

**SUBSTITUTE FOR  
HOUSE BILL NO. 5644**

A bill to amend 1954 PA 116, entitled  
"Michigan election law,"  
by amending sections 765 and 795 (MCL 168.765 and 168.795), section  
765 as amended by 1996 PA 207 and section 795 as amended by 2004 PA  
92, and by adding section 765a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 765. (1) A clerk who receives an absent voter ballot  
2 return envelope containing the marked ballots of an absent voter  
3 shall not open that envelope before delivering the envelope to the  
4 board of election inspectors as provided in this section. The city  
5 ~~, village,~~ or township clerk shall safely keep in his or her office  
6 until election day any absent voter ballot return envelopes  
7 received by the clerk before election day containing the marked  
8 ballots of an absent voter.

1           (2) Before the opening of the polls on election day or as soon  
2 after the opening of the polls as possible, the clerk shall deliver  
3 the absent voter ballot return envelopes to the chairperson or  
4 other member of the board of election inspectors in the absent  
5 voter's precinct, together with the signed absent voter ballot  
6 applications received by the clerk from any voters of that precinct  
7 and the clerk's list or record kept relative to those absent  
8 voters. However, if higher numbered ballots are used ~~pursuant to~~  
9 **UNDER** section 717, the clerk shall retain the applications and  
10 lists in his or her office and shall keep the applications and  
11 lists open to public inspection at all reasonable hours. **ABSENT**  
12 **VOTER BALLOTS MUST NOT BE TABULATED BEFORE THE OPENING OF THE POLLS**  
13 **ON ELECTION DAY.**

14           (3) The city ~~, village,~~ or township clerk, or authorized  
15 designee of the clerk, shall call for and receive absent voter  
16 ballots from the post office at which the city ~~, village,~~ or  
17 township clerk regularly receives mail addressed to the city  ~~or~~  
18 ~~village,~~ or township clerk on election day in sufficient time to  
19 deliver any envelopes containing absent voter ballots to the board  
20 of election inspectors before the close of the polls.

21           (4) If a marked absent voter ballot is received by the clerk  
22 after the close of the polls, the clerk shall plainly mark the  
23 envelope with the time and date of receipt and shall file the  
24 envelope in his or her office. Except as otherwise provided in  
25 section 759b, the clerk shall not deliver an absent voter ballot to  
26 a voter after the opening of the polls on election day.

27           (5) On or before 8 a.m. on election day, the clerk shall post

1 in the clerk's office or otherwise make public the number of absent  
2 voter ballots the clerk distributed to absent voters and the number  
3 of absent voter ballot return envelopes containing the marked  
4 ballots of absent voters received by the clerk before election day  
5 and delivered to the board of election inspectors or the absent  
6 voter counting boards ~~pursuant to~~ **UNDER** this act. On or before 9  
7 p.m. on election day, the clerk shall post in the clerk's office or  
8 otherwise make public the number of absent voter ballot return  
9 envelopes containing the marked ballots of absent voters received  
10 by the clerk on election day and delivered to the board of election  
11 inspectors ~~pursuant to~~ **UNDER** subsection (3), along with the total  
12 number of absent voter ballot return envelopes containing the  
13 marked ballots of absent voters received by the clerk both before  
14 and on election day and delivered to the board of election  
15 inspectors or the absent voter counting boards ~~pursuant to~~ **UNDER**  
16 this act. As soon as possible after all precincts in the city ~~,~~ **OR**  
17 township ~~,~~ ~~or village~~ are processed, the clerk shall post in the  
18 clerk's office or otherwise make public the number of absent voter  
19 ballot return envelopes containing the marked ballots of absent  
20 voters received by the election inspectors at the precincts on  
21 election day, along with the total number of absent voter ballot  
22 return envelopes containing the marked ballots of absent voters  
23 received in the city ~~,~~ **OR** township ~~,~~ ~~or village~~ for that election.  
24 This subsection applies only to elections in which a federal or  
25 state office appears on the ballot.

26 **SEC. 765A. (1) NOT LATER THAN 2 P.M. ON THE SATURDAY**  
27 **IMMEDIATELY BEFORE AN ELECTION, AN ELECTOR MAY SUBMIT A SIGNED,**

1 WRITTEN STATEMENT TO HIS OR HER CITY OR TOWNSHIP CLERK REQUESTING  
2 THAT THE CLERK DO BOTH OF THE FOLLOWING:

3 (A) SPOIL THE ELECTOR'S ABSENT VOTER BALLOT.

4 (B) PROVIDE OR MAIL A NEW ABSENT VOTER BALLOT TO THE ELECTOR.

5 (2) UPON RECEIPT OF A SIGNED, WRITTEN STATEMENT FROM AN  
6 ELECTOR AS DESCRIBED IN SUBSECTION (1), THE CITY OR TOWNSHIP CLERK  
7 SHALL MARK THE ABSENT VOTER BALLOT RETURN ENVELOPE OF THAT ELECTOR  
8 AS "SPOILED" AND RETAIN THE ENVELOPE. IN ADDITION, THE CITY OR  
9 TOWNSHIP CLERK SHALL PROVIDE OR MAIL A NEW ABSENT VOTER BALLOT TO  
10 THAT ELECTOR.

11 (3) AN ELECTOR WHO HAS RETURNED AN ABSENT VOTER BALLOT MAY,  
12 BEFORE 4 P.M. ON THE DAY BEFORE AN ELECTION EXCEPT SUNDAY OR A  
13 LEGAL HOLIDAY, APPEAR IN PERSON AT HIS OR HER CITY OR TOWNSHIP  
14 CLERK'S OFFICE TO DO BOTH OF THE FOLLOWING:

15 (A) SPOIL HIS OR HER ABSENT VOTER BALLOT BY SUBMITTING A  
16 SIGNED, WRITTEN STATEMENT TO THE CITY OR TOWNSHIP CLERK INDICATING  
17 THAT THE ELECTOR WISHES TO HAVE HIS OR HER ABSENT VOTER BALLOT  
18 SPOILED.

19 (B) VOTE A NEW ABSENT VOTER BALLOT IN THE CLERK'S OFFICE.

20 (4) UPON RECEIPT OF THE SIGNED, WRITTEN STATEMENT FROM AN  
21 ELECTOR AS DESCRIBED IN SUBSECTION (3) (A), THE CITY OR TOWNSHIP  
22 CLERK SHALL MARK THE ABSENT VOTER BALLOT RETURN ENVELOPE OF THAT  
23 ELECTOR AS "SPOILED" AND RETAIN THE ENVELOPE. IN ADDITION, THE CITY  
24 OR TOWNSHIP CLERK SHALL ISSUE THE ELECTOR A NEW ABSENT VOTER BALLOT  
25 THAT MUST BE VOTED BY THE ELECTOR IN THE CLERK'S OFFICE.

26 (5) NOT LATER THAN 2 P.M. ON THE SATURDAY IMMEDIATELY BEFORE  
27 AN ELECTION, AN ELECTOR WHO HAS LOST HIS OR HER ABSENT VOTER BALLOT

1 OR NOT YET RECEIVED HIS OR HER ABSENT VOTER BALLOT IN THE MAIL MAY  
2 SUBMIT A SIGNED, WRITTEN STATEMENT TO HIS OR HER CITY OR TOWNSHIP  
3 CLERK REQUESTING THAT THE CLERK DO BOTH OF THE FOLLOWING:

4 (A) SPOIL THE ELECTOR'S ABSENT VOTER BALLOT.

5 (B) PROVIDE OR MAIL A NEW ABSENT VOTER BALLOT TO THE ELECTOR.

6 (6) UPON RECEIPT OF A SIGNED, WRITTEN STATEMENT FROM AN  
7 ELECTOR AS DESCRIBED IN SUBSECTION (5), THE CITY OR TOWNSHIP CLERK  
8 SHALL INDICATE IN THE QUALIFIED VOTER FILE THAT THE ORIGINAL BALLOT  
9 IS SPOILED. IN ADDITION, THE CITY OR TOWNSHIP CLERK SHALL PROVIDE  
10 OR MAIL A NEW ABSENT VOTER BALLOT TO THAT ELECTOR.

11 (7) AN ELECTOR WHO HAS LOST HIS OR HER ABSENT VOTER BALLOT OR  
12 NOT YET RECEIVED HIS OR HER ABSENT VOTER BALLOT IN THE MAIL MAY,  
13 BEFORE 4 P.M. ON THE DAY BEFORE AN ELECTION EXCEPT SUNDAY OR A  
14 LEGAL HOLIDAY, APPEAR IN PERSON AT HIS OR HER CITY OR TOWNSHIP  
15 CLERK'S OFFICE TO DO BOTH OF THE FOLLOWING:

16 (A) SPOIL HIS OR HER ABSENT VOTER BALLOT BY SUBMITTING A  
17 SIGNED, WRITTEN STATEMENT TO THE CITY OR TOWNSHIP CLERK INDICATING  
18 THAT THE ELECTOR WISHES TO HAVE HIS OR HER ABSENT VOTER BALLOT  
19 SPOILED.

20 (B) VOTE A NEW ABSENT VOTER BALLOT IN THE CLERK'S OFFICE.

21 (8) UPON RECEIPT OF THE SIGNED, WRITTEN STATEMENT FROM AN  
22 ELECTOR DESCRIBED IN SUBSECTION (7) (A), THE CITY OR TOWNSHIP CLERK  
23 SHALL INDICATE IN THE QUALIFIED VOTER FILE THAT THE ORIGINAL BALLOT  
24 IS SPOILED. IN ADDITION, THE CITY OR TOWNSHIP CLERK SHALL ISSUE THE  
25 ELECTOR A NEW ABSENT VOTER BALLOT THAT MUST BE VOTED BY THE ELECTOR  
26 IN THE CLERK'S OFFICE.

27 Sec. 795. (1) An electronic voting system acquired or used

1 under sections 794 to 799a ~~shall~~**MUST** meet all of the following  
2 requirements:

3 (a) Provide for voting in secrecy, except in the case of  
4 voters who receive assistance as provided by this act.

5 **(B) UTILIZE A PAPER BALLOT FOR TABULATING PURPOSES.**

6 **(C)** ~~(b)~~—Permit each elector to vote at an election for all  
7 persons and offices for whom and for which the elector is lawfully  
8 entitled to vote; to vote for as many persons for an office as the  
9 elector is entitled to vote for; and to vote for or against any  
10 question upon which the elector is entitled to vote. Except as  
11 otherwise provided in this subdivision, the electronic tabulating  
12 equipment ~~shall~~**MUST** reject all choices recorded on the elector's  
13 ballot for an office or a question if the number of choices exceeds  
14 the number that the elector is entitled to vote for on that office  
15 or question. Electronic tabulating equipment that can detect that  
16 the choices recorded on an elector's ballot for an office or a  
17 question exceeds the number that the elector is entitled to vote  
18 for on that office or question ~~shall~~**MUST** be located at each  
19 polling place and programmed to reject a ballot containing that  
20 type of an error. If a choice on a ballot is rejected as provided  
21 in this subdivision, an elector ~~shall~~**MUST** be given the opportunity  
22 to have that ballot considered a spoiled ballot and to vote another  
23 ballot.

24 **(D)** ~~(c)~~—Permit an elector, at a presidential election, by a  
25 single selection to vote for the candidates of a party for  
26 president, vice-president, and presidential electors.

27 **(E)** ~~(d)~~—Permit an elector in a primary election to vote for

1 the candidates in the party primary of the elector's choice. Except  
2 as otherwise provided in this subdivision, the electronic  
3 tabulating equipment ~~shall~~**MUST** reject each ballot on which votes  
4 are cast for candidates of more than 1 political party. Electronic  
5 tabulating equipment that can detect that the elector has voted for  
6 candidates of more than 1 political party ~~shall~~**MUST** be located at  
7 each polling place and programmed to reject a ballot containing  
8 that type of an error. If a choice on a ballot is rejected as  
9 provided in this subdivision, an elector ~~shall~~**MUST** be given the  
10 opportunity to have that ballot considered a spoiled ballot and to  
11 vote another ballot.

12 (F) ~~(e)~~—Prevent an elector from voting for the same person  
13 more than once for the same office.

14 (G) ~~(f)~~—Reject a ballot on which no valid vote is cast.  
15 Electronic tabulating equipment ~~shall~~**MUST** be programmed to reject  
16 a ballot on which no valid vote is cast.

17 (H) ~~(g)~~—Be suitably designed for the purpose used; be durably  
18 constructed; and be designed to provide for safety, accuracy, and  
19 efficiency.

20 (I) ~~(h)~~—Be designed to accommodate the needs of an elderly  
21 voter or a person with 1 or more disabilities.

22 (J) ~~(i)~~—Record correctly and count accurately each vote  
23 properly cast.

24 (K) ~~(j)~~—Provide an audit trail.

25 (L) ~~(k)~~—Provide an acceptable method for an elector to vote  
26 for a person whose name does not appear on the ballot.

27 (M) ~~(l)~~—Allow for accumulation of vote totals from the

1 precincts in the jurisdiction. The accumulation software must meet  
2 specifications prescribed by the secretary of state and must be  
3 certified by the secretary of state as meeting these  
4 specifications.

5 **(N)** ~~(m)~~—Be compatible with or include at least 1 voting device  
6 that is accessible for an individual with disabilities to vote in a  
7 manner that provides the same opportunity for access and  
8 participation, including secrecy and independence, as provided for  
9 other voters. The voting device ~~shall~~ **MUST** include nonvisual  
10 accessibility for the blind and visually impaired.

11 (2) Electronic tabulating equipment that counts votes at the  
12 precinct before the close of the polls ~~shall~~ **MUST** provide a method  
13 for rendering the equipment inoperable if vote totals are revealed  
14 before the close of the polls. Electronic tabulating equipment that  
15 tabulates ballots, including absentee ballots, at a central  
16 location ~~shall~~ **MUST** be programmed to reject a ballot if the choices  
17 recorded on an elector's ballot for an office or a question exceed  
18 the number that the elector is entitled to vote for on that office  
19 or question, if no valid choices are recorded on an elector's  
20 ballot, or if, in a primary election, votes are recorded for  
21 candidates of more than 1 political party.

22 (3) ~~Beginning January 1, 2006, each~~ **EACH** jurisdiction in this  
23 state conducting an election shall equip each polling place with at  
24 least 1 accessible voting device as required under subsection  
25 ~~(1) (m)~~. **(1) (N)** .

26 Enacting section 1. This amendatory act takes effect 90 days  
27 after the date it is enacted into law.