

HOUSE BILL NO. 5141

October 23, 2019, Introduced by Rep. Calley and referred to the Committee on Elections and Ethics.

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending section 765a (MCL 168.765a), as added by 2018 PA 123, and by adding sections 764d and 764e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 764d. (1) Notwithstanding any provision of law to the
2 contrary and subject to subsection (2), the clerk of a city or
3 township may enter into a written agreement with the clerk of the



1 county in which that city or township is located to do both of the
2 following:

3 (a) Have the county board of election commissioners of the
4 participating county establish a county absent voter counting
5 board.

6 (b) Have the county clerk of the participating county count
7 the absent voter ballots for that participating city or township.

8 (2) A county absent voter counting board established under
9 this section must not be used for the first time at a general
10 November election.

11 (3) A written agreement entered into under subsection (1) is
12 not effective unless approved by resolution of the governing body
13 of each participating county, city, or township.

14 (4) The bureau of elections shall develop model language to be
15 used by a county, city, or township for written agreements entered
16 into under subsection (1).

17 (5) The clerk, or an authorized designee of the clerk, of the
18 participating city or township shall be present at the county
19 absent voter counting board at all times when absent voter ballots
20 are being counted on the day of an election.

21 (6) The county board of election commissioners of the
22 participating county shall appoint the election inspectors to the
23 county absent voter counting board not less than 21 days or more
24 than 40 days before the election at which they are to be used.
25 Sections 673a and 674 apply to the appointment of election
26 inspectors to a county absent voter counting board under this
27 section.

28 (7) The election inspectors appointed to a county absent voter
29 counting board shall comply with section 733(2) regarding



1 challengers.

2 (8) The county board of election commissioners of the
3 participating county shall provide a place for the county absent
4 voter counting board to count the absent voter ballots of the
5 participating city or township. Section 662 applies to the
6 designation and prescribing of the county absent voter counting
7 place in which the county absent voter counting board performs its
8 duties under this section.

9 (9) The county board of election commissioners of the
10 participating county shall establish the time at which election
11 inspectors of the county absent voter counting board report for
12 duty and the time at which absent voter ballots must be delivered
13 by the clerk, or an authorized designee of the clerk, of the
14 participating city or township to the county absent voter counting
15 board.

16 (10) A written agreement entered into under subsection (1)
17 must indicate which participating county, city, or township is
18 responsible for supplying the county absent voter counting board
19 with supplies necessary to carry out its duties under this act.

20 (11) The provisions of section 765a(8) to (13) apply to a
21 county absent voter counting board established under this section.

22 (12) A written agreement entered into under subsection (1)
23 must contain a provision that either participating party subject to
24 the written agreement may terminate that written agreement with 60
25 days' written notice to the clerk of the other participating party.

26 (13) Each participating party to a written agreement entered
27 into under subsection (1) shall file the written agreement with the
28 bureau of elections. In addition, a written notice to terminate a
29 written agreement entered into under subsection (1) must be filed



1 with the bureau of elections and with the clerk of the other
2 participating party.

3 Sec. 764e. (1) Notwithstanding any provision of law to the
4 contrary and subject to subsection (2), the clerk of a city or
5 township may enter into a written agreement with the clerk of a
6 contiguous city or township, or the clerks of any contiguous cities
7 or townships, to establish a combined absent voter counting board
8 to count the absent voter ballots for each participating city or
9 township.

10 (2) A combined absent voter counting board established under
11 this section must not be used for the first time at a general
12 November election.

13 (3) A written agreement entered into under subsection (1) is
14 not effective unless approved by resolution of the governing body
15 of each participating city or township.

16 (4) The bureau of elections shall develop model language to be
17 used by a city or township for written agreements entered into
18 under subsection (1).

19 (5) The clerk, or an authorized designee of the clerk, of each
20 participating city or township shall be present at the combined
21 absent voter counting board at all times when absent voter ballots
22 are being counted on the day of an election.

23 (6) The board of election commissioners of each participating
24 city or township shall appoint 3 election inspectors for the
25 combined absent voter counting board, with at least 1 election
26 inspector being appointed from each major political party. The
27 written agreement entered into under subsection (1) must indicate
28 which city or township board of election commissioners will appoint
29 the chairperson of the board of election inspectors for the



1 combined absent voter counting board. The election inspectors to
2 the combined absent voter counting board must be appointed not less
3 than 21 days or more than 40 days before the election at which they
4 are to be used. Sections 673a and 674 apply to the appointment of
5 election inspectors to a combined absent voter counting board under
6 this section.

7 (7) The election inspectors appointed to a combined absent
8 voter counting board shall comply with section 733(2) regarding
9 challengers.

10 (8) The written agreement entered into under subsection (1)
11 must designate the place for the combined absent voter counting
12 board to count the absent voter ballots. Section 662 applies to the
13 designation and prescribing of the combined absent voter counting
14 place in which the combined absent voter counting board performs
15 its duties under this section.

16 (9) The written agreement entered into under subsection (1)
17 must establish the time at which election inspectors of the
18 combined absent voter counting board report for duty and the time
19 at which absent voter ballots must be delivered by the clerk, or an
20 authorized designee of the clerk, of each participating city or
21 township to the combined absent voter counting board.

22 (10) A written agreement entered into under this section must
23 indicate which participating city or township is responsible for
24 supplying the combined absent voter counting board with supplies
25 necessary to carry out its duties under this act.

26 (11) The provisions of section 765a(8) to (13) apply to a
27 combined absent voter counting board established under this
28 section.

29 (12) A written agreement entered into under this section must



1 contain a provision that any participating party subject to the
 2 written agreement may terminate that written agreement with 60
 3 days' written notice to the clerk of any other participating party.

4 (13) Each participating party to a written agreement entered
 5 into under subsection (1) shall file the written agreement with the
 6 bureau of elections. In addition, a written notice to terminate a
 7 written agreement entered into under subsection (1) must be filed
 8 with the bureau of elections and with the clerk of any other
 9 participating party.

10 Sec. 765a. (1) ~~If~~ **Subject to sections 764d and 764e, if** a city
 11 or township decides to use absent voter counting boards, the board
 12 of election commissioners of that city or township shall establish
 13 an absent voter counting board for each election day precinct in
 14 that city or township. The ballot form of an absent voter counting
 15 board must correspond to the ballot form of the election day
 16 precinct for which it is established. After the polls close on
 17 election day, the county, city, or township clerk responsible for
 18 producing the accumulation report of the election results submitted
 19 by the boards of precinct election inspectors shall format the
 20 accumulation report to clearly indicate all of the following:

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

25 (2) ~~The~~ **Subject to sections 764d and 764e, the** board of
 26 election commissioners shall establish the absent voter counting
 27 boards. ~~The~~ **Subject to sections 764d and 764e, the** board of
 28 election commissioners shall appoint the election inspectors to
 29 those absent voter counting boards not less than 21 days or more



1 than 40 days before the election at which they are to be used.
2 Sections 673a and 674 apply to the appointment of election
3 inspectors to absent voter counting boards under this section. The
4 board of election commissioners shall determine the number of
5 ballots that may be expeditiously counted by an absent voter
6 counting board in a reasonable period of time, taking into
7 consideration the size and complexity of the ballot to be counted
8 pursuant to the guidelines of the secretary of state. Combined
9 ballots must be regarded as the number of ballots as there are
10 sections to the ballot.

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

17 (4) In a city or township that uses absent voter counting
18 boards under this section, absent voter ballots must be counted in
19 the manner provided in this section and absent voter ballots must
20 not be delivered to the polling places. ~~The~~ **Subject to sections**
21 **764d and 764e, the** board of election commissioners shall provide a
22 place for each absent voter counting board to count the absent
23 voter ballots. Section 662 applies to the designation and
24 prescribing of the absent voter counting place or places in which
25 the absent voter counting board performs its duties under this
26 section, except the location may be in a different jurisdiction if
27 the county provides a tabulator for use at a central absent voter
28 counting board location in that county. The places must be
29 designated as absent voter counting places. Except as otherwise



1 provided in this section, laws relating to paper ballot precincts,
2 including laws relating to the appointment of election inspectors,
3 apply to absent voter counting places. The provisions of this
4 section relating to placing of absent voter ballots on electronic
5 voting systems apply. More than 1 absent voter counting board may
6 be located in 1 building.

7 (5) ~~The~~ **Subject to sections 764d and 764e, the** clerk of a city
8 or township that uses absent voter counting boards shall supply
9 each absent voter counting board with supplies necessary to carry
10 out its duties under this act. The supplies must be furnished to
11 the city or township clerk in the same manner and by the same
12 persons or agencies as for other precincts.

13 (6) ~~Absent~~ **Subject to sections 764d and 764e, absent** voter
14 ballots received by the clerk before election day must be delivered
15 to the absent voter counting board by the clerk or the clerk's
16 authorized assistant at the time the election inspectors of the
17 absent voter counting boards report for duty, which time must be
18 established by the board of election commissioners. Absent voter
19 ballots received by the clerk before the time set for the closing
20 of the polls on election day must be delivered to the absent voter
21 counting boards. Absent voter ballots must be delivered to the
22 absent voter counting boards, **county absent voter counting boards,**
23 **and combined absent voter counting boards** in the sealed absent
24 voter ballot return envelopes in which they were returned to the
25 clerk. Written or stamped on each of the return envelopes must be
26 the time and the date that the envelope was received by the clerk
27 and a statement by the clerk that the signatures of the absent
28 voters on the envelopes have been checked and found to agree with
29 the signatures of the voters on the registration cards or the



1 digitized signatures of voters contained in the qualified voter
2 file as provided under section 766. If a signature on the
3 registration card or a digitized signature contained in the
4 qualified voter file and on the absent voter ballot return envelope
5 does not agree as provided under section 766, if the absent voter
6 failed to sign the envelope, or if the statement of the absent
7 voter is not properly executed, the clerk shall mark the envelope
8 "rejected" and the reason for the rejection and shall place his or
9 her name under the notation. An envelope marked "rejected" must not
10 be delivered to the absent voter counting board, **county absent**
11 **voter counting board, or combined absent voter counting board** but
12 must be preserved by the clerk until other ballots are destroyed in
13 the manner provided in this act. The clerk shall also comply with
14 section 765(5).

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

23 (8) The absent voter counting boards, **county absent voter**
24 **counting boards, and combined absent voter counting boards** shall
25 process the ballots and returns in as nearly as possible the same
26 manner as ballots are processed in paper ballot precincts. The poll
27 book may be combined with the absent voter list or record required
28 by section 760, and the applications for absent voter ballots may
29 be used as the poll list. The processing and tallying of absent



1 voter ballots may commence at 7 a.m. on the day of the election.

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

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

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

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



1 (12) Subject to this subsection, a local election official who
 2 has established an absent voter counting board, **county absent voter**
 3 **counting board, or combined absent voter counting board,** the deputy
 4 or employee of that local election official, an employee of the
 5 state bureau of elections, a county clerk, an employee of a county
 6 clerk, or a representative of a voting equipment company may enter
 7 and leave an absent voter counting board, **county absent voter**
 8 **counting board, or combined absent voter counting board** after the
 9 tally has begun but before the polls close. A person described in
 10 this subsection may enter an absent voter counting board, **county**
 11 **absent voter counting board, or combined absent voter counting**
 12 **board** only for the purpose of responding to an inquiry from an
 13 election inspector or a challenger or providing instructions on the
 14 operation of the counting board. Before entering an absent voter
 15 counting board, **county absent voter counting board, or combined**
 16 **absent voter counting board,** a person described in this subsection
 17 must take and sign the oath prescribed in subsection (9). The
 18 chairperson of the absent voter counting board, **county absent voter**
 19 **counting board, or combined absent voter counting board** shall
 20 record in the poll book the name of a person described in this
 21 subsection who enters the absent voter counting board, **county**
 22 **absent voter counting board, or combined absent voter counting**
 23 **board.** A person described in this subsection who enters an absent
 24 voter counting board, **county absent voter counting board, or**
 25 **combined absent voter counting board** and who discloses an election
 26 result or in any manner characterizes how any ballot being counted
 27 has been voted in a precinct before the time the polls can be
 28 legally closed on election day is guilty of a felony. As used in
 29 this subsection, "local election official" means a county, city, or



1 township clerk.

2 (13) The secretary of state shall develop instructions
3 consistent with this act for the conduct of absent voter counting
4 boards, **county absent voter counting boards, or combined absent**
5 **voter counting boards**. The secretary of state shall distribute the
6 instructions developed under this subsection to **county**, city, and
7 township clerks 40 days or more before a general election in which
8 absent voter counting boards, **county absent voter counting boards,**
9 **or combined absent voter counting boards** will be used. A **county,**
10 city, or township clerk shall make the instructions developed under
11 this subsection available to the public and shall distribute the
12 instructions to each challenger in attendance at an absent voter
13 counting board, **county absent voter counting board, or combined**
14 **absent voter counting board**. The instructions developed under this
15 subsection are binding upon the operation of an absent voter
16 counting board, **county absent voter counting board, or combined**
17 **absent voter counting board** used in an election conducted by a
18 county, city, or township.

