

# Inside Proposal 2 implementation laws

In November 2022, more than 60% of Michigan voters—some 2.5 million in all—approved Proposal 2022-2, enshrining new voter rights into the state Constitution. Touted as a historic expansion of voter access to elections, the constitutional amendment sparked immediate concern, consternation and questions from those who administer elections—our local clerks.

In the ensuing months, clerks and other township leaders have sought answers about the new requirements, processes and costs of continuing to provide effective, efficient elections with the added responsibilities required by Proposal 2. Questions have abounded on how communities—particularly our smaller townships and those with part-time hours—will implement the new voter rights, which include nine days of early in-person voting for statewide and federal elections, as well as sweeping changes to absentee voting (AV). While the state Bureau of Elections (BOE) has provided initial guidance and processes over the past several months (as shared regularly in MTA’s *Township Insights* weekly newsletter and in *Township Focus*), many elements required legislative action.

Thus began a five-month process, with legislators working with election experts, including representatives from the Michigan Association of Municipal Clerks and Michigan Association of County Clerks, on the intricacies of putting the proposal requirements into state law, as well as enacting other statutory changes necessitated, but not directly dictated by, the proposal. Identical 11-bill packages were introduced and debated in both chambers of the state Legislature—with both House and Senate bills crossing the finish line the final

week of June and heading to the governor for signature. The legislation was expected to be signed shortly after *Township Focus* press time.

The Fiscal Year 2023-24 state budget—which passed the same day as the Proposal 2 legislation—recognized the need for funding toward these efforts. All told, some \$46 million was allocated in the final budget for the Michigan secretary of state (SOS) to implement Proposal 2 (as well as Proposal 2022-1, which impacts legislator financial disclosure and term limits)—with up to \$30 million for incentive grants to counties to coordinate implementation of early voting and incentivize multijurisdictional coordination. An additional \$11.5 million, primarily for drop boxes, was included in the supplemental portion of the budget in the current fiscal year (FY 2022-23).

Now that implementation legislation has passed the Legislature, the real work begins—in every township in the state. As township boards weigh how to budget for these additional requirements, and clerks adapt to the new processes, staffing requirements and more, both the BOE and MTA are also working on providing additional guidance, trainings and resources to assist and help answer questions. The following is an overview of the legislation, what they do, and what information the BOE has provided thus far.



### **Venturing into new territory—early voting**

With Proposal 2, Michigan joined dozens of other U.S. states that offer some form of early voting—though this is accomplished at the county level in those states, where early voting is generally not offered at the municipal level. This is likely the biggest and most concerning change for many clerks and election workers to administer. Michigan is now required to offer nine days of early in-person voting **prior to statewide and federal elections only**. (Townships have *the option* of offering early voting for local elections.) Voters, of course, can still vote in person on Election Day or by absentee ballot. The first election for which early voting will be in effect is Michigan’s 2024 presidential primary, whose date has not yet been finalized.

### **Cooperative agreements**

Senate Bill 367 implements early voting requirements and processes. Under the bill, a township can choose to operate the nine days of early voting on its own. The bill also spells out two other options, allowing townships to share costs, equipment and personnel and join with other municipalities or with the county to cooperatively accomplish this new requirement.

If a township joins other municipalities or the county, they must enter into either a municipal or county agreement

to do so. The bill outlines what must be included in these agreements, including number of precincts of participating municipalities, how voters will be notified of early voting sites, budgeting and cost-sharing procedures, supervision, staffing, and more.

County clerks must notify all municipal clerks in their county at least 155 days before the first regularly scheduled statewide or federal election in an even-numbered year whether the county clerk intends to conduct early voting. The clerk must notify the county clerk 150 days before the election whether the township will conduct early voting on its own or in a municipal agreement or a county agreement. In addition, a township can choose to conduct early voting on its own for a presidential primary, and still enter into a municipal or county agreement for the remaining statewide and federal elections to be held in that year, as well as any elections held during the following year, and any other elections covered by the agreement. The township could enter in such an agreement until April 15 of the year of the presidential primary, either through an amendment to an existing agreement that was in effect for the presidential primary, if all parties to that agreement agree, or through a new agreement.



With Proposal 2, Michigan joined dozens of other U.S. states that offer some form of early voting. Michigan is now required to offer nine days of early in-person voting, prior to statewide and federal elections only.

If a township wants to withdraw from a municipal or county agreement, it must provide 30 days' written notice to all other parties in the agreement. It cannot withdraw during the period beginning 150 days before the first statewide general election in an even-numbered year and ending with the completion of the county canvass for that statewide general election.

Township clerks must provide voters notice of their early voting site within 45 days of the election (if offering with the county, the county clerk may also provide the notice to all electors in the county).

The legislation requires the secretary of state to create model municipal and county agreement templates, as well as model early voting plan templates.

## Early voting sites

Municipalities offering early voting on their own, or with other municipalities, must provide the county with an early voting plan at least 120 days before the first statewide or federal election in each even-numbered year, including the municipalities covered, early voting site locations, how voters will be informed about their early voting opportunity and more. The county clerk then provides the SOS with a countywide early voting plan and must certify that every registered voter in every municipality is served by at least one early voting site.

"Early voting sites" operate similar to typical Election Day polling locations, with some additional flexibility—including

that they can serve electors from more than six precincts and from more than one municipality within a county and are not subject to limitations on how many electors are assigned to a precinct. SB 367 also offers some additional flexibility in securing polling places and early voting sites.

Early voting sites must be finalized at least 60 days before Election Day.

## Security, tabulating and pre-processing

While many of the logistical issues will be determined by the secretary of state—including software changes, agreement and voting plan templates, preventing double votes, and security—SB 367 does include security procedures to be followed for securing tabulators and ballots at the end of each night of early voting.

The bill also allows all communities to pre-process and tabulate AV ballots before Election Day. Townships with a population of 5,000 or more can pre-process and tabulate AV ballots on any of the eight days—one or more, or all days if desired—prior to Election Day. *Any* township, regardless of population, can do so the Monday before the election.

Townships that have processed 500 or more same-day registrations in either of the last two November general elections can establish "Election Day vote centers" that would operate as a polling place for same-day registrants. These would have to be in the same building where the clerk provides same-day registration.

The legislation also removes the provision that does not allow a worker to leave an AV counting board before the close of polls on Election Day, and adds a provision making it illegal to photograph or record in an AV counting board, with some exceptions. A companion bill, House Bill 4696, provides sentencing guidelines for reporting early voting results prior to the close of polls on Election Day, which is a five-year felony, as well as making technical updates.

The Bureau of Elections recently conducted a Lean Process Improvement exercise to map out the procedural and technical updates that will be needed to implement early voting. The BOE has reviewed issues related to voting systems, reports, ballot storage, record keeping, chain of custody, voting locations and electronic pollbooks, among others. It is expected many of the issues discussed will be useful in quickly implementing early voting.

## Overhaul on absentee voting

Proposal 2 included several provisions in efforts to expand access and ease for AV voting, which saw a dramatic increase during the pandemic. Although the costs of some of the new requirements—such as prepaid postage and drop boxes—are primarily covered by the state, clerks must implement new—and ongoing—responsibilities, including permanent



AV voting lists and signature curing notices. While the new laws outline requirements and processes and the BOE has released some guidance, additional resources will continue to be released as the bureau develops final procedures.

### Prepaid postage

Under the proposal, state-funded postage is required for voters to return their AV ballot application and ballot. This was codified into law by Senate Bill 370, which also prescribes the signature matching and curing process that voters are to use for mismatched or missing signatures on AV applications and ballot return envelopes (see below for more on the curing process).

The BOE is continuing to work with the U.S. Postal Service (USPS) to finalize sub-permits for each of Michigan's 1,520 jurisdictions that conduct elections. This allows each jurisdiction to print AV ballot applications and envelopes with a permit that will be billed to the state.

As of *Township Focus* press time, fewer than 172 permits had yet to be finalized, and all permits for jurisdictions with an Aug. 8 election were in place, according to the BOE. If your township needs to order AV ballot application or return envelopes, the BOE instructs that clerks should contact the township's vendor to find out if the township's sub-permit has been established. If not, and your township has an August election, the BOE will reimburse for the postage applied to the return envelopes, as it did with the May 2 election.

When using a permit, USPS will send an invoice to the township, indicating postage costs incurred and postage due, and that the amount has been deducted from the township's advance deposit account (this is the master account established by the State of Michigan). **The township should not incur actual charges from these mailings.** If a township account has been charged, an invoice and proof of the debit from the account should be submitted to the BOE. According to the bureau, townships can retain the invoices if desired—however, no action is required, and the township will continue to receive them for the life of the permit.

Permits were established using the mailing address listed in the Qualified Voter File (QVF). Clerks were urged to review this information for accuracy and update if necessary. For AV ballot applications and AV ballots to be returned to the correct address, the BOE and USPS must have the township's correct mailing address to add to the BOE's statewide postage permit. If the mailing address in the township changes when a new clerk takes office (for example, if it is the clerk's home address), it is recommended that the township establish a post office box as the clerk mailing address. For mail to be routed to the correct address, the BOE must maintain an accurate, up-to-date mailing list. A mailing address with a PO box will be the PO box only and not include a street address.

For jurisdictions not able to use their permit for the August election, a postage reimbursement form is available from the BOE.

## Democracy MVP program helps recruit election workers

With nine days of early voting required by Proposal 2022-2 before statewide and federal elections, there also comes an increased need for additional poll workers. Townships can learn about individual interested in working elections through the state's Democracy MVP program.

The program was launched to make it easier for residents to learn more about and share their interest in becoming election workers. Townships can also spread the word by sharing program details with individuals in your township and help attract more election workers to assist in your local elections (there is even a Democracy MVP toolkit to help you share details). The program website (access at [www.michigan.gov/elections](http://www.michigan.gov/elections) and scroll down to the "Democracy MVP" link) allows individuals to complete an interest form online, explore an election inspector resource library (including an Election Worker Intro video) and review frequently asked questions about this important role.

After individuals apply through the Democracy MVP program, the local clerk is notified, allowing them to contact the new potential election worker to complete the application and hiring process. The program also encourages individuals to apply directly with local clerks' offices.



### Drop boxes

Proposal 2 requires that there be at least one state-funded AV drop box for every 15,000 registered voters in a jurisdiction, plus an additional drop box for every additional 15,000 registered voters. House Bill 4697, which puts these provisions into place, clearly states that the SOS is to pay for the drop boxes, their installation, and any required video monitoring (*note*: this does not, however, include video data storage).

Drop boxes must meet all of the following requirements:

- Be clearly labeled as an AV ballot drop box where voters can return completed AV applications and ballots.
- Be securely locked, affixed to the ground or another stationary object, and designed to prevent applications and ballots from being removed when locked.
- Be accessible 24 hours each day during the 40 days before Election Day, and until 8 p.m. on Election Day.
- Be equipped with a slot or mailbox-style lever to allow ballot applications and ballot return envelopes to be put in it. All other openings on the drop box must be securely locked.
- Be located in a publicly accessible, well-lit area with good visibility.



## Additional election law changes

Additional election legislation—some necessitated by, though not specifically a component of Proposal 2022-2—also recently passed the Legislature and is pending the governor's signature, as of *Township Focus* press time.

**Voter identification for election purposes.** Senate Bill 373 modifies the types of photo identification that can be used for election purposes to conform with Proposal 2. The bill provides a definition for “educational institution,” now in the state Constitution, and replaces previous language that referenced universities and colleges. The bill also adds photo identification issued by a local government to the types of ID that can be used for election purposes.

**Increased precinct size.** House Bill 4702 allows municipalities to increase their precincts to up to 5,000 active registered voters from the current 2,999. The bill also removes the provision in law that proscribes the number of voting machines a precinct should have. While the legislation is not a requirement of Proposal 2, it was included to realize savings by requiring fewer numbers of voting equipment and resources, such as absentee voter counting board tabulators, to meet the election needs per precinct.

The bill also outlines considerations for the required “equitable distribution” of a drop box (or drop boxes) throughout the township, including population density and distribution, proximity to parking, and other considerations the clerk may feel is relevant. The clerk must notify the SOS of drop box placement, which will be included on the state’s website and allow voters to see where a drop box is located in their community.

The bill does retain the current statutory requirement for video monitoring on drop boxes installed after October 2020. Beginning in 2026, **all** drop boxes must have video monitoring. Video monitoring must be in place for the 75 days prior to any election, and any vandalism and suspicious activity occurring near a drop box must be immediately reported to local law enforcement. Townships are responsible for any costs related to video storage and

maintenance. HB 4697 removes a previous requirement that clerks document the total number of AV ballot return envelopes collected from each drop box.

Statewide contracts with three vendors are now in place, and clerks can order their required state-paid drop box (or drop boxes, depending on the number of registered voters in the township) using the order form in the BOE’s “Michigan Elections eLearning Center.” Clerks can also view the vendors and available drop boxes on the eLearning Center’s drop box webpage. The bureau will place orders with the vendors at regular intervals, prioritizing those jurisdictions with an August election, then those with a November election, and then the rest of the jurisdictions.

All drop boxes should be ordered prior to the 2024 presidential primary absent voter ballot period. Drop boxes will be delivered directly to the township to the address provided by the clerk. For those jurisdictions with a May or August election that needed to purchase and install a drop box prior to the finalization of the ordering processing, the BOE will provide reimbursement via the drop box reimbursement form available in the eLearning Center.

### Permanent AV ballot list

Under Proposal 2, voters may now complete a single AV application to receive an AV ballot in *all* future elections.

#### **This is required for all jurisdictions and all elections.**

According to the BOE, permanent AV status moves with the voter when they update their registration address within the state, including across jurisdictions. Voters are removed from the list upon request, with cancellation of voter registration, with reliable information that the voter has moved from the registration address, or if the voter has not voted for six years.

House Bill 4699 sets up the process for the permanent AV ballot mailing list. These voters are referred to as “permanent mail ballot voters.” The bill also:

- Creates a presidential primary ballot selection form for voters to select their party preference for voting in presidential primary elections and how to change this preference.
- Lists the conditions under which an individual can be removed from the permanent list, and notices that must be sent to the voter when this happens.
- Changes some retention periods for election materials to conform with the federal 22-month requirement.

Updated printed and QVF AV ballot applications provide voters with the option to join the permanent AV ballot list. A QVF update now captures a voter’s permanent AV ballot status.

Given that many voters will receive absentee ballots, they will now be allowed to bring their marked absentee ballot to an early voting site or an Election Day precinct and insert them into the tabulator.

### Signature matching/curing

SB 370 prescribes the signature matching and curing process for clerks and election inspectors to use for mismatched or missing signatures on AV applications and ballot return envelopes. The bill sets guidance for comparing signatures and allows voters whose signature “does not agree sufficiently” with the signature on file to “cure” any deficiencies using a new “cure form” to be developed by the SOS. Clerks must notify an elector of any deficiency within one business day of receipt (for those envelopes received within six or more calendar days of the election), and can do so by telephone, email or text message. Those received within five days of the election must be notified of deficiencies by the end of the same business day received. An AV application or return envelope is not considered received until the “first subsequent day on which the clerk has scheduled business hours.”

AV ballot return envelopes can be cured up to three days after an election. If a deficiency is cured within those three days, the ballot is tabulated.

The bill also codifies the use of a driver’s license or state ID signature on file with the secretary of state for applying for an AV ballot online and strikes the identification requirement for applying for an AV ballot in the clerk’s office except for the day before Election Day.

Proposal 2 also requires a state-funded tracking system for submitted AV applications and ballots, including electronic status notifications. SB 339 requires the secretary of state to create the new tracking system, which also must inform the voter of any deficiencies with either the application or ballot and provide instructions for addressing such deficiencies. The legislation exempts voters’ phone numbers and email addresses from the Freedom of Information Act.

### MOVE ballots

Public Act 25 of 2023, which was signed in to law in May with immediate effect, was the first Proposal 2 implementation bill to go into effect. The law requires absentee ballots of military and overseas voters (MOVE) to be counted if they are received within six days after the election if the return envelope is postmarked on or before Election Day. PA 25 also provides the process to be used if the postmark is not legible, indicates how these ballots will be tabulated and updates the instructions for absentee voters.

### Supporting townships and clerks

Proposal 2022-2 and its implementing legislation represent the largest change in elections in years. Townships and clerks have long-adapted to ever-evolving changes to local services, and we fully recognize this may be a significantly challenging time for Michigan local governments and election administrators, and that many questions likely remain. MTA remains committed to supporting our members, clerks and all who assist in administering elections, to ensure that townships can continue to provide efficient, effective elections and support local democracy as they have done for nearly two centuries. Continue to watch future issues of *Township Focus* and *Township Insights*, and MTA’s website for continued updates and resources as they become available.

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