

HOUSE BILL No. 4434

March 14, 1989, Introduced by Rep. Hickner and referred to the Committee on Elections.

A bill to amend sections 778, 792a, 831, 832, 833, 835, and 836 of Act No. 116 of the Public Acts of 1954, entitled "Michigan election law," 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:

1 Section 1. Sections 778, 792a, 831, 832, 833, 835, and 836
2 of Act No. 116 of the Public Acts of 1954, section 792a as
3 amended by Act No. 160 of the Public Acts of 1985 and sections
4 831, 832, 833, 835, and 836 as added by Act No. 505 of the Public
5 Acts of 1982, being sections 168.778, 168.792a, 168.831, 168.832,

1 168.833, 168.835, and 168.836 of the Michigan Compiled Laws, are
2 amended to read as follows:

3 Sec. 778. The clerk of ~~the~~ A city, village, or township
4 in which voting machines are used shall have complete control of
5 ~~such~~ THE machines. ~~, excepting when such~~ HOWEVER, IF THE
6 machines are owned by the county, ~~in which case said~~ THIS con-
7 trol ~~shall be~~ IS vested in the county clerk. The clerk and his
8 OR HER authorized assistants ~~shall~~ ARE, for the purpose of this
9 chapter, ~~be considered as~~ officers of election and may be paid
10 for the time spent in the discharge of their duties, in the same
11 manner as other election officers are paid. ~~Provided, how-~~
12 ~~ever, That~~ HOWEVER, this section ~~shall~~ DOES not apply to ~~any~~
13 A city where ~~said~~ THE clerk or his OR HER authorized assistants
14 receive ~~such~~ compensation ~~as~~ THAT IS fixed by the legislative
15 body. In cities where there are more than 20 voting machines,
16 more than 1 authorized assistant may be appointed. ~~said~~ THE
17 clerk or his OR HER authorized assistants shall cause the
18 machines to be properly labeled, put in order, set, and
19 arranged. In preparing a voting machine for an election, the
20 clerk or his OR HER authorized assistants shall arrange the
21 machine and the ballots ~~therefor~~ so that it will ~~in every~~
22 ~~particular~~ meet the requirements for voting and counting at
23 ~~such~~ THE election, and thoroughly test and seal or lock the
24 ~~same~~ MACHINE. When a machine has been prepared for the elec-
25 tion, ~~it shall be the duty of such~~ THE election commissioners,
26 ~~or the city clerk or his~~ THEIR authorized assistants, ~~to~~
27 ~~make a certificate in writing which shall be filed with the~~

1 ~~election commissioners of the county, city, village or township,~~
2 ~~within which they are authorized to act,~~ SHALL INSPECT THE
3 MACHINE TO DETERMINE WHETHER IT IS PROPERLY PREPARED. AN AUTHO-
4 RIZED ASSISTANT SHALL NOT BE THE SAME PERSON WHO PREPARED AND SET
5 THE VOTING MACHINE. THE ELECTION COMMISSIONERS SHALL PREPARE AND
6 FILE WITH THE COMMISSIONERS A WRITTEN CERTIFICATE certifying to
7 the correct adjustment of the machine, the number of the machine,
8 whether or not all the candidates and question counters and the
9 public counter are set at zero, the number registered on the pro-
10 tective counter, if one is provided, and the number of the metal
11 seal with which the machine is sealed. ~~The election commission-~~
12 ~~ers, or authorized assistants, shall then be afforded an opportu-~~
13 ~~nity to inspect said machines to determine whether they are prop-~~
14 ~~erly prepared.~~ In elections ~~where~~ IN WHICH state and county
15 officers are to be voted for, an additional certificate shall be
16 filed with the county clerk. Each voting machine shall be fur-
17 nished with a ~~device for lighting which shall give sufficient~~
18 light SUFFICIENT to enable voters while in the booth or other
19 enclosure to read the ballot labels, and suitable for use by the
20 election officers in examining the counters of the machine. ~~It~~
21 ~~shall be the duty of the~~ THE clerk or his OR HER authorized
22 assistants ~~to~~ SHALL cause the voting machines to be delivered
23 at the ~~respective~~ polling places in which they are to be used
24 at least 1 hour before the time set for opening the polls. ~~→~~
25 ~~Provided, That police~~ POLICE protection shall be furnished by
26 the local authorities whenever the officers charged with the duty
27 of preparing ~~such~~ THE machines ~~shall deem such~~ CONSIDER

1 protection necessary to prevent possible injury ~~of any~~ or more
2 ~~voting machines~~ TO A MACHINE, but ~~such~~ THE machines shall at
3 all times be under the supervision of ~~such~~ AN officer, except
4 during the hours prescribed by law for voting on election day.

5 Sec. 792a. (1) In a ~~community~~ GOVERNMENTAL UNIT using
6 voting machines, the absent voters' ballots shall be counted by
7 absent voters' counting boards except ~~that in communities~~ IF,
8 IN GOVERNMENTAL UNITS with 2 precincts or less or in cities of
9 over 500,000 population, the election commission ~~may determine~~
10 ~~if~~ DECIDES THAT the absent voters' ballots shall be counted ~~by~~
11 ~~absent voters' counting boards or~~ in the manner provided in sec-
12 tion 791. In a ~~community which~~ GOVERNMENTAL UNIT THAT does not
13 use voting machines, the absent voters' ballots may be counted by
14 absent voters' counting boards or in the same manner as is other-
15 wise provided for precincts in which voting is not done on voting
16 machines. The boards shall be established by the election
17 commission. The number of ~~the~~ boards established shall be
18 determined and the inspectors appointed by the election commis-
19 sion not less than 10 days before the primary or election at
20 which they ~~shall~~ ARE TO be used. The election commission shall
21 determine the number of ballots that may be expeditiously counted
22 by a single ~~counting~~ board in a reasonable period of time
23 taking into consideration the size and complexity of the ballot
24 to be counted pursuant to the guidelines of the secretary of
25 state. Combined ballots shall be regarded as the number of bal-
26 lots as there are sections to the ballot. If more than 1
27 ~~counting~~ board is to be used, the clerk shall determine the

1 number of voting machines or the number of ballot boxes and the
2 number of inspectors of election to be used in each of the boards
3 and to which ~~counting~~ board the absent voters' ballots for ~~the~~
4 ~~precincts~~ EACH PRECINCT shall be assigned for counting. The
5 clerk shall make the determination not less than 2 days before
6 the election and shall not assign 1 board more ballots than the
7 maximum number authorized by the election commission. The clerk
8 need not use all of the boards authorized by the commission. In
9 a governmental unit using ~~counting~~ boards as provided in this
10 section, absent voters' ballots shall be counted in the manner
11 provided in this section and absent voters' ballots shall not be
12 delivered to the polling places.

13 (2) In a governmental unit where absent voters' ballots are
14 counted by absent voters' counting boards, the election commis-
15 sion shall provide places where the boards shall count the absent
16 voters' ballots. The places shall be designated as absent
17 voters' counting places. ~~All applicable laws~~ LAWS relating to
18 paper ballot precincts, including laws relating to the appoint-
19 ment of election inspectors, ~~shall~~ apply to absent voters'
20 counting places except that, in counting places using voting
21 machines, ~~as provided in this section,~~ the provisions of this
22 section relating to placing of absent voters' ballots on voting
23 machines ~~shall~~ apply. ~~A limit shall not exist as to the~~ ANY
24 number of the boards ~~which~~ may be located in 1 building.

25 (3) The clerk of a governmental unit using absent voters'
26 counting boards shall supply each board with supplies ~~as are~~
27 necessary to carry out this act. The supplies shall be furnished

1 to the clerk in the same manner and by the same persons or
2 agencies ~~as the supplies are furnished to the clerk~~ AS for
3 other precincts.

4 (4) Absent voters' ballots received by the clerk before
5 ~~the~~ election day shall be delivered to the absent voters'
6 counting board by the clerk at the time the inspectors of elec-
7 tion of the boards report for duty, which time shall be estab-
8 lished by the election commission. Absent voters' ballots
9 received by the clerk on election day shall be delivered to the
10 boards before the time set for the closing of the polls. Absent
11 voters' ballots shall be delivered to the ~~absent voters'~~
12 ~~counting~~ boards in the sealed envelopes in which they were
13 returned to the clerk by the voters. Written or stamped on each
14 of the envelopes shall be the time and the date that the envelope
15 was received by the clerk and a statement by the clerk that the
16 signatures of the voters on the envelopes have been checked and
17 found to agree with the signatures of the voters on the registra-
18 tion cards. If the signatures on the registration card and on
19 the envelope do not agree, ~~or~~ if the voter ~~has~~ failed to sign
20 the envelope, or if the statement of the voter is not properly
21 executed, the clerk shall mark the envelope "rejected" and the
22 reason for the rejection and shall place his or her name under
23 the notation. An envelope marked "rejected" shall not be deliv-
24 ered to the counting board but shall be preserved by the clerk
25 until other ballots are destroyed.

26 (5) At the time of issuing or mailing absent voters' ballots
27 to qualified applicants, the clerk of each governmental unit

1 using absent voters' counting boards shall mark the letters
2 "A.V." and the date of election on the registration card of the
3 applicant in the precinct registration file.

4 (6) This chapter does not prohibit an absent voter
5 ~~returning to his or her place of residence,~~ from voting in
6 person on a voting machine within the voter's precinct at an
7 election, notwithstanding that the voter may have made applica-
8 tion for an absent ~~voters'~~ VOTER'S ballot and the absent
9 voter's ballot may have been mailed to the voter. The voter
10 shall return the ballots ~~if~~ received ~~to~~ to the board of
11 inspectors in his or her precinct. If an absent ~~voters'~~
12 VOTER'S ballot is returned as described in this subsection, the
13 envelope containing the ballots shall be marked "canceled" by the
14 board and shall be returned to the clerk at the close of the
15 polls. ~~which~~ THE clerk shall preserve the canceled ballots
16 for 2 years. If an absent voter does not receive his or her
17 ballot and desires to vote in person, the voter shall sign a
18 sworn affidavit to that effect before 1 of the members of the
19 board. A voter voting at an election, both in person and by
20 means of an absent voters' ballot, or who attempts to vote both
21 in person and by means of an absent voters' ballot, is guilty of
22 a felony.

23 (7) The absent voters' counting boards shall process the
24 ballots and returns in as nearly as possible the same manner as
25 ballots are processed in paper ballot precincts. The poll book
26 may be combined with absent voter list required by section 760,
27 and the applications for absent voters' ballots may be used as

1 the poll list. The processing and tallying of absent voters'
2 ballots may commence at ~~-8-~~ 7 a.m. the day of the election.

3 (8) Each person including election inspectors in attendance
4 at an absent voters' counting place at any time after the pro-
5 cessing of ballots has been started shall take and sign the fol-
6 lowing oath which may be administered by the chairperson or a
7 member of the absent voters' counting board:

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

13 (9) These oaths shall be placed in an envelope provided for
14 the purpose and sealed with the red state seal. Following the
15 election the oaths shall be delivered to the local clerk. A
16 person in attendance at the absent voters' counting place shall
17 not leave that place after the tallying has begun and before the
18 polls close. A person who causes the polls to be closed or dis-
19 closes an election result in a voting precinct ~~, including a~~
20 ~~member of an absent voters' counting board,~~ before the time the
21 polls can be legally closed on election day is guilty of a
22 felony.

23 (10) At the time the election commissions provide for the
24 use of absent voters' counting boards, they may provide that the
25 boards shall record the votes contained on absent voters' ballots
26 on voting machines. ~~-(++)-The~~ IN THAT CASE, THE recording of
27 ballots shall be done by the chairperson of the board or another

1 member designated by the chairperson and the act of casting the
2 votes shall be performed in the presence and under the careful
3 observation and full view of all members of the board, party
4 challengers, and any other persons lawfully present, and the vote
5 as indicated by the voting pointers shall not be recorded until
6 each member of the board is satisfied that the arrangement of the
7 voting pointers fully carries out the intent of the voter as
8 shown by the cross marks or check marks on the paper ballot, and
9 certificate to that effect shall be made on the inspectors'
10 statement of returns.

11 (11) ~~-(12)-~~ As soon as ~~the~~ ABSENT VOTERS' ballots have
12 been cast on ~~the~~ A voting machine PURSUANT TO SUBSECTION (10),
13 but not before 8 p.m., the inspectors shall seal the operating
14 lever of the machine against voting and shall then proceed to
15 determine and record the votes cast in the manner provided in
16 this act.

17 (12) ~~-(13)-~~ Voted absent voters' ballots shall be placed in
18 a ballot box and the ballot bag and ballot box shall be sealed in
19 the manner provided by law for paper ballot precincts. The seal
20 numbers shall be recorded on the statement sheet and in the poll
21 book.

22 (13) ~~-(14)-~~ In governmental units where challenged voters
23 are required to vote on absent voters' ballots, each challenged
24 voters' ballot and application for ballot, after having been
25 voted and properly identified, shall be placed by the voter in an
26 absent voter envelope. The applicable information required on
27 the back of the envelope shall be completed by the board. The

1 envelope shall be signed by the challenged voter and by the
2 chairperson of the precinct board. The word "challenged" shall
3 be written across the front of the envelope. The envelope and
4 application for ballot shall be sealed and delivered to the
5 absent voter precinct by the clerk of the governmental unit.
6 Immediately after the closing of the polls, the chairperson of
7 each precinct board shall notify the clerk of the governmental
8 unit of remaining challenged voter ballots to be delivered to the
9 absent voter precinct. In those governmental units using voting
10 machines where absent voters' counting boards are not used, chal-
11 lenged ballots shall be counted and tallied in the precincts, in
12 the same manner that absent voters' ballots are tallied and
13 counted as provided in section 791.

14 Sec. 831. If an elector cannot cast a valid vote at an
15 election for the candidate of that elector's choice OR FOR OR
16 AGAINST A BALLOT QUESTION SUBMITTED TO THE VOTERS because of a
17 defect in or a mechanical malfunction of a voting machine, voting
18 device, ballot, or other election equipment or material, a spe-
19 cial election may be petitioned for and held as provided for in
20 sections 832 to 839.

21 Sec. 832. A candidate aggrieved by a defect or mechanical
22 malfunction as described in section 831 OR A REGISTERED ELECTOR,
23 WHOSE NAME APPEARS IN A POLL BOOK AT THE ELECTION FOR A BALLOT
24 QUESTION AGGRIEVED BY A DEFECT OR MECHANICAL MALFUNCTION AS
25 DESCRIBED IN SECTION 831, may petition for a special election.
26 The petition shall be filed with the secretary or clerk of the

1 board of canvassers ~~which~~ THAT canvasses the election no later
2 than 10 days after the date of the election.

3 Sec. 833. ~~The~~ A petition filed under section 832 shall
4 MEET ALL OF THE FOLLOWING REQUIREMENTS:

5 (a) Be typed or printed.

6 (b) Allege the facts ~~which~~ THAT made it impossible to cast
7 a vote for the petitioning candidate OR FOR OR AGAINST THE BALLOT
8 QUESTION.

9 (c) Identify the precinct and city or township, and, if
10 applicable, the number of the voting machine or device.

11 (d) Be signed and certified by the candidate OR ELECTOR.

12 Sec. 835. The secretary or clerk of the board of canvass-
13 ers shall determine if a petition meets the requirements of sec-
14 tion 833. ~~and has been served as required by section 834.~~ If a
15 petition is so qualified, the secretary or clerk shall call a
16 meeting of the board of canvassers no later than 5 days after
17 receipt of the petition. The secretary or clerk shall notify the
18 petitioning candidate and ~~each person required to be served~~
19 ~~under section 834~~ THE FILER OF THE BALLOT QUESTION, IF KNOWN, of
20 the time and place of the meeting.

21 Sec. 836. (1) The board of canvassers shall order a spe-
22 cial election for the office of the petitioning candidate OR THE
23 BALLOT QUESTION only in each precinct affected by a defect or
24 mechanical malfunction as described in section 831 if all of the
25 following are true:

1 (a) An elector could not cast a valid vote in the precinct
2 for the petitioning candidate OR FOR OR AGAINST THE BALLOT
3 QUESTION because of the defect or mechanical malfunction.

4 (b) Based on the available canvass, the number of electors
5 who could not cast valid votes for ~~an~~ THE office OR FOR OR
6 AGAINST THE BALLOT QUESTION in an election because of the defect
7 or mechanical malfunction is greater than the number of votes
8 separating the candidates getting the most and the second most
9 number of votes OR IS GREATER THAN THE NUMBER OF VOTES SEPARATING
10 TOTAL "YES" VOTES AND THE TOTAL "NO" VOTES.

11 (2) IF THE NUMBER OF VOTES FOR AN OFFICE OR FOR OR AGAINST A
12 BALLOT QUESTION RECORDED ON A VOTING MACHINE EXCEEDS THE NUMBER
13 OF ELECTORS THAT VOTED ON THE MACHINE, THEN FOR THE PURPOSES OF
14 SUBSECTION (1), THE DIFFERENCE SHALL BE REGARDED AS THE NUMBER OF
15 ELECTORS WHO, BECAUSE OF A DEFECT OR MECHANICAL MALFUNCTION AS
16 DESCRIBED IN SECTION 831, COULD NOT CAST VALID VOTES FOR THE
17 OFFICE OR FOR OR AGAINST THE BALLOT QUESTION.

18 Section 2. Section 834 of Act No. 116 of the Public Acts of
19 1954, being section 168.834 of the Michigan Compiled Laws, is
20 repealed.