SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5644

A bill to amend 1954 PA 116, entitled

"Michigan election law,"

by amending sections 765 and 795 (MCL 168.765 and 168.795), section

765 as amended by 1996 PA 207 and section 795 as amended by 2004 PA

92, and by adding section 765b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1   Sec. 765. (1) A clerk who receives an absent voter ballot

2 return envelope containing the marked ballots of an absent voter

3 shall not open that envelope before delivering the envelope to the

4 board of election inspectors as provided in this section. The city

5 , village, or township clerk shall safely keep in his or her office

6 until election day any absent voter ballot return envelopes

7 received by the clerk before election day containing the marked

8 ballots of an absent voter.

1   (2) Before the opening of the polls on election day or as soon

2 after the opening of the polls as possible, the clerk shall deliver

3 the absent voter ballot return envelopes to the chairperson or

4 other member of the board of election inspectors in the absent

5 voter's precinct, together with the signed absent voter ballot

6 applications received by the clerk from any voters of that precinct

7 and the clerk's list or record kept relative to those absent

8 voters. However, if higher numbered ballots are used ~~pursuant to~~

9 **UNDER** section 717, the clerk shall retain the applications and

10 lists in his or her office and shall keep the applications and

11 lists open to public inspection at all reasonable hours. **ABSENT**

12 **VOTER BALLOTS MUST NOT BE TABULATED BEFORE THE OPENING OF THE POLLS**

13 **ON ELECTION DAY.**

14   (3) The city ~~, village,~~ or township clerk, or authorized

15 designee of the clerk, shall call for and receive absent voter

16 ballots from the post office at which the city ~~, village,~~ or

17 township clerk regularly receives mail addressed to the city ~~,~~

18 ~~village,~~ or township clerk on election day in sufficient time to

19 deliver any envelopes containing absent voter ballots to the board

20 of election inspectors before the close of the polls.

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

22 after the close of the polls, the clerk shall plainly mark the

23 envelope with the time and date of receipt and shall file the

24 envelope in his or her office. Except as otherwise provided in

25 section 759b, the clerk shall not deliver an absent voter ballot to

26 a voter after the opening of the polls on election day.

27   (5) On or before 8 a.m. on election day, the clerk shall post

1 in the clerk's office or otherwise make public the number of absent

2 voter ballots the clerk distributed to absent voters and the number

3 of absent voter ballot return envelopes containing the marked

4 ballots of absent voters received by the clerk before election day

5 and delivered to the board of election inspectors or the absent

6 voter counting boards ~~pursuant to~~ **UNDER** this act. On or before 9

7 p.m. on election day, the clerk shall post in the clerk's office or

8 otherwise make public the number of absent voter ballot return

9 envelopes containing the marked ballots of absent voters received

10 by the clerk on election day and delivered to the board of election

11 inspectors ~~pursuant to~~ **UNDER** subsection (3), along with the total

12 number of absent voter ballot return envelopes containing the

13 marked ballots of absent voters received by the clerk both before

14 and on election day and delivered to the board of election

15 inspectors or the absent voter counting boards ~~pursuant to~~ **UNDER**

16 this act. As soon as possible after all precincts in the city ~~,~~ **OR**

17 township ~~, or village~~ are processed, the clerk shall post in the

18 clerk's office or otherwise make public the number of absent voter

19 ballot return envelopes containing the marked ballots of absent

20 voters received by the election inspectors at the precincts on

21 election day, along with the total number of absent voter ballot

22 return envelopes containing the marked ballots of absent voters

23 received in the city ~~,~~ **OR** township ~~, or village~~ for that election.

24 This subsection applies only to elections in which a federal or

25 state office appears on the ballot.

26   **SEC. 765B. (1) NOT LATER THAN 2 P.M. ON THE SATURDAY**

27 **IMMEDIATELY BEFORE AN ELECTION, AN ELECTOR MAY SUBMIT A SIGNED,**

1   WRITTEN STATEMENT TO HIS OR HER CITY OR TOWNSHIP CLERK REQUESTING

2   THAT THE CLERK DO BOTH OF THE FOLLOWING:

3   (A) SPOIL THE ELECTOR'S ABSENT VOTER BALLOT.

4   (B) PROVIDE OR MAIL A NEW ABSENT VOTER BALLOT TO THE ELECTOR.

5   (2) UPON RECEIPT OF A SIGNED, WRITTEN STATEMENT FROM AN

6   ELECTOR AS DESCRIBED IN SUBSECTION (1), THE CITY OR TOWNSHIP CLERK

7   SHALL MARK THE ABSENT VOTER BALLOT RETURN ENVELOPE OF THAT ELECTOR

8   AS "SPOILED" AND RETAIN THE ENVELOPE. IN ADDITION, THE CITY OR

9   TOWNSHIP CLERK SHALL PROVIDE OR MAIL A NEW ABSENT VOTER BALLOT TO

10   THAT ELECTOR.

11   (3) AN ELECTOR WHO HAS RETURNED AN ABSENT VOTER BALLOT MAY,

12   BEFORE 4 P.M. ON THE DAY BEFORE AN ELECTION EXCEPT SUNDAY OR A

13   LEGAL HOLIDAY, APPEAR IN PERSON AT HIS OR HER CITY OR TOWNSHIP

14   CLERK'S OFFICE TO DO BOTH OF THE FOLLOWING:

15   (A) SPOIL HIS OR HER ABSENT VOTER BALLOT BY SUBMITTING A

16   SIGNED, WRITTEN STATEMENT TO THE CITY OR TOWNSHIP CLERK INDICATING

17   THAT THE ELECTOR WISHES TO HAVE HIS OR HER ABSENT VOTER BALLOT

18   SPOILED.

19   (B) VOTE A NEW ABSENT VOTER BALLOT IN THE CLERK'S OFFICE.

20   (4) UPON RECEIPT OF THE SIGNED, WRITTEN STATEMENT FROM AN

21   ELECTOR AS DESCRIBED IN SUBSECTION (3)(A), THE CITY OR TOWNSHIP

22   CLERK SHALL MARK THE ABSENT VOTER BALLOT RETURN ENVELOPE OF THAT

23   ELECTOR AS "SPOILED" AND RETAIN THE ENVELOPE. IN ADDITION, THE CITY

24   OR TOWNSHIP CLERK SHALL ISSUE THE ELECTOR A NEW ABSENT VOTER BALLOT

25   THAT MUST BE VOTED BY THE ELECTOR IN THE CLERK'S OFFICE.

26   (5) NOT LATER THAN 2 P.M. ON THE SATURDAY IMMEDIATELY BEFORE

27   AN ELECTION, AN ELECTOR WHO HAS LOST HIS OR HER ABSENT VOTER BALLOT

1 OR NOT YET RECEIVED HIS OR HER ABSENT VOTER BALLOT IN THE MAIL MAY

2 SUBMIT A SIGNED, WRITTEN STATEMENT TO HIS OR HER CITY OR TOWNSHIP

3 CLERK REQUESTING THAT THE CLERK DO BOTH OF THE FOLLOWING:

4   (A) SPOIL THE ELECTOR'S ABSENT VOTER BALLOT.

5   (B) PROVIDE OR MAIL A NEW ABSENT VOTER BALLOT TO THE ELECTOR.

6   (6) UPON RECEIPT OF A SIGNED, WRITTEN STATEMENT FROM AN

7 ELECTOR AS DESCRIBED IN SUBSECTION (5), THE CITY OR TOWNSHIP CLERK

8 SHALL INDICATE IN THE QUALIFIED VOTER FILE THAT THE ORIGINAL BALLOT

9 IS SPOILED. IN ADDITION, THE CITY OR TOWNSHIP CLERK SHALL PROVIDE

10 OR MAIL A NEW ABSENT VOTER BALLOT TO THAT ELECTOR.

11   (7) AN ELECTOR WHO HAS LOST HIS OR HER ABSENT VOTER BALLOT OR

12 NOT YET RECEIVED HIS OR HER ABSENT VOTER BALLOT IN THE MAIL MAY,

13 BEFORE 4 P.M. ON THE DAY BEFORE AN ELECTION EXCEPT SUNDAY OR A

14 LEGAL HOLIDAY, APPEAR IN PERSON AT HIS OR HER CITY OR TOWNSHIP

15 CLERK'S OFFICE TO DO BOTH OF THE FOLLOWING:

16   (A) SPOIL HIS OR HER ABSENT VOTER BALLOT BY SUBMITTING A

17 SIGNED, WRITTEN STATEMENT TO THE CITY OR TOWNSHIP CLERK INDICATING

18 THAT THE ELECTOR WISHES TO HAVE HIS OR HER ABSENT VOTER BALLOT

19 SPOILED.

20   (B) VOTE A NEW ABSENT VOTER BALLOT IN THE CLERK'S OFFICE.

21   (8) UPON RECEIPT OF THE SIGNED, WRITTEN STATEMENT FROM AN

22 ELECTOR DESCRIBED IN SUBSECTION (7)(A), THE CITY OR TOWNSHIP CLERK

23 SHALL INDICATE IN THE QUALIFIED VOTER FILE THAT THE ORIGINAL BALLOT

24 IS SPOILED. IN ADDITION, THE CITY OR TOWNSHIP CLERK SHALL ISSUE THE

25 ELECTOR A NEW ABSENT VOTER BALLOT THAT MUST BE VOTED BY THE ELECTOR

26 IN THE CLERK'S OFFICE.

27   Sec. 795. (1) An electronic voting system acquired or used

1 under sections 794 to 799a ~~shall~~ **MUST** meet all of the following

2 requirements:

3 (a) Provide for voting in secrecy, except in the case of

4 voters who receive assistance as provided by this act.

5 **(B) UTILIZE A PAPER BALLOT FOR TABULATING PURPOSES.**

6 **(C)** ~~(b)~~ Permit each elector to vote at an election for all

7 persons and offices for whom and for which the elector is lawfully

8 entitled to vote; to vote for as many persons for an office as the

9 elector is entitled to vote for; and to vote for or against any

10 question upon which the elector is entitled to vote. Except as

11 otherwise provided in this subdivision, the electronic tabulating

12 equipment ~~shall~~ **MUST** reject all choices recorded on the elector's

13 ballot for an office or a question if the number of choices exceeds

14 the number that the elector is entitled to vote for on that office

15 or question. Electronic tabulating equipment that can detect that

16 the choices recorded on an elector's ballot for an office or a

17 question exceeds the number that the elector is entitled to vote

18 for on that office or question ~~shall~~ **MUST** be located at each

19 polling place and programmed to reject a ballot containing that

20 type of an error. If a choice on a ballot is rejected as provided

21 in this subdivision, an elector ~~shall~~ **MUST** be given the opportunity

22 to have that ballot considered a spoiled ballot and to vote another

23 ballot.

24 **(D)** ~~(c)~~ Permit an elector, at a presidential election, by a

25 single selection to vote for the candidates of a party for

26 president, vice-president, and presidential electors.

27 **(E)** ~~(d)~~ Permit an elector in a primary election to vote for

1   the candidates in the party primary of the elector's choice. Except

2   as otherwise provided in this subdivision, the electronic

3   tabulating equipment ~~shall~~ **MUST** reject each ballot on which votes

4   are cast for candidates of more than 1 political party. Electronic

5   tabulating equipment that can detect that the elector has voted for

6   candidates of more than 1 political party ~~shall~~ **MUST** be located at

7   each polling place and programmed to reject a ballot containing

8   that type of an error. If a choice on a ballot is rejected as

9   provided in this subdivision, an elector ~~shall~~ **MUST** be given the

10 opportunity to have that ballot considered a spoiled ballot and to

11 vote another ballot.

12   **(F)** ~~(e)~~ Prevent an elector from voting for the same person

13 more than once for the same office.

14   **(G)** ~~(f)~~ Reject a ballot on which no valid vote is cast.

15 Electronic tabulating equipment ~~shall~~ **MUST** be programmed to reject

16 a ballot on which no valid vote is cast.

17   **(H)** ~~(g)~~ Be suitably designed for the purpose used; be durably

18 constructed; and be designed to provide for safety, accuracy, and

19 efficiency.

20   **(I)** ~~(h)~~ Be designed to accommodate the needs of an elderly

21 voter or a person with 1 or more disabilities.

22   **(J)** ~~(i)~~ Record correctly and count accurately each vote

23 properly cast.

24   **(K)** ~~(j)~~ Provide an audit trail.

25   **(l)** ~~(k)~~ Provide an acceptable method for an elector to vote

26 for a person whose name does not appear on the ballot.

27   **(M)** ~~(l)~~ Allow for accumulation of vote totals from the

1 precincts in the jurisdiction. The accumulation software must meet

2 specifications prescribed by the secretary of state and must be

3 certified by the secretary of state as meeting these

4 specifications.

5   **(N)** ~~(m)~~ Be compatible with or include at least 1 voting device

6 that is accessible for an individual with disabilities to vote in a

7 manner that provides the same opportunity for access and

8 participation, including secrecy and independence, as provided for

9 other voters. The voting device ~~shall~~ **MUST** include nonvisual

10 accessibility for the blind and visually impaired.

11   (2) Electronic tabulating equipment that counts votes at the

12 precinct before the close of the polls ~~shall~~ **MUST** provide a method

13 for rendering the equipment inoperable if vote totals are revealed

14 before the close of the polls. Electronic tabulating equipment that

15 tabulates ballots, including absentee ballots, at a central

16 location ~~shall~~ **MUST** be programmed to reject a ballot if the choices

17 recorded on an elector's ballot for an office or a question exceed

18 the number that the elector is entitled to vote for on that office

19 or question, if no valid choices are recorded on an elector's

20 ballot, or if, in a primary election, votes are recorded for

21 candidates of more than 1 political party.

22   (3) ~~Beginning January 1, 2006, each~~ **EACH** jurisdiction in this

23 state conducting an election shall equip each polling place with at

24 least 1 accessible voting device as required under subsection

25 ~~(1)(m).~~**(1)(N).**