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Senate Bill 386 and 387 (as introduced 6-13-23)

Sponsor: Senator Jeremy Moss

Committee: Elections and Ethics

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## **INTRODUCTION**

Collectively, the bills would modify the processing and tabulation of absent voter ballots and ballots issued to electors who registered to vote or updated their voter registration on election day. Senate Bill 387 would allow a city or township to establish election day vote centers, which could only tabulate ballots cast by electors who registered to vote or updated their voter registration on election day. The bill would allow an elector to tabulate the elector's absent voter ballot in person at the elector's polling place or an appropriate early voting site. It would also amend requirements for absent voter counting boards. Additionally, it would allow a city or township with a population of at least 5,000 to establish an absent voter counting board to process and tabulate absent voter ballots during specific hours on the eight days before election day, or the Monday before election day, and prescribe requirements for the processing and tabulation of absent voter ballots during the early voting period. Senate Bill 386 would amend the Code of Criminal Procedure to update felonies related to disclosing how a ballot was voted or disclosing election results early before polls are closed.

## **FISCAL IMPACT**

Senate Bill 387 could have indeterminate cost implications for local units of government related to building rentals, purchase of additional tabulators and poll books, and related IT costs. Based on Department of State estimates, the cost for a tabulator is \$5,600 while the cost of an electronic poll book is \$1,500. Information technology programming costs for tabulators and poll books is an estimated \$250,000 per programmer hired. Building rental costs would vary by municipal jurisdictions and depend on the number and size of buildings needed to comply with the bill and the number of jurisdictions that would combine to comply with the bill. Additionally, the bill would allow certain jurisdictions to combine to establish election day vote centers to tabulate ballots. Jurisdictions also could combine precincts to establish absent voter counting boards. The combining of jurisdictions and precincts could result in lower costs as the aforementioned costs could be shared. Thus, the costs for locals could vary widely and depend on the specific needs for equipment and personnel to meet the bill's requirements.

Senate Bill 386 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the bill's addition to the guidelines would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

MCL 168.764a et al. (S.B. 387)  
777.11d (S.B. 386)

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## **CONTENT**

### **Senate Bill 387 would amend the Michigan Election Law to do the following:**

- **Allow a city or township to establish election day vote centers to tabulate ballots cast by electors who registered to vote or updated their voter registration on election day under certain conditions.**
- **Prescribe requirements for election day vote centers.**
- **Modify requirements for processing and tabulating absent voter ballots.**
- **Allow an elector to tabulate the elector's absent voter ballot in person at the elector's polling place or an appropriate early voting site.**
- **Modify requirements for absent voter counting boards.**
- **Modify the instructions required to be mailed with absent voter ballots to include instructions on how an elector may cast an absent voter ballot in person.**
- **Allow a city or township to authorize an absent voter counting board that could only process and tabulate absent voter ballots approved for tabulation and received after 4 PM on the day before an election and before 8 PM on election day.**
- **Allow a city or township with a population of at least 5,000 to establish an absent voter counting board to process and tabulate absent voter ballots during specific hours on the eight days before election day.**
- **Prescribe requirements for the processing and tabulation of absent voter ballots during the early voting period.**
- **Extend, from the Friday immediately before an election to the second Friday before an election, the deadline before which an elector may submit a request that the clerk spoil the elector's absent voter ballot.**
- **Repeal Sections 14b, 24k, and 767 of the Michigan Election Law, which govern the use of absent voter ballot secrecy envelope containers.**

### **Senate Bill 386 would amend the Code of Criminal Procedure to do the following:**

- **Remove a provision specifying that disclosing election results or how a ballot was voted is a felony.**
- **Update the MCL reference for the felony of disclosing how a ballot was voted or disclosing election results early before polls are closed.**

Senate Bill 387 is tie-barred to Senate Bill 370 and Senate Bill 372. Senate Bill 386 is tie-barred to Senate Bill 387.

## **Senate Bill 387**

### **Election Day Vote Centers**

Under the bill, the board of election commissioners of a city or township may establish election day vote centers to tabulate ballots issued to electors who registered to vote or update voter registration on election day, if that city or township had processed 500 or more election day voter registrations in either or both two prior general November elections. No later than 90 days before an election, the board of election commissioners of a city or township that established an election day voter center would have to inform the county clerk that an election day voter center would be established in that city or township.

An election day vote center would operate as a polling place. It would have to have at least three election inspectors and be in the same building where the city or township clerk provided election day registration, which would include a satellite office. A political party, or an

incorporated organization or organized committee of interested citizens, could have one challenger for every six election inspectors assigned to an election day vote center. Only an elector who registered to vote or updated the elector's voter registration on election day would be eligible to cast a ballot at an election day vote center. The registered elector would have to present to an election inspector the voter registration receipt issued to the elector by the city or township clerk on election day. The elector would have to comply with all other requirements for electors.

An election inspector in an election day vote center would have to do all the following:

- Allow an elector to cast a ballot in the same manner as an elector whose name was listed on the voter registration list in an election day precinct.
- Enter the elector's name in the poll book approved by the Secretary of State (SOS) for use in an election day vote center.
- Issue a ballot to the elector who would have to mark the ballot and deposit it in the tabulator.

A city or township clerk would have to configure an election day voter center with at least one tabulator and a corresponding poll book that listed the electors issued a ballot to be cast on that tabulator. The collected voter registration receipts would serve as one of the required poll lists, and the list of electors issued a ballot in the poll book would serve as the second required poll list. The county clerk would have to program the tabulators to be used in an election day voter center so that the results would be included in the unofficial and official election accumulation reports that are part of the election day precinct results. The number of tabulators and poll books would have to conform to the way the county clerk programmed tabulators for use in an election day vote center.

An elector in line at a city or township clerk's office, including a satellite office, by 8 PM on election day to register to vote or update a voter registration would have to be allowed to complete the voter registration transaction and be allowed to cast a ballot immediately after that transaction at that city or township election day vote center. The election inspectors at an early vote center would have to allow an elector who was issued a voter registration receipt at the city or township clerk's office on election day and who was in line at that election day vote center by 8 PM on election day to cast a ballot. The election inspectors at an election day vote center would have to follow the same process required at an election day polling place after the last elector in line cast a ballot.

#### Absent Voter Ballot Tabulation

Currently, a clerk who receives an absent voter ballot return envelope containing the marked ballots of an absent voter must not open the envelope before delivering the envelope to the board of election inspectors. The city or township clerk must safely keep in the clerk's office until election day any absent voter ballot return envelopes received by the clerk before election day containing the marked ballots of an absent voter. The bill specifies that a clerk would have to deliver sealed absent voter ballots to a precinct board of election inspectors, an absent voter counting board, or a team of election inspectors.

Before the opening of the polls on election day or as soon after the opening of the polls as possible, the clerk must deliver the absent voter ballot return envelopes to the chairperson or other member of the Board of Election Inspectors in the absent voter's precinct, together with the signed absent voter ballot applications received by the clerk from any voters of that precinct and the clerk's list or record kept relative to those absent voters. However, if higher numbered ballots are used, the clerk must retain the applications and lists in the clerk's office and must keep the applications and lists open to public inspection at all reasonable hours.

Absent voter ballots must not be tabulated before the opening of the polls on election day. The bill would delete these provisions.

The bill would require each city and township clerk to review each absent voter ballot return envelope to determine whether the ballot was approved for tabulation, which would include verifying the signature on each absent voter ballot return envelope. A precinct board of election inspectors or an absent voter counting board could not make any further signature verification for an absent voter ballot return envelope. The clerk would have to write or stamp on each absent voter ballot return envelope the time and date that the ballot envelope was received and a statement by the clerk that the absent voter ballot was approved for tabulation. If the clerk determined that the elector's signature was missing or did not agree sufficiently with the signature on file, the clerk would have to reject the absent voter ballot and provide the elector with notice and the opportunity to cure the deficiency.

The clerk of a city or township that was not processing and tabulating absent voter ballots before election day would have to appoint one or more teams of two election inspectors, with one election inspector appointed from each major political party, to assist the clerk in determining whether the ballots for absent uniformed services voters and overseas voters were approved for tabulation. Beginning no earlier than seven days before an election, a team of election inspectors would have to assist the city or township clerk with the absent voter ballots that were electronically transmitted to absent uniformed services voters and overseas voters and were returned in envelopes that did not have the elector's signature affixed to the exterior of the return envelope. The election inspectors would have to open the return envelope and extract the certificate that absent uniformed services voters and overseas voters were instructed to sign and return in the same envelope as the ballot, while leaving the ballot in the return envelope. The clerk would have to copy the certificate bearing the elector's signature, and the election inspectors would have to reinsert the certificate into the return envelope and reseal the return envelope. The clerk would proceed to determine whether the absent voter ballot was approved for tabulation.

Under the bill, the clerk of a city or township could deliver absent voter ballot return envelopes to a board of election inspectors of an election day precinct only if the city or township had not established an absent voter counting board. The city or township clerk would have to deliver to that board of election inspectors only those absent voter ballots that had been approved for tabulation, along with the clerk's list or record that was kept relative to those absent voters. The city or township clerk would have to retain the applications in the clerk's office and keep the applications and lists open for public inspection during regular business hours. Absent voter ballots that would be tabulated by a board of election inspectors of an election day precinct could not be tabulated before the opening of the polls on election day.

Subject to the bill's provisions, if a city or township had established an absent voter counting board, the clerk would have to deliver absent voter ballots approved for tabulation to the absent voter counting board by the time the election inspectors of the absent voter counting board reported for duty on election day. Absent voter ballots received by the clerk by 8 PM on election day and approved for tabulation would have to be delivered to the absent voter counting board.

The board of election inspectors would have to verify that there was an elector's signature on the absent voter ballot return envelope and that the statement on the absent voter ballot return envelope that the ballot was approved for tabulation was complete. If the elector's signature was missing or the statement that the absent voter ballot was approved for tabulation was incomplete, the board of election inspectors would have to immediately contact the city or township clerk. If the elector's signature was present and the statement that the absent voter ballot was approved for tabulation is complete, the board of election inspectors would have to open the absent voter's voter ballot return envelope and compare the ballot

number on the ballot stub with the ballot number on the face of the absent voter ballot return envelope. If the ballot numbers matched, the board of election inspectors would have to prepare the ballot for tabulation as directed by the SOS.

If an absent voter ballot return envelope was received by the clerk after the close of the polls, the clerk would have to plainly mark the absent voter ballot return envelope with the time and date of receiving the absent voter ballot return envelope and would have to file the absent voter ballot return envelope in the clerk's office. The city or township clerk would have to as soon as practicable, but no later than 90 days after the election, notify by mail, telephone, or email any elector who returned an absent voter ballot return envelope with an absent voter ballot that was not tabulated. The notification provided to an elector by the city or township clerk would have to inform the elector that the elector's absent voter ballot was not tabulated and give the reason why.

Generally, the city or township clerk must call for and receive absent voter ballots from the post office at which the city or township clerk regularly receives mail addressed to the clerk. The clerk must deliver these absent voter ballots to the board of election inspectors or the absent voter counting board to be tabulated. The bill would require the clerk to collect mail as close as possible to 8 PM on election day and review and approve for tabulation any absent voter ballots collected before delivery to the appropriate board.

The bill would delete a requirement that the clerk, on or before 9 PM on election day, post in the clerk's office or otherwise make public the number of absent voter ballots received by the clerk on election day and delivered to the board of election inspectors, along with the total number of absent voter ballots received by the clerk both before and on election day and delivered to the board of election inspectors or the absent voter counting boards.

Additionally, current law requires a clerk to post in the clerk's office or otherwise make public, as soon as possible after all precincts in the city or township are processed, the number of absent voter ballots received by the election inspectors at the precincts on election day, along with the total number of absent voter ballot return envelopes containing the marked ballots of absent voters received in the city or township for that election. Instead, the bill would require the clerk to post or otherwise make public the number of ballots tabulated for that election as soon as possible after all precincts in the city or township were processed.

Generally, voted absent voter ballots must be placed in an approved ballot container, which must be sealed in the manner provided for election day precincts. The seal number must be recorded on the statement sheet and in the poll book. The bill would require the seal number to be recorded on the ballot contained certificate and allow the seal number to be recorded in an addendum to the poll book instead of the poll book.

Under the bill, an absent voter could take the absent voter's marked absent voter ballot to the absent voter's election day polling place or to an appropriate early voting site during the early voting period as provided under Article II of the State Constitution to personally put the absent voter's marked absent voter ballot into a tabulator to be tabulated. An absent voter would have to do all the following:

- Place the marked absent voter ballot in the secrecy sleeve that was provided to the absent voter.
- Bring the marked absent voter ballot in the secrecy sleeve to the absent voter's election day polling place or early voting site.
- Comply with the same identification requirements as an elector voting in person.

If an elector brought an absent voter ballot to an election day polling place or to an early voting site without a secrecy sleeve, an election inspector would have to provide a secrecy

sleeve to that elector and instruct the elector to place the absent voter ballot in the secrecy sleeve. The election inspectors processing an absent voter under these circumstances would have to note in the poll book that the absent voter returned the absent voter's absent voter ballot to the election day polling place or early voting site and that the absent voter's absent voter ballot was tabulated.

If the tabulators in an election day polling place could not be programmed to accept and tabulate absent voter ballots in person, an absent voter would not be authorized to return the absent voter's absent voter ballot to an election day polling place to be tabulated. An absent voter could still return the absent voter's absent voter ballot to an election day polling place, surrender the absent voter ballot to an election inspector, be issued another ballot, and vote that ballot in a polling place.

The Law allows an absent ballot voter to vote in person at the voter's precinct after the voter surrenders the absent voter ballot, which the board of election inspectors would mark as "cancelled". Under the bill, this provision would not apply to an absent voter who brought the absent voter's marked absent voter ballot to be cast on the tabulator at the absent voter's election day polling place or early voting site.

The bill would delete a provision specifying that, after the ballots were counted, the board of election inspectors must tie the ballots in packages or rolls, place them in a ballot bag, and attach to them an endorsed statement showing the number and kind of ballots included in the ballot bag.

#### Absent Voter Counting Board

A city or township may decide to use absent voter counting boards. If so, the board of election commissioners of that city or township must establish an absent voter counting board for each election day precinct. 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. Under the bill, a city or township with 250 or more precincts could establish at least one absent voter counting board for each ballot form containing identical offices and candidate names, and that would be considered a separate precinct.

After the polls closed on election day, the county, city, or township clerk responsible for producing the accumulation report of the election results would have to format the accumulation report.

For a city or township with 250 or more precincts using common ballot forms instead of the election day precinct format in the absent voter counting boards and early voting sites, the accumulation report would not report results from absent voter counting boards or early voting sites as corresponding to election day precincts. Accumulation reports in each city or township would have to report the results for each election day precinct and separately report the results of each absent voter counting board and the corresponding early voting results. Each common ballot form may constitute at least one separate absent voter counting board and early voting precinct. The bill would specify that the county clerk may conduct an unofficial count to provide unofficial election returns to the public.

Currently, the board of election commissioners must establish the absent voter counting boards. Additionally, the it must 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 SOS. Combined ballots must be regarded as the number of ballots as there are sections to the ballot. The bill would delete these provisions.

In a city or township that used absent voter counting boards, ballots would be processed and tabulated by election inspectors assigned to the absent voter counting boards. The same laws related to election day precincts would apply to absent voter counting places. Under the bill, high-speed tabulators and software to support those high-speed tabulators, as a component of an electronic voting system approved by the Board of State Canvassers for use in this State, could be used to tabulate absent voter ballots in an absent voter counting board. There would be no limit on the number of absent voter counting boards that could be assigned to one building.

The bill would allow the processing and tabulating of absent voter ballots to commence at the time set by the board of election commissioners, but no earlier than 7 AM on the day of the election. Additionally, it would delete a description of the duties of election inspectors who are appointed to an absent voter counting board on election day.

An election inspector, challenger, or any other individual in attendance at an absent voter counting place or combined absent voter counting place at any time after the processing of ballots has begun must take and sign an oath that may be administered by the chairperson or a member of the absent voter counting board or combined absent voter counting board. The bill would modify the oath to the following: "I (name of individual taking the oath) do solemnly swear (or affirm) that I shall not communicate in any way information relative to any ballots or the tabulation of votes that may come to me while in this counting place until after the polls are closed. Further, I shall not photograph, or audio or video record, within the counting place, except for posted election results".

The bill would delete a requirement that a person in attendance at the absent voter counting place or combined absent voter council place, including an election inspector, could not leave the counting place after the tallying began until the polls closed. Additionally, the bill would delete a provision allowing specific individuals, such as an employee of the State Bureau of Elections, to enter and leave an absent voter counting board after the tally has begun but before the polls close and associated provisions describing appropriate reasons for entering or leaving and the process for recording the individual in the poll book.

The bill would specify that, if the election inspectors appointed to an absent voter counting board were authorized to work in shifts, the absent voter ballots could not be left unattended during the transition from one shift to the next shift, or at any other time during the day after ballots were removed from the absent voter ballot return envelopes and before the absent voter ballots were sealed in the ballot container.

#### Instructions for Absent Voters

The Law requires specified instructions to be included with each absentee ballot. The bill would add the following step to the instructions: "Step 3. If, after voting your absent voter ballot, you wish to take your marked absent voter ballot to your polling place on election day, or to an early voting site during the early voting period, to personally put your marked absent voter ballot into a tabulator to be counted, skip Steps 4 to 7 and proceed to Step 8. If you do not proceed to Step 8, and you wish to return your marked absent voter ballot to the clerk, proceed to Steps 4 to 7."

Additionally, the bill would add Step 8: "This step applies only if, after marking your absent voter ballot, you wish to take your marked absent voter ballot to your polling place on election day, or to an early voting site during the early voting period, to personally put your marked ballot into a tabulator to be counted. Bring your marked absent voter ballot that you placed in the secrecy sleeve under Step 2 to your polling place on election day, or to an early voting site during the early voting period, and indicate to the election inspectors that you are there to put your marked absent voter ballot into the tabulator to be counted. Before tabulating

your ballot, you will be required to provide identification for election purposes to the election inspectors, or sign an affidavit that you do not have identification for election purposes, and complete the ballot application."

Under the bill, an absent voter ballot could be tabulated at an election day polling place or early voting site only as authorized in the instructions provided to an absent voter, in addition to being delivered to the clerk for tabulation.

Currently, the instructions included with each absent voter ballot instruct an elector to return the absent voter return envelope through two methods. The first method is as follows: "Place the necessary postage upon the return envelope and deposit it in the United States mail, or with another public postal service, express mail service, parcel post service, or common carrier." The bill would amend these instructions to read: "Deposit the postage prepaid return envelope in the United States mail or place the necessary postage on the return envelope and deposit the return envelope with another public postal service, express mail service, parcel post service, or common carrier."

If a city or township decides to use absent voter counting boards, the board of election commissioners of that city or township must 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. Under the bill, if a city or township with 250 or more precincts was unable to program an election day tabulator to accept an absent voter ballot in any election in an election year, the appropriate city or township clerk would have to provide a modified version of the instructions for absent voters that removed the ability of an elector to return the elector's marked absent voter ballot to the elector's election day polling place to be tabulated.

At least 75 days before the day of an election, the clerk of a city or township may enter into one of the following agreements:

- An agreement with one or more clerks of other cities or townships located in the same county to establish a combined absent voter counting board to count the absent voter ballots for each participating city or township.
- An agreement with the clerk of another city or township located in the same county that authorizes the clerk of one participating city or township to process and count the absent voter ballots for both participating entities by utilizing the absent voter counting board of that participating city or township.
- An agreement with the clerk of the county in which that city or township was located to establish an absent voter counting board to count the absent voter ballots for that city or township. If a city or township has boundaries located in more than one county, the clerk of the city or township must only enter into an agreement with the county clerk of the county in which the majority of the electors of the city or township reside.

Generally, if the clerk of a city or township enters into one of these agreements, any absent voter ballot received by that city or township clerk after 4 PM on the day before an election must not be delivered to the absent voter counting board but instead delivered to the voting precinct of the elector on election day to be process and counted. The bill would provide an alternative by allowing a city or township to authorize an absent voter counting board that could only process and tabulate absent voter ballots approved for tabulation and received after 4 PM on the day before an election and before 8 PM on election day. To use this alternative method, the clerk of that city or township would have to inform the county clerk that the absent voter counting board had been authorized by that city or township's board of election commission at least 60 days before an election.



## Pre-Election Absent Voter Tabulation

Under the bill, the board of election commissioners of a city or township with a population of at least 5,000, or a board of county election commissioners, may authorize that absent voter counting boards be established to process and tabulate absent voter ballots between the hours of 7 AM and 8 PM on any of the eight days before election day, beginning on the second Monday before election day and ending on the Monday immediately before election day. The board of election commissioners of any city or township, regardless of population size, may authorize and establish an absent voter counting board to process and tabulate absent voter ballots between the hours of 7 AM and 8 PM on the Monday immediately before election day.

To participate in the processing and tabulation of absent voter ballots before election day, the clerk of a city or township would have to submit a written notice to the SOS no later than 28 days before election day stating the clerk's intent to participate in the processing and tabulation of absent voter ballots before election day. No later than 20 days before an election, the SOS would have to publish on the Department of State's website a list of those cities and townships that notified the SOS of an intent to process and tabulate absent voter ballots before election day. No later than 18 days before an election, a clerk who notified the SOS of the clerk's intent to process and tabulate absent voter ballots before election day would have to post on an existing website of the city or township, and in the clerk's office, a notice providing the location of the absent voter counting place, the dates and hours of operation of the absent voter counting place, and the number of election inspectors who would process and tabulate absent voter ballots at the absent voter counting place. If the location, dates, hours, or number of election inspectors changed, the clerk would have to publicly post a revised notice as soon as possible, but no later than 11 days before an election, on an existing website of the city or township, and in the clerk's office. A revised notice would have to include the updated location, dates, hours, and number of election inspectors.

If the clerk changed the number of election inspectors on subsequent days after processing and tabulating began, the clerk would have to post the updated number of election inspectors on an existing website of the city or township, and in the clerk's office, no later than 10 AM on the day before the changes occurred. If a city or township clerk failed to post a notice by 10 AM on the day before a change reducing the number election inspectors occurred, the clerk would have to allow the number of challengers to remain at the same level even though the reduction in the number of election inspectors may have reduced the number of allowed challengers.

For each day of processing and tabulation of absent voter ballots before election day, a participating city or township clerk would have to deliver the absent voter ballots approved for tabulation to an absent voter counting board. The instructions and procedures adopted by the SOS regarding the processing and tabulating of absent voter ballots before election day would have to be followed. Absent voter ballots would have to be processed and tabulated in the same manner and under the same requirements as absent voter ballots are processed and tabulated on election day. Election results could not be generated, printed, or reported before 8 PM on election day.

During the processing and tabulation of absent voter ballots before election day, each political party, and each incorporated organization or organized committee of interested citizens, may designate one challenger for every eight election inspectors serving at the absent voter counting place. If there were seven or fewer election inspectors serving at an absent voter counting place, each political party, 1and each incorporated organization or organized committee of interested citizens, may designate one challenger.

During the processing and tabulation of absent voter ballots before election day, the election inspectors would have to secure tabulated ballots in a sealed ballot container at the end of

each day. Tabulated ballots may be added to a ballot container used on a previous day or may be placed in an unused ballot container. The election inspectors would have to complete the poll book ballot summary at the conclusion of each day to account for absent voter ballot return envelopes and absent voter ballots processed and tabulated on that day. The poll book, or an addendum to the poll book, would have to be signed and dated by one election inspector from each major political party who was present at the location after tabulation was completed each day. The city or township clerk would have to post the number of absent voter ballots tabulated each day on an existing website of that city or township, and in the clerk's office.

A clerk could not deliver any absent voter ballots received on a day early voting was being conducted to an absent voting counting board to be processed or tabulated on that day. An absent voter ballot could be processed and tabulated only after receipt of the absent voter ballot appeared on the registration list or an addendum to the registration list in an early voting site and the voter history of electors casting an early voting ballot on the previous day was recorded in the qualified voter file. An absent voter ballot would have to be canceled if the absent voter cast a ballot at an early voting site.

Currently, the Michigan Election Law allows the clerk of a city or township with a population of at least 10,000 to perform certain absent voter ballot pre-processing activities between 7 AM and 8 PM on the Sunday and Monday before an election if the clerk provides written notice to the SOS 20 days or more before election day. This written notice must include the location and hours that the absent voter ballot return envelopes will be opened. Additionally, the city or township clerk has to make this information publicly available. The board of election commissions must appoint election inspectors to the location where the absent voter return envelopes will be opened, with one inspector representing each major political party. The bill would delete these provisions, as well as associated provisions describing the duties of election inspectors during this pre-election processing.

#### Spoiling a Ballot

Generally, not later than 5 PM on the Friday immediately before an election, an elector may submit a signed, written statement to the elector's city or township clerk requesting that the clerk spoil the elector's absent voter ballot and provide or mail a new absent voter ballot to the elector. An elector who has returned an absent voter ballot also may appear in person at the elector's city or township clerk's office to submit a signed, written statement indicating that the elector wished to have the prior absent voter ballot spoiled and vote a new absent voter ballot in the clerk's office. The bill would modify these deadlines to be the second Friday before an election. Under the bill, an elector could not spoil a ballot that had been tabulated.

#### Damaged or Defective Ballots

Under the bill, if an absent voter ballot were damaged or defective so that the absent voter ballot could not be properly counted by the electronic tabulating equipment, a true duplicate copy of that absent voter ballot would have to be made by the election inspectors from different political parties and substituted for the damaged or defective absent voter ballot. A damaged or defective absent voter ballot that cannot be properly counted by the electronic tabulating equipment would include an absent voter ballot issued to an elector that was for the wrong precinct. The election inspectors would have to duplicate the absent voter ballot on the correct precinct ballot only for the candidates and ballot proposals that remained the same. Each duplicate ballot would have to be clearly labeled "duplicate" by the election inspectors, and that duplicate ballot would have to bear a serial number that was recorded on the damaged or defective absent voter ballot under procedures provided by the SOS.

## Reporting Requirements

The Law requires the SOS to provide a written report to the House and Senate committees dealing with elections that contains specific information. The bill would delete this requirement.

### Repeal

The bill would repeal Sections 14b, 24k, and 767 of the Michigan Election Law. Section 14b defines the term "absent voter ballot secrecy envelope container". Section 24k prescribes the requirements for an absent voter ballot secrecy envelope container. Section 767 describes the process by which ballots are identified, rejected, and marked as illegal.

## **Senate Bill 386**

A local election official, an official's employee, an employee of the State Bureau of Elections, a county clerk, a clerk's employee, or a representative of a voting equipment company who discloses election results or how a ballot was voted is guilty of a class E felony against Public Trust with a statutory maximum of five years' imprisonment under the Code. The bill would delete this provision in accordance with the changes proposed by Senate Bill 387; however, it would retain the following felony.

Under the Code of Criminal Procedure, a person who discloses how a ballot was voted or discloses election results before the polls are closed is guilty of a class E felony against Public Trust with a statutory maximum of five years' imprisonment. The bill would update the MCL reference for this felony in accordance with the changes proposed by Senate Bill 387.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.