

# HOUSE BILL No. 6215

November 5, 1998, Introduced by Reps. Hale, Wallace, Parks, Hood, Stallworth, Basham, Gagliardi, LaForge, Schauer, Kilpatrick, Vaughn, Scott, Murphy, Leland, Dobronski, Price, Hanley, Varga, Agee, Tesanovich, Schermesser, Rison, Quarles and Thomas and referred to the Committee on Local Government.

A bill to amend 1954 PA 116, entitled  
"Michigan election law,"  
by amending section 792a (MCL 168.792a), as amended by 1996 PA  
583.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 792a. (1) Except as otherwise provided in this subsec-  
2 tion, the absent voter ballots in a city, township, or village  
3 that uses voting machines shall be counted by absent voter count-  
4 ing boards. The board of election commissioners of a city, town-  
5 ship, or village that has 2 precincts or less or of a city that  
6 has 500,000 or more in population may decide that the absent  
7 voter ballots shall be counted in the manner provided in section  
8 791. In a city, township, or village that does not use voting  
9 machines, the absent voter ballots may be counted by absent voter

1 counting boards or in the same manner as is otherwise provided  
2 for precincts in which voting is not done on voting machines.

3 (2) The board of election commissioners shall establish the  
4 absent voter counting boards. The board of election commission-  
5 ers shall determine the number of absent voter counting boards to  
6 be established and shall appoint the election inspectors to those  
7 absent voter counting boards 10 days or more before the election  
8 at which they are to be used. Sections 673a and 674 apply to the  
9 appointment of election inspectors to absent voter counting  
10 boards under this section. The board of election commissioners  
11 shall determine the number of ballots that may be expeditiously  
12 counted by an absent voter counting board in a reasonable period  
13 of time, taking into consideration the size and complexity of the  
14 ballot to be counted pursuant to the guidelines of the secretary  
15 of state. Combined ballots shall be regarded as the number of  
16 ballots as there are sections to the ballot.

17 (3) If more than 1 absent voter counting board is to be  
18 used, the city, township, or village clerk shall determine the  
19 number of voting machines or the number of ballot boxes and the  
20 number of election inspectors to be used in each of the absent  
21 voter counting boards and to which absent voter counting board  
22 the absent voter ballots for each precinct shall be assigned for  
23 counting. The clerk shall make the determination under this sub-  
24 section 2 days or more before the election and shall not assign  
25 an absent voter counting board more ballots than the maximum  
26 number authorized by the board of election commissioners under  
27 subsection (2). The clerk is not required to use all of the

1 absent voter counting boards authorized by the board of election  
2 commissioners under subsection (2).

3       (4) In a city, township, or village that uses absent voter  
4 counting boards under this section, absent voter ballots shall be  
5 counted in the manner provided in this section and absent voter  
6 ballots shall not be delivered to the polling places. The board  
7 of election commissioners shall provide a place for each absent  
8 voter counting board to count the absent voter ballots. Section  
9 662 applies to the designation and prescribing of the absent  
10 voter counting place or places in which the absent voter counting  
11 board performs its duties under this section. The places shall  
12 be designated as absent voter counting places. Except as other-  
13 wise provided in this section, laws relating to paper ballot pre-  
14 cincts, including laws relating to the appointment of election  
15 inspectors, apply to absent voter counting places. If a counting  
16 place uses voting machines, the provisions of this section relat-  
17 ing to placing of absent voter ballots on voting machines apply.  
18 More than 1 absent voter counting board may be located in 1  
19 building.

20       (5) The clerk of a city, township, or village that uses  
21 absent voter counting boards shall supply each absent voter  
22 counting board with supplies necessary to carry out their duties  
23 under this act. The supplies shall be furnished to the city,  
24 township, or village clerk in the same manner and by the same  
25 persons or agencies as for other precincts.

26       (6) Absent voter ballots received by the clerk before  
27 election day shall be delivered to the absent voter counting

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

24 (7) At the time of issuing or mailing absent voter ballots  
25 to qualified applicants, the clerk of a city, township, or vil-  
26 lage that uses absent voter counting boards shall mark the

1 letters "A.V." and the date of election on the registration card  
2 of the applicant in the precinct registration file.

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

11 (9) The absent voter counting boards shall process the bal-  
12 lots and returns in as nearly as possible the same manner as bal-  
13 lots are processed in paper ballot precincts. The poll book may  
14 be combined with the absent voter list or record required by sec-  
15 tion 760, and the applications for absent voter ballots may be  
16 used as the poll list. The processing ~~and tallying~~ ONLY of  
17 absent voter ballots may commence at ~~7~~ 12:01 a.m. on the day of  
18 the election. AS USED IN THIS SECTION, "PROCESSING" INCLUDES ALL  
19 THE STEPS NECESSARY TO PREPARE THE ABSENT VOTER BALLOTS FOR  
20 TALLYING. THE TALLYING OF ABSENT VOTER BALLOTS SHALL NOT COM-  
21 MENCE UNTIL 7 A.M. ON THE DAY OF THE ELECTION.

22 (10) An election inspector, challenger, or any other person  
23 in attendance at an absent voter counting place at any time after  
24 the processing of ballots has begun shall take and sign the fol-  
25 lowing oath that may be administered by the chairperson or a  
26 member of the absent voter counting board:

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

6 (11) The oaths administered under subsection (10) shall be  
7 placed in an envelope provided for the purpose and sealed with  
8 the red state seal. Following the election the oaths shall be  
9 delivered to the city, township, or village clerk. Except as  
10 otherwise provided in THIS SUBSECTION AND subsection (16), a  
11 person in attendance at the absent voter counting place shall not  
12 leave the counting place after the tallying has begun until the  
13 polls close. A person who causes the polls to be closed or who  
14 discloses an election result or in any manner characterizes how  
15 any ballot being counted has been voted in a voting precinct  
16 before the time the polls can be legally closed on election day  
17 is guilty of a felony. A PERSON IN ATTENDANCE AT THE ABSENT  
18 VOTER COUNTING PLACE MAY LEAVE THE COUNTING PLACE AFTER THE TAL-  
19 LYING HAS BEGUN IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

20 (A) A SEPARATE AREA IS USED TO PROCESS ABSENT VOTER BALLOTS  
21 AND NO TALLYING OF BALLOTS OCCURS IN THAT SEPARATE PROCESSING  
22 AREA.

23 (B) THE PERSON WAS ONLY INVOLVED IN THE PROCESSING OF ABSENT  
24 VOTER BALLOTS IN THE SEPARATE AREA DESCRIBED IN SUBDIVISION (A).

25 (C) THE PERSON HAS NO ACCESS TO THE AREA USED FOR TALLYING  
26 THE BALLOTS.

1 (D) THE PERSON HAS NO ACCESS TO ANY INFORMATION REGARDING  
2 THE TALLYING OF BALLOTS.

3 (12) At the time the board of election commissioners provide  
4 for the use of absent voter counting boards, the board of elec-  
5 tion commissioners may provide that the absent voter counting  
6 boards shall record the votes contained on absent voter ballots  
7 on voting machines. In that case, the recording of ballots shall  
8 be done by the chairperson of the absent voter counting board or  
9 another member designated by the chairperson. The act of casting  
10 the votes shall be performed in the presence of and under the  
11 careful observation and full view of all members of the absent  
12 voter counting board, party challengers, and any other persons  
13 lawfully present at the absent voter counting place. The vote as  
14 indicated by the voting pointers shall not be recorded until each  
15 member of the absent voter counting board is satisfied that the  
16 arrangement of the voting pointers fully carries out the intent  
17 of the absent voter as shown by the cross marks or check marks on  
18 the absent voter ballot. A certificate that the requirements of  
19 this subsection were met shall be made on the election  
20 inspectors' statement of returns.

21 (13) As soon as absent voter ballots have been cast on a  
22 voting machine pursuant to subsection (12), but not before 8  
23 p.m., the election inspectors shall seal the operating lever of  
24 the machine against voting and shall then proceed to determine  
25 and record the votes cast in the manner provided in this act.

26 (14) Voted absent voter ballots shall be placed in a ballot  
27 box and the ballot bag and ballot box shall be sealed in the

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

4 (15) In a city, township, or village where challenged voters  
5 are required to vote on absent voter ballots, each challenged  
6 voter ballot and application for ballot, after having been voted  
7 and properly identified, shall be placed by the voter in an  
8 absent voter ballot return envelope. The applicable information  
9 required on the back of the envelope shall be completed by the  
10 board of election inspectors. The envelope shall be signed by  
11 the challenged voter and by the chairperson of the precinct board  
12 of election inspectors. The word "challenged" shall be written  
13 across the front of the envelope. The envelope and application  
14 for ballot shall be sealed and delivered to the absent voter  
15 counting place by the clerk of the city, township, or village.  
16 Immediately after the closing of the polls, the chairperson of  
17 the precinct board of election inspectors shall notify the clerk  
18 of the city, township, or village of remaining challenged voter  
19 ballots to be delivered to the absent voter counting place. In a  
20 city, township, or village that uses voting machines where absent  
21 voter counting boards are not used, challenged ballots shall be  
22 counted and tallied in the precincts, in the same manner that  
23 absent voter ballots are tallied and counted as provided in sec-  
24 tion 791.

25 (16) Subject to this subsection, a local election official  
26 who has established an absent voter counting board, the deputy or  
27 employee of that local election official, or an employee of the

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

20 (17) The secretary of state shall develop instructions con-  
21 sistent with this act for the conduct of absent voter counting  
22 boards. The secretary of state shall distribute the instructions  
23 developed under this subsection to city and township clerks 40  
24 days or more before a general election in which absent voter  
25 counting boards will be used. A city or township clerk shall  
26 make the instructions developed under this subsection available  
27 to the public and shall distribute the instructions to each

1 challenger in attendance at an absent voter counting board. The  
2 instructions developed under this subsection are binding upon the  
3 operation of an absent voter counting board used in an election  
4 conducted by a county, city, township, village, school district,  
5 or any other jurisdiction empowered to conduct an election under  
6 this act.