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BILL ANALYSIS

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Senate Bill 367 and 368 (as introduced 6-6-23)
Sponsor: Senator Jeremy Moss (S.B. 367)
Senator Ed McBroom (S.B. 368)
Committee: Elections and Ethics

Date Completed: 6-7-23

INTRODUCTION

The bills would codify provisions of Proposal 22-2 (see **BACKGROUND**) into the Michigan Election Law. They would prescribe the process for implementing and administering the constitutionally required nine consecutive days of early voting, for eight hours per day, for each statewide and Federal election. They also would allow a municipality to set additional days and hours of early voting beyond what is constitutionally required and to use early voting for elections that were not statewide or Federal. In addition, they would allow more than one municipality to jointly conduct early voting through a municipal agreement or a county agreement and prescribe the requirements of those agreements. The bills would make disclosing an election result from an early voting site before 8PM on election day a felony.

Senate Bill 368 is tie-barred to Senate Bill 367.

BRIEF FISCAL IMPACT

The Department of State estimates the total implementation costs for early voting for Fiscal Years (FYs) 2022-23 and 2023-24 at \$45.4 million, with \$9.5 million expended by the State and \$36.0 million expended by local units of government. The Department estimates annual ongoing costs to local units of government for Fiscal Year 2024-25 at \$10.0 million; however, these costs could increase in subsequent years for several reasons, such as the possible expansion of early voting to the Monday before an election beginning January 1, 2026. Additionally, the requirement that the appropriate clerk of a municipality or county would have to provide notifications to all electors registered to vote in their jurisdiction upon approval of an early voting site would lead to an increase in postage costs that would occur each election.

Because the guidelines added to the Code of Criminal Procedure would not be compulsory for the sentencing judge and penalties for felony convictions vary, the fiscal impact of a Federal conviction under the bill would depend on judicial decision.

MCL 168.662 et al. (S.B. 367)
777.11d (S.B. 368)

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CONTENT

Senate Bill 367 would amend the Michigan Election Law to do the following:

- **Require a municipality to provide nine consecutive days of early voting, for eight hours per day, for every statewide and Federal election.**
- **Require the Secretary of State (SOS) to supervise the implementation and conduct of early voting and provide resources to county and municipal election officials that prevented an elector from casting more than one ballot per election.**
- **Require each municipality to provide at least one suitable early voting site for each voting precinct located in the municipality.**
- **Prescribe the types of buildings that could or could not be used as a polling place or early voting site.**
- **Require the appropriate clerk to provide a notice specifying the location of the polling place or early voting site to each registered elector upon approval or change of the site.**
- **Allow the clerk of a municipality to set additional hours for early voting, add additional days of early voting, and allow early voting for an election that was not a statewide or Federal election, by resolution.**
- **Establish the requirements and process for entering a municipal or county early voting agreement.**
- **Require a single municipality or participants in a municipal agreement to submit to the appropriate county clerk an early voting plan.**
- **Require a county clerk participating in a county agreement to prepare an early voting plan.**
- **Establish the requirements a clerk would have to fulfill while administering early voting.**
- **Prohibit an individual from intentionally disclosing an election result from an early voting site before 8PM on election day and prescribe a felony penalty for a violation of such.**

Senate Bill 368 would amend the Code of Criminal Procedure to add a felony penalty for disclosing an election result from an early voting site before election day.

Senate Bill 367

Implementation of Early Voting

Under the bill, in accordance with Proposal 22-2's constitutional amendments, a registered and qualified elector in the State would have the right to vote in person in each statewide and Federal election at an early voting site before election day. An elector at an early voting site would have the same rights and would be subject to the same requirements as an elector at a polling place on election day. (Under the bill, "early voting" means casting a ballot in person before election day in the same manner as a ballot is cast on election day, including depositing the ballot into a tabulator).

Under the bill, early voting would have to be provided in each statewide and Federal election for at least nine consecutive days beginning on the second Saturday and ending on the Sunday before the election. Early voting would have to be provided for at least eight hours each day during the required days. Beginning January 1, 2026, early voting could be offered on the Monday before an election but would have to end by 4PM.

The SOS would have to supervise the implementation and conduct of early voting required under Article II of the State Constitution of 1963 to provide each elector an opportunity to

cast a ballot. For early voting required under Article II, the SOS would have to do all the following:

- Advise, direct, and issue instructions and procedures to county and municipal election officials on the administration and conduct of early voting.
- Develop, acquire, or approve new technology for the early voting poll book to implement, administer, and conduct early voting efficiently and securely.
- Create a model municipal agreement template and model county agreement template and ensure that each template could be completed online by a county or municipality.
- Create model early voting plan templates for municipalities and counties to complete and ensure that each template could be electronically transmitted to the Bureau of Elections.
- Evaluate new voting system technology that produced ballots on demand or that could be used to cast and tabulate early voting ballots, and, if appropriate, submit new technology to the Board of State Canvassers for approval.

The SOS would have to provide resources to county and municipal election officials that prevented an elector from intentionally or inadvertently casting more than one ballot at an election. The resources required could be technological, procedural, or a combination of both. In addition, the SOS would have to provide guidance to county and municipal election officials regarding the process for securing equipment and ballots at the conclusion of each day of early voting.

Early Voting Sites

Generally, the Michigan Election Law requires the legislative body in each city and township to designate and prescribe the place or places of holding an election for a city, village, or township election, and to provide a suitable polling place for each precinct located in the city or township. Publicly owned or controlled buildings, such as schools and fire stations, must be used as polling places. The bill would modify these provisions to require a legislative body to provide a suitable polling place for each precinct located in a municipality for use on election day. (Under the bill, "municipal" or "municipality" means a city or township).

Additionally, under the bill, the legislative body of a municipality would have to provide a suitable early voting site for each precinct located in the municipality for each election for which the municipality would conduct early voting: a Federal election, a statewide election, and, by resolution, a municipal election. A publicly owned or controlled building would have to be used as an early voting site, unless it was not possible.

(As used above, "early voting site" would mean that term as described in Article II of the State Constitution of 1963: A polling place subject to the same requirements as an election day polling place, except that an early voting site may serve voters from more than six precincts and may serve voters from more than one municipality within a county.)

The bill would delete provisions allowing the following to be used as a polling place, if a publicly owned or controlled building is not found:

- A building owned or controlled by an organization that is exempt from Federal income tax as provided by certain sections of the Internal Revenue Code.
- A for profit or nonprofit residence or facility in which 150 individuals or more aged 62 or older reside or at an apartment building or complex in which 150 individuals or more reside.
- If neither of the above were reasonably available or convenient to use, any privately owned banquet or conference center or recreation clubhouse if the clerk of the city or

township in which that building is located obtained a signed affidavit from the owner or manager of the building that certifies that he or she is not a sponsor of a political committee or independent committee or is not a candidate for election.

The bill would specify that a building owned or leased by an elected official, an individual who was a candidate up for election, or a person that was regulated under the Michigan Campaign Finance Act could not be designated as a polling or early voting site. If such an individual owned or leased a *portion* of a building, and that portion would *not* be located within 100 feet from the entrance of the polling place or early voting site located inside the building, the building could be used.

The legislative body of a city or township may not establish, move, or abolish a polling place within 60 days of an election unless necessary because the site had been damaged, destroyed, or rendered inaccessible or unusable for its intended purpose. The bill would apply this and similar provisions to early voting sites and central polling places and allow a board of county election commissioners to assume responsibilities related to polling places, early voting sites, and central polling places in place of a municipal legislative body.

A city, township, or county could not use as a polling place, early voting site, or central polling place a building that did not meet these requirements. For early voting sites, if a city or township could not secure a building that met these requirements, that city or township would have to enter into a municipal agreement or a county agreement (see Municipal and County Agreements below).

The location and number of early voting sites would have to be selected by taking into consideration expected turnout, population density, public transportation, accessibility, travel time, traffic patterns, and any other factors that election officials considered necessary to enhance site accessibility. The location of each early voting site would have to be finalized at least 60 days before election day. On each day of early voting, each registered and qualified elector present and in line at the early voting site at the hour prescribed for the closing of the early voting site would have to be allowed to vote.

Notice Requirements

After a polling place or early voting site was approved, the appropriate clerk would have to provide a notice specifying the location of the polling place or early voting site to each registered elector entitled to vote at that polling place or early voting site. A city or township clerk may provide notice by sending each elector his or her updated voter identification card or by sending a separate notice by mail or other method designed to provide actual notice to the registered elector. A city or township clerk could only use the latter method to notify electors of an approved early voting site. This notice would have to provide the site's hours of operation.

In addition to providing this required notice, the appropriate clerk would have to post a sign indicating the new polling place location or early voting site at the location of the former polling place location or early voting site.

This requirement would apply to permanent and temporary changes to polling places and early voting sites. The notice would have to be provided at least 45 days before an election for a polling place or early voting site established or changed 60 or more days before an election. For temporary changes made to a polling place or early voting site, the notice would have to be provided at least 21 days before an election for a polling place or before the first day of early voting for an early voting site.

For temporary changes to a polling place within 20 days before an election or to an early voting

site within 20 days before the start of early voting, the appropriate clerk would have to provide notice by posting a sign indicating the new polling place location or early voting site at the location of the former place or site, on the municipality or county's website, and on the Department of State's website.

Additional Early Voting

The bill would allow a clerk of a municipality to set additional hours for early voting on any of the required nine consecutive days of early voting. The clerk also could offer early voting on additional days beyond the required nine. The clerk of the municipality could set the hours for those additional days of early voting without regard to the hours on the required days of early voting. Additional days would have to take place within 29 days of an election.

The legislative body of a municipality could adopt a resolution to conduct early voting in an election held in that municipality that was not a statewide or Federal election, and early voting for that election would have to be conducted in accordance with the prior requirements, except that the required nine consecutive days of early voting beginning on the second Saturday and ending on the Sunday before the election, and the required minimum of eight hours of early voting each day, would not apply.

The clerks of the municipalities participating in a municipal agreement could agree to jointly offer early voting on additional days and for additional hours. The legislative body of a municipality that was a party to a municipal agreement could adopt a resolution to conduct early voting in an election to be held in the municipality that was not a statewide or Federal election. If one or more municipalities in a municipal agreement wished to conduct early voting in an election that was not a statewide or Federal election, they could do so jointly.

A county clerk and the legislative body of one or more municipalities could enter into an agreement for the county clerk to conduct early voting in an election that was not a statewide or Federal election. The legislative body of a municipality that was party to a county agreement could adopt a resolution to conduct early voting in an election to be held in the municipality that was not a statewide or Federal election.

Each early voting site in a municipality would have to be designated in the same manner as polling places. Each elector registered in the municipality could engage in early voting at any early voting site in that municipality. The Board of Election Commissioners of a municipality would have to appoint election inspectors for each early voting site in that municipality.

Early Voting in a Single Municipality

At least 150 days before the first regularly scheduled statewide or Federal election in an even numbered year, the clerk of each municipality intending to conduct early voting as a single municipality separate from any other municipality would have to notify the county clerk. That municipal clerk would be responsible for administering early voting in that municipality and providing electors with notice about the approval of and changes to early voting sites.

If a municipality had 250 or more precincts, each ballot form that contained identical offices and names could be considered a separate precinct for purposes of early voting.

Early Voting for Multiple Municipalities

If a municipality did not wish to conduct early voting as a single municipality, it could enter either of the following:

- A municipal agreement to jointly conduct early voting with one or more other municipalities located in the same county.
- A county agreement to authorize the county clerk of the county in which that municipality was located to conduct early voting for one or more municipalities located in that county, with the assistance of, and in consultation with, the clerk of each municipality that was a party to the county agreement.

At least 150 days before the first regularly scheduled statewide or Federal election in an even numbered year, the clerk of each municipality would have to notify the appropriate county clerk regarding whether the municipality intended to enter into a municipal agreement or a county agreement. At least 155 days beforehand, the clerk of each county would have to notify each municipal clerk regarding whether the county clerk intended to conduct early voting through a county agreement.

At least 125 days before the first regularly scheduled statewide or Federal election to be held in an even numbered year, the municipal clerks entering into a municipal agreement and the municipal clerks and county clerk of each county entering into a county agreement would have to finalize and sign those agreements. For a *special* statewide or Federal election, the municipal and county clerks would have to finalize and sign those agreements no later than 90 days beforehand.

The SOS would have to prescribe the provisions to be included in a municipal or county agreement. For a county agreement, the county clerk would have to seek assistance from and consult with the clerk of each municipality that was a party to the agreement. The provisions would have to include all the following:

- The name of each municipality that was a party to the agreement and, for a county agreement, the name of the county.
- The number of precincts in each participating municipality.
- The name of the coordinator who would organize and monitor the administrative requirements of early voting for the participating municipalities.
- The process for approving early voting sites by one or more legislative bodies of the participating municipalities.
- The process for approving early voting hours for the required nine consecutive days of early voting, and the process for approving any additional days and hours of early voting.
- The communication strategy for informing electors of the opportunity for early voting, and for publicizing each early voting site, along with their dates and hours of operation.
- The process to ensure that the SOS would have the information necessary to include each location, along with their dates and hours of operation, on its website.
- The process for developing the early voting budget and cost sharing procedures.
- The process for determining the number of tabulators and early voting poll books that would be necessary at each early voting site and the name of each municipality that would provide those tabulators and early voting poll books.
- The name of the Board of Election Commissioners that would conduct testing of the electronic voting equipment.
- The name of the clerk who would have to download the early voting poll book; for a county agreement, this could be the county clerk or a designated municipal clerk.
- The supervision and staffing of each early voting site on each day of early voting.
- Information on how a receiving board or group of election inspectors would be appointed to canvass the early vote returns on election day and report early voting results to the county clerk.
- The process for a municipality or county clerk to withdraw from the agreement.

Additionally, a municipal agreement would need to include the Board of Election Commissioners of the participating municipalities that would appoint the election inspectors for each early voting site. A county agreement would need to include a description of the process for determining the number of and location of early voting sites. The clerk of each municipality participating in a municipal agreement would have to notify the clerk's electors of the approval and change, either permanent or temporary, of an early voting site. For a county agreement, the county clerk or the clerk of each municipality party to the agreement would have to notify the clerk's electors.

The clerks of the participating municipalities or, for a county agreement, the county clerk, would have to appoint a coordinator to organize and monitor the administrative requirements of early voting. The coordinator would have to be a municipal clerk or, for a county agreement, the county clerk, or a member of the clerk's staff. The coordinator would have to provide oversight to ensure sufficient resources would be available and dispatched in a timely manner to each early voting site. For a municipal agreement, the coordinator would have to develop the early voting plan and the early voting budget for each election. The coordinator would have to develop the early voting plan in consultation with the clerks of participating municipalities.

For a municipal agreement, the coordinator would have to submit each early voting site to the legislative body of the municipality or municipalities designated by the municipal agreement for approval. A participating municipal clerk would have to recruit election inspectors at the request of the coordinator or county clerk or would have to provide the coordinator or county clerk with the list of election inspectors for that clerk's municipality. The Board of Election Commissioners for a participating municipality or the Board of County Election Commissioners would have to appoint election inspectors for early voting. On request of the county clerk, a clerk of a participating municipality would have to make available, to the extent possible, tabulators, early voting poll books, and ballot containers for conducting early voting. (Under the bill, "early voting poll book" would mean the poll book utilized in early voting to create the poll list of registered electors voting at an early voting site and to comply with all statutory requirements of a poll book in an election. It could be electronic or a combination of electronic and paper, as the SOS prescribed).

For a county agreement, the county clerk, after consulting with the municipal clerks, would have to submit each early voting site location to the Board of County Election Commissioners for approval. Each early voting site submitted for approval may serve all electors covered by the county agreement, the electors in specific municipalities that were covered by an early voting site, the electors of one municipality, or any combination of these options, as long as each elector in the county was served by one or more early voting sites.

The clerks of the municipalities that were participating in a municipal agreement or the county clerk would have to appoint a municipal clerk (or member of the county clerk's staff) to act as supervisor for each day of early voting. A supervisor could delegate the supervisor's duty to a member of the supervisor's staff.

A municipal and county agreement would cover all statewide and Federal elections, and any additional elections included in the municipal or county agreement, for at least the entire election year in which a general November election was held and the year following. A municipal or county agreement could provide that the agreement would have no fixed termination date. A party to a municipal or county agreement could withdraw from the agreement by providing at least 30 days' written notice to the other parties to the agreement but could not withdraw from the agreement during the period beginning 150 days before the first statewide general November election in an even numbered year and ending on the completion of the county canvass for that statewide general November election in that even

numbered year. If any agreement covered any election in addition to the statewide and Federal elections, a party to that municipal agreement could not withdraw from the municipal agreement during the period beginning 150 days before the election covered under the municipal agreement and ending on the completion of the county canvass for that election. If a municipality withdrew from a municipal agreement, the municipality would have to conduct early voting as a single municipality.

A county clerk and the legislative body of one or more municipalities could enter into an agreement for the county clerk to conduct early voting in an election that was not a statewide or Federal election. The bill would not preclude a county clerk and a municipality from entering into an agreement for the county clerk to conduct early voting for an election in the municipality that was not a statewide or Federal election.

Early Voting Plan

At least 120 days before the first statewide or Federal election in each even numbered year, each single municipality or coordinator for the municipalities that have signed a municipal agreement would have to file an early voting plan with the county clerk of the county in which the municipality or municipalities were located. If a municipality failed to file an early voting plan with the county clerk at least 120 days before the first statewide or Federal election in each even numbered year, the county clerk of the county in which the municipality was located would have to immediately contact the municipal clerk and attempt to determine that municipality's plan for conducting early voting. Each county that was a party to a county agreement would have to prepare an early voting plan within the same time period.

An early voting plan would have to provide sufficient details describing the processes created to conduct early voting. Each early voting plan would have to include all the following:

- Whether the plan covered a municipality providing early voting as a single municipality, a municipal agreement, or a county agreement.
- The name of each municipal clerk or county clerk executing the early voting plan.
- The number of precincts and registered electors in the municipality, the municipal agreement, or the county agreement, as applicable.
- The number of early voting sites, the location of each early voting site, if available, and the municipality or municipalities the early voting sites would serve.
- The name, position, and contact information of the coordinator for a municipal agreement or county agreement, if applicable.
- Any additional early voting days that would be offered before the required days, along with the hours that the early voting sites would be open on those additional days.
- Beginning January 1, 2026, whether early voting would be offered on the Monday before election day.
- The communication strategy for informing electors of the opportunity for early voting.
- The process to ensure that the SOS had the information necessary to include the location and dates and hours of operation of each early voting site on the Department of State's website.
- A copy of a municipal agreement or a county agreement, if applicable.
- Any other information as the SOS or county clerk considered necessary.

No later than 110 days before the first statewide or Federal election in an even numbered year, each county clerk would have to submit to the SOS a countywide early voting plan that included whether the county clerk was participating in a municipal or county agreement, information concerning which municipalities in the county were or were not participating in an agreement, the process planned for conducting early voting, and a copy of each early voting plan submitted, among other things.

Equipment and Technology

At each early voting site, ballots would have to be cast using electronic tabulating equipment authorized to be used on election day or specifically authorized for early voting in the county where the early voting site was located.

Tabulators and early voting poll books used at each early voting site would have to be configured in one of the ways laid out in statute and in the bill; however, the SOS could approve an alternate configuration of tabulators and early voting poll books. A municipal clerk, or the coordinator of a municipal agreement, would have to select a configuration set or sets and inform the county clerk of the selection within 90 days of an election. Under a county agreement, the county clerk, after consulting with the participating municipal clerks, would have to select the configuration set or sets within that time. A county clerk would have to program the tabulators to adhere to the configuration set or sets selected for each site.

The early voting poll book would have to be updated before early voting started each day to reflect new registered electors, absent voter ballots received, and ballots cast at early voting sites since the last update. After the close of the first day of early voting, the board of election inspectors would have to verify and seal tabulated ballots, note any discrepancy in the poll book, record the seal number, and report the number on the public counter on the tabulator at the end of the day and at the beginning of the day in the poll book, among other things. The board would have to follow these procedures after the close of each subsequent day of early voting.

During the required early voting period, the municipal clerk or the early voting site supervisor, as appropriate, would have to take all necessary steps to secure the electronic voting equipment, ballot containers, blank ballots, and other election materials after the close of early voting each day until the opening of early voting on the following day. After the last day of early voting, the municipal clerk or the early voting site supervisor would have to deliver the electronic voting equipment, each ballot container, the blank ballots, and other election materials to the clerk who would oversee the closing of the election after the polls close on election day. No later than the Friday before election day, each municipal clerk would have to post on the municipality's website the location where the precinct canvass of early votes for that municipality would take place and the time the precinct canvass would begin.

Early Voting Related Felony

The bill would prescribe certain requirements for early voting tabulation, including canvassing and recording requirements. The bill also would require a county clerk to report early voting results as a separate category and add these results to the total results for each precinct, except in certain circumstances.

Early voting results could not be generated or reported until after 8PM. on election day. An individual could not intentionally disclose an election result from an early voting site before 8PM on election day. An individual who violated this provision would be guilty of a felony.

Senate Bill 368

The bill would amend the Code of Criminal Procedure to make disclosing an election result from an early voting site before election day a Class E felony against Public Trust with a statutory maximum of five years' imprisonment.

BACKGROUND

In July 2022, Promote the Vote, a coalition of Michigan organizations active in elections, circulated a petition proposing several constitutional amendments concerning voting rights. Among other amendments, the Proposal enshrined in the Constitution that a registered voter has the right to vote in statewide and Federal elections in-person at an early voting site. It required an early voting site to be open for at least nine consecutive days and for at least eight hours a day, beginning on the second Saturday and ending on the Sunday before the election. The proposal specifies that early voting sites would be governed in the same manner as election-day polling places, except that an early voting site may serve voters from more than six precincts and from more than one municipality within a county. The proposal also prohibits early voting results from being generated or reported until after 8PM on election day.¹ Promote the Vote submitted the petition to the Michigan Bureau of Elections after gathering enough signatures for the ballot initiative that became Proposal 22-2. Proposal 22-2 passed with 59.99% of the vote during the 2022 November general election.²

FISCAL IMPACT

Senate Bill 367

The Department of State estimates the total implementation costs for early voting for Fiscal Years (FYs) 2022-23 and 2023-24 at \$45.4 million. The \$9.5 million would be expended by the State and \$36.0 million would be expended by local units of government. These figures include the cost to locals of 5,000 tabulators and over 1,7000 voter assistance terminals. Costs to the State include expenditures for four IT programmers, 5,000 electronic poll books, and Qualified Voter File network and performance upgrades.

The Department estimates annual ongoing costs to local units of government for Fiscal Year 2024-25 at \$10.0 million. These costs may increase in subsequent years due to a provision in the bill stating that early voting may be expanded to the Monday prior to an election beginning January 1, 2026, or if a significant number of jurisdictions otherwise expand early voting beyond the nine days required under the bill.

The bill would require the appropriate clerk of a municipality or county to provide notification to all electors registered to vote in their jurisdiction upon approval of an early voting site. Although clerks would not be required to provide notice by mail, it is likely that this would be the most common method of communication. The average mailing cost for the Department of Technology, Management, and Budget for a 1 oz to 3.5 oz parcel is \$0.66. If a single notification were sent to all 8.2 million electors in the state, postage costs would total approximately \$5.4 million. However, actual costs may be higher if multiple mailings were required. These costs would occur each election.

Senate Bill 368

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, considering 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 addition to the guidelines under the bill 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.

¹ "November 2022 Ballot Proposal 22-2", Senate Fiscal Agency.

² "2022 Michigan Election results," Elections, Michigan Department of State. Retrieved on 4-11-23.

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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.