

**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 subsection (2), not less than 75 days**  
3 **before the day of an election, the clerk of a city or township may**  
4 **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 have the county clerk  
10 establish an absent voter counting board to count the absent voter  
11 ballots for that city or township. If a city or township has  
12 boundaries located in more than 1 county, the clerk of the city or  
13 township shall only enter into an agreement under this subdivision  
14 with the county clerk of the county in which the majority of the  
15 electors of the city or township reside.

16 (2) An absent voter counting board established under  
17 subsection (1) must not be used for the first time at a general  
18 November election.

19 (3) An agreement entered into under subsection (1)(b) or (c)  
20 must comply with the established approval procedures of the  
21 governing body of each county, city, or township involved, or if  
22 established approval procedures do not exist, the agreement must be  
23 approved by resolution of the governing body of that county, city,  
24 or township.

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

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

28 (b) Develop procedures to implement this section.

29 (5) If the clerk of a city or township enters into an



1 agreement under subsection (1), the clerk of that city or township  
2 shall file the agreement with the county clerk of the county in  
3 which that city or township is located no later than 74 days before  
4 the election at which the agreement applies.

5 (6) If the clerk of a city or township enters into an  
6 agreement under subsection (1) and that agreement covers more than  
7 1 election, the agreement must allow any participating clerk to  
8 terminate the agreement by giving 84 days' written notice to each  
9 of the other participating clerks. If the clerk terminating the  
10 agreement is a city or township clerk, the clerk must also file the  
11 notice of termination with the county clerk of the county in which  
12 that city or township is located no later than 2 business days  
13 after the date of termination. If the clerk terminating the  
14 agreement is a county clerk, the clerk must also file the notice of  
15 termination with the bureau of elections no later than 2 business  
16 days after the date of termination.

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

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

25 (b) The agreement entered into under subsection (1)(a) must  
26 designate the place for the combined absent voter counting board to  
27 count the absent voter ballots. Section 662 applies to the  
28 designation and prescribing of the combined absent voter ballot  
29 counting place in which the combined absent voter counting board



1 performs its duties.

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

5 (8) For an absent voter counting board established by a county  
6 under subsection (1)(c), all of the following apply:

7 (a) The county board of election commissioners of that county  
8 shall appoint election inspectors to the county absent voter  
9 counting board not less than 21 days or more than 40 days before  
10 the election at which those election inspectors are to be used.  
11 Sections 673a and 674 apply to the appointment of election  
12 inspectors to a county absent voter counting board.

13 (b) The county board of election commissioners of the county  
14 shall designate the place for the county absent voter counting  
15 board to count the absent voter ballots. Section 662 applies to the  
16 designation and prescribing of the county absent voter ballot  
17 counting place in which the county absent voter counting board  
18 performs its duties.

19 (c) The county board of election commissioners of the county  
20 shall establish the time at which the election inspectors of the  
21 county absent voter counting board report for duty.

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

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



1 on election day to be processed and counted.

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

4 Sec. 765. (1) A clerk who receives an absent voter ballot  
5 return envelope containing the marked ballots of an absent voter  
6 shall not open that envelope before delivering the envelope to the  
7 board of election inspectors as provided in this section. The city  
8 or township clerk shall safely keep in his or her office until  
9 election day any absent voter ballot return envelopes received by  
10 the clerk before election day containing the marked ballots of an  
11 absent voter.

12 (2) Before the opening of the polls on election day or as soon  
13 after the opening of the polls as possible, the clerk shall deliver  
14 the absent voter ballot return envelopes to the chairperson or  
15 other member of the board of election inspectors in the absent  
16 voter's precinct, together with the signed absent voter ballot  
17 applications received by the clerk from any voters of that precinct  
18 and the clerk's list or record kept relative to those absent  
19 voters. However, if higher numbered ballots are used under section  
20 717, the clerk shall retain the applications and lists in his or  
21 her office and shall keep the applications and lists open to public  
22 inspection at all reasonable hours. Absent voter ballots must not  
23 be tabulated before the opening of the polls on election day.

24 (3) The city or township clerk, or authorized designee of the  
25 clerk, shall call for and receive absent voter ballots from the  
26 post office at which the city or township clerk regularly receives  
27 mail addressed to the city or township clerk on election day. Any  
28 envelopes containing absent voter ballots that are received from  
29 the post office or from voters who voted by absentee ballot in



1 person in the clerk's office on election day must be delivered to  
2 the board of election inspectors or, **except as otherwise provided**  
3 **in section 764d**, the absent voter counting boards to be tabulated.

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

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



1 absent voters received in the city or township for that election.  
2 This subsection applies only to elections in which a federal or  
3 state office appears on the ballot.

4 Sec. 765a. (1) ~~If~~ **Subject to section 764d, if** a city or  
5 township decides to use absent voter counting boards, the board of  
6 election commissioners of that city or township shall establish an  
7 absent voter counting board for each election day precinct in that  
8 city or township. The ballot form of an absent voter counting board  
9 must correspond to the ballot form of the election day precinct for  
10 which it is established. After the polls close on election day, the  
11 county, city, or township clerk responsible for producing the  
12 accumulation report of the election results submitted by the boards  
13 of precinct election inspectors shall format the accumulation  
14 report to clearly indicate all of the following:

- 15 (a) The election day precinct returns.  
16 (b) The corresponding absent voter counting board returns.  
17 (c) A total of each election day precinct return and each  
18 corresponding absent voter counting board return.

19 (2) ~~The~~ **Subject to section 764d, the** board of election  
20 commissioners shall establish the absent voter counting boards. ~~The~~  
21 **Subject to section 764d, the** board of election commissioners shall  
22 appoint the election inspectors to those absent voter counting  
23 boards not less than 21 days or more than 40 days before the  
24 election at which they are to be used. Sections 673a and 674 apply  
25 to the appointment of election inspectors to absent voter counting  
26 boards under this section. The board of election commissioners  
27 shall determine the number of ballots that may be expeditiously  
28 counted by an absent voter counting board in a reasonable period of  
29 time, taking into consideration the size and complexity of the



1 ballot to be counted pursuant to the guidelines of the secretary of  
2 state. Combined ballots must be regarded as the number of ballots  
3 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, **except as otherwise**  
13 **provided in section 764d**, absent voter ballots must not be  
14 delivered to the polling places. ~~The~~ **Subject to section 764d, the**  
15 board of election commissioners shall provide a place for each  
16 absent voter counting board to count the absent voter ballots.  
17 Section 662 applies to the designation and prescribing of the  
18 absent voter counting place or places in which the absent voter  
19 counting board performs its duties under this section, except the  
20 location may be in a different jurisdiction if the county provides  
21 a tabulator for use at a central absent voter counting board  
22 location in that county. The places must be designated as absent  
23 voter counting places. Except as otherwise provided in this  
24 section, laws relating to paper ballot precincts, including laws  
25 relating to the appointment of election inspectors, apply to absent  
26 voter counting places. The provisions of this section relating to  
27 placing of absent voter ballots on electronic voting systems apply.  
28 More than 1 absent voter counting board may be located in 1  
29 building.



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

7 (6) ~~Absent~~**Subject to section 764d, absent** voter ballots  
8 received by the clerk before election day must be delivered to the  
9 absent voter counting board by the clerk or the clerk's authorized  
10 assistant at the time the election inspectors of the absent voter  
11 counting boards report for duty, which time must be established by  
12 the board of election commissioners. ~~Absent~~**Except as otherwise**  
13 **provided in section 764d, absent** voter ballots received by the  
14 clerk before the time set for the closing of the polls on election  
15 day must be delivered to the absent voter counting boards. Absent  
16 voter ballots must be delivered to the absent voter counting  
17 boards, **county absent voter counting boards, or combined absent**  
18 **voter counting boards** in the sealed absent voter ballot return  
19 envelopes in which they were returned to the clerk. Written or  
20 stamped on each of the return envelopes must be the time and the  
21 date that the envelope was received by the clerk and a statement by  
22 the clerk that the signatures of the absent voters on the envelopes  
23 have been checked and found to agree with the signatures of the  
24 voters on the registration cards or the digitized signatures of  
25 voters contained in the qualified voter file as provided under  
26 section 766. If a signature on the registration card or a digitized  
27 signature contained in the qualified voter file and on the absent  
28 voter ballot return envelope does not agree as provided under  
29 section 766, if the absent voter failed to sign the envelope, or if



1 the statement of the absent voter is not properly executed, the  
 2 clerk shall mark the envelope "rejected" and the reason for the  
 3 rejection and shall place his or her name under the notation. An  
 4 envelope marked "rejected" must not be delivered to the absent  
 5 voter counting board, **county absent voter counting board, or**  
 6 **combined absent voter counting board** but must be preserved by the  
 7 clerk until other ballots are destroyed in the manner provided in  
 8 this act. The clerk shall also comply with section 765(5).

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

17 (8) The absent voter counting boards, **county absent voter**  
 18 **counting boards, and combined absent voter counting boards** shall  
 19 process the ballots and returns in as nearly as possible the same  
 20 manner as ballots are processed in paper ballot precincts. The poll  
 21 book may be combined with the absent voter list or record required  
 22 by section 760, and the applications for absent voter ballots may  
 23 be used as the poll list. The processing and tallying of absent  
 24 voter ballots may commence at 7 a.m. on the day of the election.

25 (9) An election inspector, challenger, or any other person in  
 26 attendance at an absent voter counting place, **county absent voter**  
 27 **counting place, or combined absent voter counting place** at any time  
 28 after the processing of ballots has begun shall take and sign the  
 29 following oath that may be administered by the chairperson or a



1 member of the absent voter counting board, **county absent voter**  
2 **counting board, or combined absent voter counting board:**

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

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

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

24 (12) Subject to this subsection, a local election official who  
25 has established an absent voter counting board, **county absent voter**  
26 **counting board, or combined absent voter counting board,** the deputy  
27 or employee of that local election official, an employee of the  
28 state bureau of elections, a county clerk, an employee of a county  
29 clerk, or a representative of a voting equipment company may enter



1 and leave an absent voter counting board, **county absent voter**  
 2 **counting board, or combined absent voter counting board** after the  
 3 tally has begun but before the polls close. A person described in  
 4 this subsection may enter an absent voter counting board, **county**  
 5 **absent voter counting board, or combined absent voter counting**  
 6 **board** only for the purpose of responding to an inquiry from an  
 7 election inspector or a challenger or providing instructions on the  
 8 operation of the counting board. Before entering an absent voter  
 9 counting board, **county absent voter counting board, or combined**  
 10 **absent voter counting board**, a person described in this subsection  
 11 must take and sign the oath prescribed in subsection (9). The  
 12 chairperson of the absent voter counting board, **county absent voter**  
 13 **counting board, or combined absent voter counting board** shall  
 14 record in the poll book the name of a person described in this  
 15 subsection who enters the absent voter counting board, **county**  
 16 **absent voter counting board, or combined absent voter counting**  
 17 **board**. A person described in this subsection who enters an absent  
 18 voter counting board, **county absent voter counting board, or**  
 19 **combined absent voter counting board** and who discloses an election  
 20 result or in any manner characterizes how any ballot being counted  
 21 has been voted in a precinct before the time the polls can be  
 22 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, **county absent voter counting boards, or combined absent**  
 28 **voter counting boards**. The secretary of state shall distribute the  
 29 instructions developed under this subsection to **county, city, and**



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

