

Act No. 123
Public Acts of 2018
Approved by the Governor
May 2, 2018
Filed with the Secretary of State
May 3, 2018
EFFECTIVE DATE: December 31, 2018

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Senator Robertson

ENROLLED SENATE BILL No. 812

AN ACT to amend 1954 PA 116, entitled “An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act,” by amending section 794b (MCL 168.794b), as amended by 1990 PA 109, and by adding sections 37a, 37b, and 765a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 37a. The secretary of state shall allow a county clerk, in consultation with the clerk of each city and township located in that county, to determine which electronic voting system will be used in the county as long as the electronic voting system selected meets both of the following criteria:

- (a) The electronic voting system is the same type of electronic voting system as the uniform voting system.
- (b) The electronic voting system is approved and certified as provided in section 795a.

Sec. 37b. The governing body of a governmental unit in this state may contract with the governing body of another governmental unit in this state with regard to the use of the electronic voting system owned by either of the contracting units.

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

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

(2) The board of election commissioners shall establish the absent voter counting boards. The board of election commissioners shall appoint the election inspectors to those absent voter counting boards not less than 21 days or more than 40 days before the election at which they are to be used. Sections 673a and 674 apply to the appointment of election

inspectors to absent voter counting boards under this section. The board of election commissioners shall determine the number of ballots that may be expeditiously counted by an absent voter counting board in a reasonable period of time, taking into consideration the size and complexity of the ballot to be counted pursuant to the guidelines of the secretary of state. Combined ballots must be regarded as the number of ballots as there are sections to the ballot.

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

(4) In a city or township that uses absent voter counting boards under this section, absent voter ballots must be counted in the manner provided in this section and absent voter ballots must not be delivered to the polling places. The board of election commissioners shall provide a place for each absent voter counting board to count the absent voter ballots. Section 662 applies to the designation and prescribing of the absent voter counting place or places in which the absent voter counting board performs its duties under this section, except the location may be in a different jurisdiction if the county provides a tabulator for use at a central absent voter counting board location in that county. The places must be designated as absent voter counting places. Except as otherwise provided in this section, laws relating to paper ballot precincts, including laws relating to the appointment of election inspectors, apply to absent voter counting places. The provisions of this section relating to placing of absent voter ballots on electronic voting systems apply. More than 1 absent voter counting board may be located in 1 building.

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

(6) Absent voter ballots received by the clerk before election day must be delivered to the absent voter counting board by the clerk or the clerk's authorized assistant at the time the election inspectors of the absent voter counting boards report for duty, which time must be established by the board of election commissioners. Absent voter ballots received by the clerk before the time set for the closing of the polls on election day must be delivered to the absent voter counting boards. Absent voter ballots must be delivered to the absent voter counting boards in the sealed absent voter ballot return envelopes in which they were returned to the clerk. Written or stamped on each of the return envelopes must be the time and the date that the envelope was received by the clerk and a statement by the clerk that the signatures of the absent voters on the envelopes have been checked and found to agree with the signatures of the voters on the registration cards or the digitized signatures of voters contained in the qualified voter file as provided under section 766. If a signature on the registration card or a digitized signature contained in the qualified voter file and on the absent voter ballot return envelope does not agree as provided under section 766, if the absent voter failed to sign the envelope, or if the statement of the absent voter is not properly executed, the clerk shall mark the envelope "rejected" and the reason for the rejection and shall place his or her name under the notation. An envelope marked "rejected" must not be delivered to the absent voter counting board but must be preserved by the clerk until other ballots are destroyed in the manner provided in this act. The clerk shall also comply with section 765(5).

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

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

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

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

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

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

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

(13) The secretary of state shall develop instructions consistent with this act for the conduct of absent voter counting boards. The secretary of state shall distribute the instructions developed under this subsection to city and township clerks 40 days or more before a general election in which absent voter counting boards will be used. A city or township clerk shall make the instructions developed under this subsection available to the public and shall distribute the instructions to each challenger in attendance at an absent voter counting board. The instructions developed under this subsection are binding upon the operation of an absent voter counting board used in an election conducted by a county, city, or township.

Sec. 794b. If federal funding or state funding is not available, the board of commissioners of a county, the legislative body of a city, or the township board of a township, on the adoption and acquisition of an electronic voting system, shall provide for all or the balance of the payment for the system.

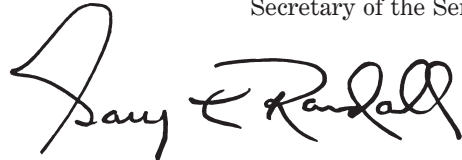
Enacting section 1. Sections 769a to 793 of the Michigan election law, 1954 PA 116, MCL 168.769a to 168.793, are repealed.

Enacting section 2. This amendatory act takes effect December 31, 2018.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor