

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5141**

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
by amending sections 765 and 765a (MCL 168.765 and 168.765a),
section 765 as amended by 2018 PA 603 and section 765a as added by
2018 PA 123, and by adding section 764d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 764d. (1) Notwithstanding any provision of law to the**
2 **contrary and subject to subsections (2) and (12), not less than 75**
3 **days before the day of an election, the clerk of a city or township**
4 **may do any of the following:**

5 **(a) Enter into an agreement with the clerk of another city or**
6 **township, or with the clerks of more than 1 city or township,**
7 **located in the same county as that city or township to establish a**



1 combined absent voter counting board to count the absent voter
2 ballots for each participating city or township.

3 (b) Enter into an agreement with the clerk of another city or
4 township located in the same county that authorizes the clerk of 1
5 participating city or township to process and count the absent
6 voter ballots for both participating entities by utilizing the
7 absent voter counting board of that participating city or township.

8 (c) Enter into an agreement with the clerk of the county in
9 which that city or township is located to establish an absent voter
10 counting board to count the absent voter ballots for that city or
11 township. If a city or township has boundaries located in more than
12 1 county, the clerk of the city or township shall only enter into
13 an agreement under this subdivision with the county clerk of the
14 county in which the majority of the electors of the city or
15 township reside.

16 (2) Except as otherwise provided in this subsection, an absent
17 voter counting board established under subsection (1) must not be
18 used for the first time at a general November election. For the
19 November 3, 2020 general November election, an absent voter
20 counting board may be established under subsection (1) and used for
21 the first time if either of the following occurs:

22 (a) An agreement is entered into under subsection (1) (a) or
23 (b) and at least 1 of the clerks participating in the agreement has
24 previously operated an absent voter counting board.

25 (b) An agreement is entered into under subsection (1) (c) .

26 (3) An agreement entered into under subsection (1) (b) or (c)
27 must comply with the established approval procedures of the
28 governing body of each county, city, or township involved, or if
29 established approval procedures do not exist, the agreement must be



1 approved by resolution of the governing body of that county, city,
2 or township.

3 (4) The bureau of elections shall do both of the following:

4 (a) Develop model language to be used by county, city, and
5 township clerks for agreements entered into under subsection (1).

6 (b) Develop procedures to implement this section.

7 (5) Except as otherwise provided in this subsection, if the
8 clerk of a city or township enters into an agreement under
9 subsection (1), the clerk of that city or township shall file the
10 agreement with the county clerk of the county in which that city or
11 township is located no later than 74 days before the election at
12 which the agreement applies. For an election occurring before
13 January 1, 2021, the clerk of a city or township who enters into an
14 agreement under subsection (1) is not required to file the
15 agreement with the county clerk if all of the following apply:

16 (a) The electronic voting system used by the county can be
17 programmed to accommodate an absent voter counting board formed
18 under subsection (1).

19 (b) The county clerk agrees that the electronic voting system
20 used by the county can be altered after completion of the ballot
21 programming.

22 (c) The appropriate board of election commissioners publicly
23 tests the electronic tabulating equipment as required under section
24 798.

25 (6) If the clerk of a city or township enters into an
26 agreement under subsection (1) and that agreement covers more than
27 1 election, the agreement must allow any participating clerk to
28 terminate the agreement by giving 84 days' written notice to each
29 of the other participating clerks. If the clerk terminating the



1 agreement is a city or township clerk, the clerk must also file the
2 notice of termination with the county clerk of the county in which
3 that city or township is located no later than 2 business days
4 after the date of termination. If the clerk terminating the
5 agreement is a county clerk, the clerk must also file the notice of
6 termination with the bureau of elections no later than 2 business
7 days after the date of termination.

8 (7) For a combined absent voter counting board established
9 under subsection (1)(a), all of the following apply:

10 (a) The board of election commissioners of each participating
11 city or township must appoint at least 1 election inspector to that
12 combined absent voter counting board not less than 21 days or more
13 than 40 days before the election at which those election inspectors
14 are to be used. Sections 673a and 674 apply to the appointment of
15 election inspectors to a combined absent voter counting board.

16 (b) The agreement entered into under subsection (1)(a) must
17 designate the place for the combined absent voter counting board to
18 count the absent voter ballots. Section 662 applies to the
19 designation and prescribing of the combined absent voter ballot
20 counting place in which the combined absent voter counting board
21 performs its duties.

22 (c) The agreement entered into under subsection (1)(a) must
23 establish the time at which the election inspectors of the combined
24 absent voter counting board report for duty.

25 (8) For an absent voter counting board established under
26 subsection (1)(c), all of the following apply:

27 (a) The board of election commissioners of the city or
28 township entering into an agreement under subsection (1)(c) shall
29 appoint at least 1 election inspector to the absent voter counting



1 board and the county board of election commissioners of that county
2 shall appoint at least 1 election inspector to the absent voter
3 counting board not less than 21 days or more than 40 days before
4 the election at which those election inspectors are to be used.
5 Sections 673a and 674 apply to the appointment of election
6 inspectors to the absent voter counting board.

7 (b) In consultation with the parties to an agreement under
8 subsection (1)(c), the county board of election commissioners shall
9 designate the place for the absent voter counting board to count
10 the absent voter ballots. Section 662 applies to the designation
11 and prescribing of the absent voter ballot counting place in which
12 the absent voter counting board performs its duties.

13 (c) In consultation with the parties to an agreement under
14 subsection (1)(c), the county board of election commissioners shall
15 establish the time at which the election inspectors of the absent
16 voter counting board report for duty.

17 (9) The election inspectors appointed to an absent voter
18 counting board established under subsection (1) shall comply with
19 section 733(2) regarding election challengers.

20 (10) If the clerk of a city or township enters into an
21 agreement under subsection (1), any absent voter ballot received by
22 that city or township clerk after 4 p.m. on the day before an
23 election must not be delivered to the absent voter counting board
24 but must instead be delivered to the voting precinct of the elector
25 on election day to be processed and counted.

26 (11) The provisions of section 765a(8) to (13) apply to an
27 absent voter counting board established under subsection (1).

28 (12) For an election occurring before January 1, 2021, the
29 clerk of a city or township may enter into an agreement under



1 subsection (1) not less than 23 days before the day of the election
2 if all of the following apply:

3 (a) The electronic voting system used by the county can be
4 programmed to accommodate an absent voter counting board formed
5 under subsection (1).

6 (b) The county clerk agrees that the electronic voting system
7 used by the county can be altered after completion of the ballot
8 programming.

9 (c) The appropriate board of election commissioners publicly
10 tests the electronic tabulating equipment as required under section
11 798.

12 (13) This section does not abrogate the duties or
13 responsibilities of a city or township clerk for conducting
14 elections under this act.

15 Sec. 765. (1) A clerk who receives an absent voter ballot
16 return envelope containing the marked ballots of an absent voter
17 shall not open that envelope before delivering the envelope to the
18 board of election inspectors as provided in this section. The city
19 or township clerk shall safely keep in his or her office until
20 election day any absent voter ballot return envelopes received by
21 the clerk before election day containing the marked ballots of an
22 absent voter.

23 (2) Before the opening of the polls on election day or as soon
24 after the opening of the polls as possible, the clerk shall deliver
25 the absent voter ballot return envelopes to the chairperson or
26 other member of the board of election inspectors in the absent
27 voter's precinct, together with the signed absent voter ballot
28 applications received by the clerk from any voters of that precinct
29 and the clerk's list or record kept relative to those absent



1 voters. However, if higher numbered ballots are used under section
2 717, the clerk shall retain the applications and lists in his or
3 her office and shall keep the applications and lists open to public
4 inspection at all reasonable hours. Absent voter ballots must not
5 be tabulated before the opening of the polls on election day.

6 (3) The city or township clerk, or authorized designee of the
7 clerk, shall call for and receive absent voter ballots from the
8 post office at which the city or township clerk regularly receives
9 mail addressed to the city or township clerk on election day. Any
10 envelopes containing absent voter ballots that are received from
11 the post office or from voters who voted by absentee ballot in
12 person in the clerk's office on election day must be delivered to
13 the board of election inspectors or, **except as otherwise provided**
14 **in section 764d**, the absent voter counting boards to be tabulated.

15 (4) If a marked absent voter ballot is received by the clerk
16 after the close of the polls, the clerk shall plainly mark the
17 envelope with the time and date of receipt and shall file the
18 envelope in his or her office.

19 (5) On or before 8 a.m. on election day, the clerk shall post
20 in the clerk's office or otherwise make public the number of absent
21 voter ballots the clerk distributed to absent voters and the number
22 of absent voter ballot return envelopes containing the marked
23 ballots of absent voters received by the clerk before election day
24 and to be delivered to the board of election inspectors or the
25 absent voter counting boards under this act. On or before 9 p.m. on
26 election day, the clerk shall post in the clerk's office or
27 otherwise make public the number of absent voter ballot return
28 envelopes containing the marked ballots of absent voters received
29 by the clerk on election day and delivered to the board of election



1 inspectors, under subsection (3), along with the total number of
2 absent voter ballot return envelopes containing the marked ballots
3 of absent voters received by the clerk both before and on election
4 day and delivered to the board of election inspectors or the absent
5 voter counting boards under this act. As soon as possible after all
6 precincts in the city or township are processed, the clerk shall
7 post in the clerk's office or otherwise make public the number of
8 absent voter ballot return envelopes containing the marked ballots
9 of absent voters received by the election inspectors at the
10 precincts on election day, along with the total number of absent
11 voter ballot return envelopes containing the marked ballots of
12 absent voters received in the city or township for that election.
13 This subsection applies only to elections in which a federal or
14 state office appears on the ballot.

15 Sec. 765a. (1) ~~If~~ **Subject to section 764d, if** a city or
16 township decides to use absent voter counting boards, the board of
17 election commissioners of that city or township shall establish an
18 absent voter counting board for each election day precinct in that
19 city or township. The ballot form of an absent voter counting board
20 must correspond to the ballot form of the election day precinct for
21 which it is established. After the polls close on election day, the
22 county, city, or township clerk responsible for producing the
23 accumulation report of the election results submitted by the boards
24 of precinct election inspectors shall format the accumulation
25 report to clearly indicate all of the following:

- 26 (a) The election day precinct returns.
27 (b) The corresponding absent voter counting board returns.
28 (c) A total of each election day precinct return and each
29 corresponding absent voter counting board return.



1 (2) ~~The~~ **Subject to section 764d, the** board of election
2 commissioners shall establish the absent voter counting boards. ~~The~~
3 **Subject to section 764d, the** board of election commissioners shall
4 appoint the election inspectors to those absent voter counting
5 boards not less than 21 days or more than 40 days before the
6 election at which they are to be used. Sections 673a and 674 apply
7 to the appointment of election inspectors to absent voter counting
8 boards under this section. The board of election commissioners
9 shall determine the number of ballots that may be expeditiously
10 counted by an absent voter counting board in a reasonable period of
11 time, taking into consideration the size and complexity of the
12 ballot to be counted pursuant to the guidelines of the secretary of
13 state. Combined ballots must be regarded as the number of ballots
14 as there are sections to the ballot.

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

21 (4) In a city or township that uses absent voter counting
22 boards under this section, absent voter ballots must be counted in
23 the manner provided in this section and, **except as otherwise**
24 **provided in section 764d,** absent voter ballots must not be
25 delivered to the polling places. ~~The~~ **Subject to section 764d, the**
26 board of election commissioners shall provide a place for each
27 absent voter counting board to count the absent voter ballots.
28 Section 662 applies to the designation and prescribing of the
29 absent voter counting place or places in which the absent voter



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

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

18 (6) ~~Absent~~ **Subject to section 764d, absent** voter ballots
 19 received by the clerk before election day must be delivered to the
 20 absent voter counting board by the clerk or the clerk's authorized
 21 assistant at the time the election inspectors of the absent voter
 22 counting boards report for duty, which time must be established by
 23 the board of election commissioners. ~~Absent~~ **Except as otherwise**
 24 **provided in section 764d, absent** voter ballots received by the
 25 clerk before the time set for the closing of the polls on election
 26 day must be delivered to the absent voter counting boards. Absent
 27 voter ballots must be delivered to the absent voter counting boards
 28 **or combined absent voter counting boards** in the sealed absent voter
 29 ballot return envelopes in which they were returned to the clerk.



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

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

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



1 ballot precincts. The poll book may be combined with the absent
2 voter list or record required by section 760, and the applications
3 for absent voter ballots may be used as the poll list. The
4 processing and tallying of absent voter ballots may commence at 7
5 a.m. on the day of the election.

6 (9) An election inspector, challenger, or any other person in
7 attendance at an absent voter counting place **or combined absent**
8 **voter counting place** at any time after the processing of ballots
9 has begun shall take and sign the following oath that may be
10 administered by the chairperson or a member of the absent voter
11 counting board **or combined 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 **or combined absent voter counting place** shall not
22 leave the counting place after the tallying has begun until the
23 polls close. A person who causes the polls to be closed or who
24 discloses an election result or in any manner characterizes how any
25 ballot being counted has been voted in a voting precinct before the
26 time the polls can be legally closed on election day is guilty of a
27 felony.

28 (11) Voted absent voter ballots must be placed in an approved
29 ballot container, and the ballot container must be sealed in the



1 manner provided by this act for paper ballot precincts. The seal
2 numbers must be recorded on the statement sheet and in the poll
3 book.

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



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

