

# Legislative Analysis



## COMBINED ABSENT VOTER COUNTING BOARDS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5141 as enacted**  
**Public Act 95 of 2020**  
**Sponsor: Rep. Julie Calley**  
**1st House Committee: Elections and Ethics**  
**2nd House Committee: Ways and Means**  
**Senate Committee: Elections**  
**Complete to 2-8-21**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 5141 amends the Michigan Election Law to allow a city or township clerk to enter into a written agreement regarding the creation of an absent voter counting board with the clerks of other cities or townships in the county, or with the applicable county clerk, at least 75 days before an election.

**FISCAL IMPACT:** House Bill 5141 would have no direct fiscal impact on the Department of State and an indeterminate but potentially substantial fiscal impact on local units of government. See **Fiscal Information**, below, for a detailed analysis.

### **THE APPARENT PROBLEM:**

Boards of election commissioners must provide each absent voter counting board with a location for counting that is not a polling place, and more than one board may be located in a single location. All laws relating to paper ballot precincts, including those regarding election inspectors, apply. The absent voter counting boards must process ballots and returns in as nearly as possible the same manner as ballots in paper ballot precincts, with processing and tallying beginning at 7 a.m. on election day.

Proposal 3 of 2018, approved by the voters with 67% of the vote, added eight voter rights to the Michigan constitution, including “no-reason absentee voting.”<sup>1</sup> Previously, a voter had to meet one of six criteria in order to qualify for an absentee ballot. Now, Michigan voters can obtain an absentee ballot, without giving a reason, during the 40 days before an election. It is expected that Proposal 3 will lead to an increase in voting participation and a dramatic increase in absentee voters. HB 5141 provides procedural adjustments for that expected increase in absentee voters in upcoming elections.

### **THE CONTENT OF THE BILL:**

House Bill 5141 amends the Michigan Election Law to allow a city or township clerk to enter into a written agreement regarding the creation of an absent voting board with the clerks of other cities or townships in the county, or with the applicable county clerk, at least 75 days before the election. However, for an election occurring before January 1, 2021, a

---

<sup>1</sup> House Fiscal Agency analysis of Proposal 3: [https://www.house.mi.gov/hfa/PDF/Alpha/Ballot\\_Proposal\\_2018-3\\_Promote\\_The\\_Vote.pdf](https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2018-3_Promote_The_Vote.pdf)

city or township clerk can enter into one of the agreements described at least 23 days before the election as long as the county's electronic voting system can be programmed to accommodate the agreed-upon absent voter (AV) counting board, the county clerk agrees that the system can be altered after completion of the ballot programming, and the appropriate board of election commissioners publicly tests the electronic tabulating equipment as required.

Under the bill, a city or township clerk may enter into an agreement to do any of the following:

- Establish, with the clerk of another city or township or with the clerks of more than one city or township, a combined AV counting board to count the AV ballots for participating cities or townships.
- Allow the clerk of another city or township located in the same county to count AV ballots for both entities using the applicable AV counting board.
- Allow the county's AV counting board to count AV ballots for the city or township. (If the city or township is located in more than one county, the agreement must be with the county in which the majority of its electors reside.)

If the city or township hands over administration of AV counting—as in, using the second or third option above—it must use the established approval procedures of each participating county, city, or township or, if procedures do not exist, the agreement must be approved by the applicable governing bodies.

Generally, an AV counting board established as described above cannot be used for the first time at a general November election. However, such an AV counting board may be used for the first time for the November 3, 2020, election as long as one of the following applies:

- The agreement is with the clerk of another city or township and at least one of the participating clerks has previously operated an AV counting board.
- The agreement is with the applicable county clerk.

The Michigan Bureau of Elections (BOE) must develop model language that can be used for the written agreements, as well as procedures to implement the options.

The clerk of a city or township who enters into such an agreement must file it with the applicable county clerk at least 74 days before the election to which it applies. However, for an election occurring before January 1, 2021, a city or township clerk does not have to file the agreement as long as the county's electronic voting system can be programmed to accommodate the agreed-upon AV counting board, the county clerk agrees that the system can be altered after completion of the ballot programming, and the appropriate board of election commissioners publicly tests the electronic tabulating equipment as required.

If an agreement covers more than one election, it must allow any participating clerk to terminate the agreement with 84 days' written notice. If the terminating clerk is a city or township clerk, notice must be filed with the county clerk within two business days and, if a county clerk, notice must be filed with the BOE within two business days.

For a combined AV counting board (composed of at least two cities or townships), each city's or township's board of election commissioners must appoint at least one election inspector to the combined AV counting board between 21 and 40 days before the applicable election. Additionally, the agreement must stipulate a place for the AV counting board to count the ballots and a time for them to report for duty. For a county AV counting board, the county board of election commissioners must meet the requirements for designating a time and place, and the boards of election commissioners of both the city or township and the county must each appoint at least one election inspector to the board.

Election inspectors appointed to an AV board under these provisions must comply with statutory requirements regarding election challenges.

If a city or township clerk who enters into an agreement described above receives an AV ballot after 4 p.m. on the day before the election, the ballot must be delivered to the elector's voting precinct to be processed and counted, and not to the applicable AV counting board.

The bill took effect June 23, 2020.

MCL 168.765a (amended); MCL 168.764d and 168.764e (added)

***FISCAL INFORMATION:***

House Bill 5141 would have no direct fiscal impact on the Department of State and an indeterminate but potentially substantial fiscal impact on local units of government.

The fiscal impact on counties, cities, and townships would depend on the extent to which these units enter into written agreements, the scope of the duties transferred through the agreements, and any agreed-upon payment arrangements. If written agreements are largely used to allow temporary gaps in administrative staffing to be filled, the bill would likely have only a limited fiscal impact on the units of government that enter into the agreements. The cost to a local unit of government for an election day worker can range between \$200 and \$300 a day.

Agreements among local units and counties could also provide cost savings through the transfer and reallocation of election equipment such as ballot tabulators, poll booths, and other equipment if those efficiencies are achieved. This may reduce the number of tabulators local units must purchase to accommodate anticipated increases in absent voter ballots and allow them to replace tabulators in the future. Each tabulator costs approximately \$5,000, not including programming and maintenance costs. Programming and maintenance can cost an additional \$2,000 to \$3,000 over the course of five years.

***ARGUMENTS:***

***For:***

Proponents advanced the bill as a needed change to account for the increased voter participation expected following the passage of Proposal 3 of 2018 (described in **The Apparent Problem**, above). The bill would not require clerks to make changes to existing practice, but would give them the flexibility to determine what would work best for their community. According to committee testimony, small communities could see substantial cost savings if they were able to band together to buy tabulators in bulk.

***Against:***

No one testified or voted against the bill in House committee.

Legislative Analyst: Jenny McInerney  
Fiscal Analyst: Michael Clossen

---

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.