

Michigan Legislature Passes Package of Bills Implementing Proposal 2

July 1, 2023

At the November 2022 state general election, Michigan voters overwhelmingly approved a voting rights constitutional amendment known as Proposition 2022-2 (“Prop 2”). Prop 2 enshrined in the Michigan Constitution the right to vote early in every statewide and federal election, a permanent absentee voting list, expansion of acceptable voter identification, absentee voter improvements, and extended deadlines for military and overseas ballots.[1] These rights require sweeping changes in election administration. The Michigan Legislature has passed a package of election-related bills implementing these changes and providing guidance to local clerks.

Certain aspects of the bills go beyond Prop 2’s constitutional mandates, including new provisions allowing faster reporting of absent voter ballot results through tabulation before the polls close on Election Day and criminal penalties for disclosing results early.

Some of the significant changes of the bills include:

- **Early Voting** SB 367 provides for 9 days of early voting, at a minimum, before each statewide and federal election. The bill further provides cities and townships with the flexibility to choose how they will conduct early voting and the types of locations that can be used for polling places and early voting sites. Cities and townships can conduct early voting entirely on their own, or they can collaborate with other municipalities in their county or with their county clerk to conduct early voting.

SB 367 also allows for the possibility of pre-processing and early tabulation of absent voter (“AV”) ballots.

- **Absent Voter Tracking** SB 339 implements Prop 2’s right to a state-funded system to track submitted absentee ballot applications and AV ballots. The system must give voters the option to receive electronic notifications regarding status, inform voters of deficiencies and provide instructions for addressing them.
- **Permanent Mail Ballot List** HB 4699 implements Prop 2’s right of voters to fill out a single application to have an absentee ballot mailed to them in all future elections.
- **Signature and Cure** SB 370 implements Prop 2’s signature and cure requirements and prepaid postage for AV ballot applications and envelopes.
- **In Person Identification** SB 373 implements Prop 2’s expansion of valid photo identification used for elections. Voters can now use photo identification issued by a local government and photo identification issued by a broad array of educational institutions.
- **Drop Boxes** HB 4697 largely to incorporates Prop 2’s drop box requirements. The bill requires:
 - at least one secure drop box for every municipality and at least one drop box for each 15,000 registered voters in municipalities with more than 15,000 voters.
 - That the drop boxes described above be funded by the state.

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- That the drop boxes be used for the return of completed AV ballot applications as well as voted AV ballots.
- That secure drop boxes be distributed equitably throughout the municipality.
- That secure drop boxes be accessible 24 hours a day during the 40 days before an election and until 8 p.m. on Election Day.
- **Increase Precinct Size** HB 4702 increases maximum precinct size from 2,999 to 5,000.
- **Criminal Penalties for Disclosure of Early Voting Result** HB 4696 establishes criminal penalties for disclosing an election result from an early voting site before Election Day.

We've provided additional insights regarding the legislative changes enacted ahead of the 2024 contests.

The bills now head to Governor Gretchen Whitmer's desk, where she is expected to sign them into law. When the new provisions will take full effect is an open question, depending upon whether a provision is constitutionally self-executing or must be enabled by legislation.[2] For instance, early voting under Prop 2 is self-executing and must be in place for the next presidential primary election regardless of whether the legislation is in effect.

Miller Canfield will continue monitoring these developments. If you have any questions, please contact your Miller Canfield attorney, any member of the **Miller Canfield Election Law team** or one of the authors of this alert.

[1] Michigan Const. Article II § 4(1)

[2] Michigan Bureau of Elections News Update, June 30, 2023, <https://content.govdelivery.com/accounts/MISOS/bulletins/362e9b6>