40 days before
10 the election at which they are to be used. Sections 673a and 674
11 apply to the appointment of election inspectors to absent voter
12 counting boards under this section. The board of election
13 commissioners shall determine the number of ballots that may be
14 expeditiously counted by an absent voter counting board in a
15 reasonable period of time, taking into consideration the size and
16 complexity of the ballot to be counted pursuant to the guidelines
17 of the secretary of state. Combined ballots must be regarded as the
18 number of ballots as there are sections to the ballot.

19 (3) If more than 1 absent voter counting board is to be used,
20 the city or township clerk shall determine the number of electronic
21 voting systems or the number of ballot boxes and the number of
22 election inspectors to be used in each of the absent voter counting
23 boards and to which absent voter counting board the absent voter
24 ballots for each precinct are assigned for counting.

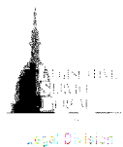
25 (4) In a city or township that uses absent voter counting
26 boards under this section, absent voter ballots must be counted in
27 the manner provided in this section and absent voter ballots must
28 not be delivered to the polling places. The board of election
29 commissioners shall provide a place for each absent voter counting



1 board to count the absent voter ballots. Section 662 applies to the
2 designation and prescribing of the absent voter counting place or
3 places in which the absent voter counting board performs its duties
4 under this section, except the location may be in a different
5 jurisdiction if the county provides a tabulator for use at a
6 central absent voter counting board location in that county. The
7 places must be designated as absent voter counting places. Except
8 as otherwise provided in this section, laws relating to paper
9 ballot precincts, including laws relating to the appointment of
10 election inspectors, apply to absent voter counting places. The
11 provisions of this section relating to placing of absent voter
12 ballots on electronic voting systems apply. More than 1 absent
13 voter counting board may be located in 1 building.

14 (5) The clerk of a city or township that uses absent voter
15 counting boards shall supply each absent voter counting board with
16 supplies necessary to carry out its duties under this act. The
17 supplies must be furnished to the city or township clerk in the
18 same manner and by the same persons or agencies as for other
19 precincts.

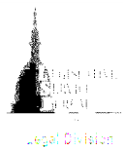
20 (6) ~~Absent~~ **Subject to section 765(6), absent** voter ballots
21 received by the clerk before election day must be delivered to the
22 absent voter counting board by the clerk or the clerk's authorized
23 assistant at the time the election inspectors of the absent voter
24 counting boards report for duty, which time must be established by
25 the board of election commissioners. Absent voter ballots received
26 by the clerk before the time set for the closing of the polls on
27 election day must be delivered to the absent voter counting boards.
28 ~~Absent~~ **Except as otherwise provided in section 765(6), absent** voter
29 ballots must be delivered to the absent voter counting boards in



1 the sealed absent voter ballot return envelopes in which they were
2 returned to the clerk. Written or stamped on each of the return
3 envelopes must be the time and the date that the envelope was
4 received by the clerk and a statement by the clerk that the
5 signatures of the absent voters on the envelopes have been checked
6 and found to agree with the signatures of the voters on the
7 registration cards or the digitized signatures of voters contained
8 in the qualified voter file as provided under section 766. If a
9 signature on the registration card or a digitized signature
10 contained in the qualified voter file and on the absent voter
11 ballot return envelope does not agree as provided under section
12 766, if the absent voter failed to sign the envelope, or if the
13 statement of the absent voter is not properly executed, the clerk
14 shall mark the envelope "rejected" and the reason for the rejection
15 and shall place his or her name under the notation. An envelope
16 marked "rejected" must not be delivered to the absent voter
17 counting board but must be preserved by the clerk until other
18 ballots are destroyed in the manner provided in this act. The clerk
19 shall also comply with section 765(5).

20 (7) This chapter does not prohibit an absent voter from voting
21 in person within the voter's precinct at an election,
22 notwithstanding that the voter may have applied for an absent voter
23 ballot and the ballot may have been mailed or otherwise delivered
24 to the voter. The voter, the election inspectors, and other
25 election officials shall proceed in the manner prescribed in
26 section 769. The clerk shall preserve the canceled ballots for 2
27 years.

28 (8) The absent voter counting boards shall process the ballots
29 and returns in as nearly as possible the same manner as ballots are



1 processed in paper ballot precincts. The poll book may be combined
2 with the absent voter list or record required by section 760, and
3 the applications for absent voter ballots may be used as the poll
4 list. ~~The~~ **Except as otherwise provided in section 765(6), the**
5 processing and tallying of absent voter ballots may commence at 7
6 a.m. on the day of the election.

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

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

16 (10) The oaths administered under subsection (9) must be
17 placed in an envelope provided for the purpose and sealed with the
18 red state seal. Following the election, the oaths must be delivered
19 to the city or township clerk. Except as otherwise provided in
20 subsection (12), a person in attendance at the absent voter
21 counting place shall not leave the counting place after the
22 tallying has begun until the polls close. A person who causes the
23 polls to be closed or who discloses an election result or in any
24 manner characterizes how any ballot being counted has been voted in
25 a voting precinct before the time the polls can be legally closed
26 on election day is guilty of a felony.

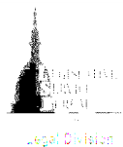
27 (11) Voted absent voter ballots must be placed in an approved
28 ballot container, and the ballot container must be sealed in the
29 manner provided by this act for paper ballot precincts. The seal



1 numbers must be recorded on the statement sheet and in the poll
2 book.

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

24 (13) The secretary of state shall develop instructions
25 consistent with this act for the conduct of absent voter counting
26 boards. The secretary of state shall distribute the instructions
27 developed under this subsection to city and township clerks 40 days
28 or more before a general election in which absent voter counting
29 boards will be used. A city or township clerk shall make the



1 instructions developed under this subsection available to the
2 public and shall distribute the instructions to each challenger in
3 attendance at an absent voter counting board. The instructions
4 developed under this subsection are binding upon the operation of
5 an absent voter counting board used in an election conducted by a
6 county, city, or township.

7 Sec. 765b. (1) Not later than 2 p.m. on the Saturday
8 immediately before an election, an elector may submit a signed,
9 written statement to his or her city or township clerk requesting
10 that the clerk do both of the following:

11 (a) Spoil the elector's absent voter ballot.

12 (b) Provide or mail a new absent voter ballot to the elector.

13 (2) Upon receipt of a signed, written statement from an
14 elector as described in subsection (1), the city or township clerk
15 shall mark the absent voter ballot return envelope of that elector
16 as "spoiled" and retain the envelope. In addition, the city or
17 township clerk shall provide or mail a new absent voter ballot to
18 that elector.

19 (3) ~~An~~ **Except as otherwise provided in subsection (9), an**
20 elector who has returned an absent voter ballot may, before 4 p.m.
21 on the day before an election except Sunday or a legal holiday,
22 appear in person at his or her city or township clerk's office to
23 do both of the following:

24 (a) Spoil his or her absent voter ballot by submitting a
25 signed, written statement to the city or township clerk indicating
26 that the elector wishes to have his or her absent voter ballot
27 spoiled.

28 (b) Vote a new absent voter ballot in the clerk's office.

29 (4) Upon receipt of the signed, written statement from an



1 elector as described in subsection (3)(a), the city or township
2 clerk shall mark the absent voter ballot return envelope of that
3 elector as "spoiled" and retain the envelope. In addition, the city
4 or township clerk shall issue the elector a new absent voter ballot
5 that must be voted by the elector in the clerk's office.

6 (5) Not later than 2 p.m. on the Saturday immediately before
7 an election, an elector who has lost his or her absent voter ballot
8 or not yet received his or her absent voter ballot in the mail may
9 submit a signed, written statement to his or her city or township
10 clerk requesting that the clerk do both of the following:

11 (a) Spoil the elector's absent voter ballot.

12 (b) Provide or mail a new absent voter ballot to the elector.

13 (6) Upon receipt of a signed, written statement from an
14 elector as described in subsection (5), the city or township clerk
15 shall indicate in the qualified voter file that the original ballot
16 is spoiled. In addition, the city or township clerk shall provide
17 or mail a new absent voter ballot to that elector.

18 (7) An elector who has lost his or her absent voter ballot or
19 not yet received his or her absent voter ballot in the mail may,
20 before 4 p.m. on the day before an election except Sunday or a
21 legal holiday, appear in person at his or her city or township
22 clerk's office to do both of the following:

23 (a) Spoil his or her absent voter ballot by submitting a
24 signed, written statement to the city or township clerk indicating
25 that the elector wishes to have his or her absent voter ballot
26 spoiled.

27 (b) Vote a new absent voter ballot in the clerk's office.

28 (8) Upon receipt of the signed, written statement from an
29 elector described in subsection (7)(a), the city or township clerk



1 shall indicate in the qualified voter file that the original ballot
2 is spoiled. In addition, the city or township clerk shall issue the
3 elector a new absent voter ballot that must be voted by the elector
4 in the clerk's office.

5 (9) If a city or township adopts a resolution under section
6 765(6) to allow the city or township clerk, or his or her
7 authorized designee, to open and process absent voter ballot return
8 envelopes beginning at 7 a.m. on the day before election day, an
9 elector who has voted and returned his or her absent voter ballot
10 to the city or township clerk is not permitted to spoil his or her
11 absent voter ballot after 7 a.m. on the day before election day.

