

Act No. 95
Public Acts of 1990
Approved by the Governor
June 6, 1990
Filed with the Secretary of State
June 6, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Rep. Hickner

ENROLLED HOUSE BILL No. 4434

AN ACT to amend sections 778, 792a, 831, 832, 833, 835, and 836 of Act No. 116 of the Public Acts of 1954, entitled "An act to reorganize, consolidate and add to the election laws; to provide for election officials and prescribe their powers and duties; 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 prescribe the penalties therefor; and to repeal certain acts and all other acts inconsistent herewith," section 792a as amended by Act No. 160 of the Public Acts of 1985 and sections 831, 832, 833, 835, and 836 as added by Act No. 505 of the Public Acts of 1982, being sections 168.778, 168.792a, 168.831, 168.832, 168.833, 168.835, and 168.836 of the Michigan Compiled Laws; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 778, 792a, 831, 832, 833, 835, and 836 of Act No. 116 of the Public Acts of 1954, section 792a as amended by Act No. 160 of the Public Acts of 1985 and sections 831, 832, 833, 835, and 836 as added by Act No. 505 of the Public Acts of 1982, being sections 168.778, 168.792a, 168.831, 168.832, 168.833, 168.835, and 168.836 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 778. The clerk of a city, village, or township in which voting machines are used shall have complete control of the machines. However, if the machines are owned by the county, this control is vested in the county clerk. The clerk and his or her authorized assistants are, for the purpose of this chapter, officers of election and may be paid for the time spent in the discharge of their duties, in the same manner as other election officers are paid. However, this section does not apply to a city where the clerk or his or her authorized assistants receive compensation that is fixed by the legislative body. In cities where there are more than 20 voting machines, more than 1 authorized assistant may be appointed. The clerk or his or her authorized assistants shall cause the machines to be properly labeled, put in order, set, and arranged. In preparing a voting machine for an election, the clerk or his or her authorized assistants shall arrange the machine and the ballots so that it will meet the requirements for voting and counting at the election, and thoroughly test and seal or lock the machine. When a machine has been prepared for the election, the election commissioners, or their authorized assistants, shall inspect the machine to determine whether it is properly prepared. An authorized assistant shall not be the same person who prepared and set the voting machine. The election commissioners or their authorized assistant shall prepare and file with the commissioners a written certificate certifying to the correct adjustment of the machine, the number of the machine, whether or not all the candidates and question counters and the public counter are set at zero, the number registered on the protective counter, if one is provided, and the number of the metal seal with which the machine is sealed. In elections in which state and county officers are to be voted for, an additional certificate shall be filed with the county clerk. Each voting machine shall be furnished with a

light sufficient to enable voters while in the booth or other enclosure to read the ballot labels, and suitable for use by the election officers in examining the counters of the machine. The clerk or his or her authorized assistants shall cause the voting machines to be delivered at the polling places in which they are to be used at least 1 hour before the time set for opening the polls. Police protection shall be furnished by the local authorities whenever the officers charged with the duty of preparing the machines consider protection necessary to prevent possible injury to a machine, but the machines shall at all times be under the supervision of an officer, except during the hours prescribed by law for voting on election day.

Sec. 792a. (1) In a governmental unit using voting machines, the absent voters' ballots shall be counted by absent voters' counting boards except if, in governmental units with 2 precincts or less or in cities of over 500,000 population, the election commission decides that the absent voters' ballots shall be counted in the manner provided in section 791. In a governmental unit that does not use voting machines, the absent voters' ballots may be counted by absent voters' counting boards or in the same manner as is otherwise provided for precincts in which voting is not done on voting machines. The boards shall be established by the election commission. The number of boards established shall be determined and the inspectors appointed by the election commission not less than 10 days before the primary or election at which they are to be used. The election commission shall determine the number of ballots that may be expeditiously counted by a single 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 shall be regarded as the number of ballots as there are sections to the ballot. If more than 1 board is to be used, the clerk shall determine the number of voting machines or the number of ballot boxes and the number of inspectors of election to be used in each of the boards and to which board the absent voters' ballots for each precinct shall be assigned for counting. The clerk shall make the determination not less than 2 days before the election and shall not assign 1 board more ballots than the maximum number authorized by the election commission. The clerk need not use all of the boards authorized by the commission. In a governmental unit using boards as provided in this section, absent voters' ballots shall be counted in the manner provided in this section and absent voters' ballots shall not be delivered to the polling places.

(2) In a governmental unit where absent voters' ballots are counted by absent voters' counting boards, the election commission shall provide places where the boards shall count the absent voters' ballots. The places shall be designated as absent voters' counting places. Laws relating to paper ballot precincts, including laws relating to the appointment of election inspectors, apply to absent voters' counting places except that, in counting places using voting machines, the provisions of this section relating to placing of absent voters' ballots on voting machines apply. Any number of the boards may be located in 1 building.

(3) The clerk of a governmental unit using absent voters' counting boards shall supply each board with supplies necessary to carry out this act. The supplies shall be furnished to the clerk in the same manner and by the same persons or agencies as for other precincts.

(4) Absent voters' ballots received by the clerk before election day shall be delivered to the absent voters' counting board by the clerk at the time the inspectors of election of the boards report for duty, which time shall be established by the election commission. Absent voters' ballots received by the clerk on election day shall be delivered to the boards before the time set for the closing of the polls. Absent voters' ballots shall be delivered to the boards in the sealed envelopes in which they were returned to the clerk by the voters. Written or stamped on each of the envelopes shall 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 voters on the envelopes have been checked and found to agree with the signatures of the voters on the registration cards. If the signatures on the registration card and on the envelope do not agree, if the voter failed to sign the envelope, or if the statement of the 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" shall not be delivered to the counting board but shall be preserved by the clerk until other ballots are destroyed.

(5) At the time of issuing or mailing absent voters' ballots to qualified applicants, the clerk of each governmental unit using absent voters' counting boards shall mark the letters "A.V." and the date of election on the registration card of the applicant in the precinct registration file.

(6) 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 made application for an absent voter's ballot and the absent voter's ballot may have been mailed to the voter. The voter shall return the ballots, if received, to the board of inspectors in his or her precinct. If an absent voter's ballot is returned as described in this subsection, the envelope containing the ballots shall be marked "canceled" by the board and shall be returned to the clerk at the close of the polls. The clerk shall preserve the canceled ballots for 2 years. If an absent voter does not receive his or her ballot and desires to vote in person, the voter shall sign a sworn affidavit to that effect before 1 of the members of the board. A voter voting at an election, both in person and by means of an absent voters' ballot, or who attempts to vote both in person and by means of an absent voters' ballot, is guilty of a felony.

(7) The absent voters' 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 absent voter list required by section 760, and the applications for absent voters' ballots may be used as the poll list. The processing and tallying of absent voters' ballots may commence at 7 a.m. the day of the election.

(8) Each person including election inspectors in attendance at an absent voters' counting place at any time after the processing of ballots has been started shall take and sign the following oath which may be administered by the chairperson or a member of the absent voters' 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."

(9) These oaths shall be placed in an envelope provided for the purpose and sealed with the red state seal. Following the election the oaths shall be delivered to the local clerk. A person in attendance at the absent voters' counting place shall not leave that place after the tallying has begun and before the polls close. A person who causes the polls to be closed or discloses an election result in a voting precinct before the time the polls can be legally closed on election day is guilty of a felony.

(10) At the time the election commissions provide for the use of absent voters' counting boards, they may provide that the boards shall record the votes contained on absent voters' ballots on voting machines. In that case, the recording of ballots shall be done by the chairperson of the board or another member designated by the chairperson and the act of casting the votes shall be performed in the presence and under the careful observation and full view of all members of the board, party challengers, and any other persons lawfully present, and the vote as indicated by the voting pointers shall not be recorded until each member of the board is satisfied that the arrangement of the voting pointers fully carries out the intent of the voter as shown by the cross marks or check marks on the paper ballot, and certificate to that effect shall be made on the inspectors' statement of returns.

(11) As soon as absent voters' ballots have been cast on a voting machine pursuant to subsection (10), but not before 8 p.m., the inspectors shall seal the operating lever of the machine against voting and shall then proceed to determine and record the votes cast in the manner provided in this act.

(12) Voted absent voters' ballots shall be placed in a ballot box and the ballot bag and ballot box shall be sealed in the manner provided by law for paper ballot precincts. The seal numbers shall be recorded on the statement sheet and in the poll book.

(13) In governmental units where challenged voters are required to vote on absent voters' ballots, each challenged voters' ballot and application for ballot, after having been voted and properly identified, shall be placed by the voter in an absent voter envelope. The applicable information required on the back of the envelope shall be completed by the board. The envelope shall be signed by the challenged voter and by the chairperson of the precinct board. The word "challenged" shall be written across the front of the envelope. The envelope and application for ballot shall be sealed and delivered to the absent voter precinct by the clerk of the governmental unit. Immediately after the closing of the polls, the chairperson of each precinct board shall notify the clerk of the governmental unit of remaining challenged voter ballots to be delivered to the absent voter precinct. In those governmental units using voting machines where absent voters' counting boards are not used, challenged ballots shall be counted and tallied in the precincts, in the same manner that absent voters' ballots are tallied and counted as provided in section 791.

Sec. 831. If an elector cannot cast a valid vote at an election for the candidate of that elector's choice or for or against a ballot question submitted to the voters because of a defect in or a mechanical malfunction of a voting machine, voting device, ballot, or other election equipment or material, a special election may be petitioned for and held as provided for in sections 832 to 839.

Sec. 832. A candidate aggrieved by a defect or mechanical malfunction as described in section 831 or a registered elector, whose name appears in a poll book at the election for a ballot question aggrieved by a defect or mechanical malfunction as described in section 831, may petition for a special election. The petition shall be filed with the secretary or clerk of the board of canvassers that canvasses the election no later than 10 days after the date of the election.

Sec. 833. A petition filed under section 832 shall meet all of the following requirements:

- (a) Be typed or printed.
- (b) Allege the facts that made it impossible to cast a vote for the petitioning candidate or for or against the ballot question.
- (c) Identify the precinct and city or township, and, if applicable, the number of the voting machine or device.
- (d) Be signed and certified by the candidate or elector.

Sec. 835. The secretary or clerk of the board of canvassers shall determine if a petition meets the requirements of section 833. If a petition is so qualified, the secretary or clerk shall call a meeting of the board of canvassers no later than 5 days after receipt of the petition. The secretary or clerk shall notify the following persons by first class mail or phone of the time and place of the meeting:

(a) The appropriate city or township clerk.

(b) If the election was a general election or special election, each candidate whose name appears on the ballot for the same office.

(c) If the election was a primary election, each candidate whose name appears on the ballot for the same office under the political party of the candidate.

(d) The filer or sponsor of the ballot question, if known, any ballot question committee filed under Act No. 388 of the Public Acts of 1976, being sections 169.201 to 169.282 of the Michigan Compiled Laws, supporting or opposing the ballot question, and the registered elector who filed the petition under section 832.

Sec. 836. (1) The board of canvassers shall order a special election for the office of the petitioning candidate or the ballot question only in each precinct affected by a defect or mechanical malfunction as described in section 831 if all of the following are true:

(a) An elector could not cast a valid vote in the precinct for the petitioning candidate or for or against the ballot question because of the defect or mechanical malfunction.

(b) Based on the available canvass, the number of electors who could not cast valid votes for the office or for or against the ballot question in an election because of the defect or mechanical malfunction is greater than the number of votes separating the candidates getting the most and the second most number of votes or is greater than the number of votes separating total "yes" votes and the total "no" votes.

(2) If the number of votes for an office or for or against a ballot question recorded on a voting machine exceeds the number of electors that voted on the machine, then for the purposes of subsection (1), the difference shall be regarded as the number of electors who, because of a defect or mechanical malfunction as described in section 831, could not cast valid votes for the office or for or against the ballot question.

Section 2. Section 834 of Act No. 116 of the Public Acts of 1954, being section 168.834 of the Michigan Compiled Laws, is repealed.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.