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# CHAPTER 16 PRE & POST ELECTION INFORMATION

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## MANDATORY ELECTION PUBLICATIONS

**Notice of Voter Registration:** A Notice of Registration must be published in a local newspaper at least 30 days prior to the election. Arranging for the publication of the notice is the responsibility of the city clerk or township clerk. (MCL 168.498(2)) Notices must contain the following information:

- Days and hours that the clerk will be at the clerk's office or other designated place to receive registrations before an election.
- The offices to be filled that will appear on the ballot and if applicable, a brief description of any ballot proposals which will appear on the ballot, information on where voters can obtain the full text of any ballot proposals.
- The Bureau of Elections also recommends including a list of other voter registration agencies and that the mail-in registration form can be used and found at [mi.gov/vote](http://mi.gov/vote).
- Local jurisdictions may enter into agreements to publish joint Notices of Registration to contain costs. Such agreements may be coordinated by the county clerk at the county clerk's discretion.

**Notice of Election:** A Notice of Election must be published in a local newspaper prior to any upcoming election. Arranging for the publication of the notices is the responsibility of the city clerk or township clerk and must include: (MCL 168.653a)

- The publication must appear no later than the seventh calendar day before the election involved.
- The date of the election and the hours that the polls will be open (7:00 a.m. through 8:00 p.m.).
- A listing of the offices which will be elected or nominated at the election. (The names of the candidates seeking nomination or election to the offices do *not* need to be included in the notice.)
- A brief description of any ballot proposals which will appear on the ballot. (If presenting a bond proposal, the development of the proposal description in close consultation with the bond counsel is recommended.)
- Information on where voters can obtain the full text of any ballot proposals which will appear on the ballot.
- A listing of the polling place locations. A statement regarding the accessibility of the polling place locations and the availability of voting instructions in alternative formats (audio and Braille) must be included with the listing.

While not required by law, it is recommended that the notice include information on how and where an elector may obtain an absent voter ballot for the election.

- If the Notice of Election is for an election on a millage increase, the notice must include a statement of the amount by which the total tax rate limitation is increased and the number of years by which the increase would be effective. (MCL 211.203)
- Local jurisdictions may enter into agreements to publish joint Notices of Election to contain costs. Such agreements may be coordinated by the county clerk at the county clerk's discretion.

**Notice of Public Logic and Accuracy Test:** A Notice of Public Logic and Accuracy Test must be published in a local newspaper prior to any upcoming election. Arranging for the publication of the notice is the responsibility of the city clerk or township clerk. (MCL 168.798(1))

- The publication must appear at least 48 hours prior to the conduct of the test. The test must be

conducted no later than the fifth day prior to the primary or election.

- A Notice of Public Logic and Accuracy Test must include the name of the jurisdiction conducting the election and the test, the date of the election, the date and time of the test, the location of the test, and a statement regarding the purpose of the test (i.e., “The Public Accuracy Test is conducted to demonstrate that the computer program used to tabulate the votes cast at the election meets the requirements of law”).

\*Samples of the Notice of Registration, Notice of Election and Notice of Public Accuracy can be found in the Appendix.

## REQUIRED POSTINGS & REPORTING

**Weekend Hours of Operation Prior to Election Day:** Beginning January 1, 2019, a city or township clerk must be available at his or her office to issue and receive absent voter ballots for any combination of at least eight hours on the Saturday, Sunday, or both before election day. At least 30 days prior to the election, the clerk must post and must notify the Bureau of Elections of the hours of operation for the weekend immediately preceding the election. (MCL 168.761b)

**Additional Locations and Hours:** A city or township clerk may designate additional locations and hours of operation for the purpose of issuing and receiving absent voter ballots. At least 30 days prior to the election, the clerk must post and notify the Bureau of Elections of the additional locations and hours of operation preceding the election. The additional locations would also have to allow challengers in the same manner as allowed under law in a polling place on election day. (MCL 168.761b(3))

## OPTIONAL ELECTION POSTINGS

The following optional notices may be better suited for a press release.

**Notice of Filing Deadline:** A Notice of Filing Deadline may be published in a local newspaper prior to any upcoming election. The publication of such notice is at the discretion of the local clerk. The notice may include information on candidate qualifications, filing requirements (including number of required signatures) and any upcoming filing deadlines for offices appearing on the ballot.

**Notice to Absent Voters:** A Notice to Absent Voters may be published in a local newspaper prior to any upcoming election. The publication of such notice is at the discretion of the local clerk. The notice may include the deadline to apply for an absentee ballot, and contact information for the election official accepting absentee ballot applications.

## PROCEDURE FOR HANDLING PROVISIONAL ENVELOPE BALLOTS RETURNED TO CLERK'S OFFICE FOR REVIEW

Within 6 days after the election, the city or township clerk must evaluate each Provisional Envelope ballot voted by the jurisdiction's voters to determine if the ballot can be counted. Call the QVF Help Desk; they can assist with research if necessary. The Provisional Ballot Form is designed to guide the precinct board on recording all of the information needed by the clerk to determine whether an Envelope ballot can be counted. When making this determination, the city or township clerk is not permitted to open the *Provisional Ballot Form* envelope holding the ballot.

**MISSING REGISTRATION: Determining the validity of a Provisional Envelope ballot issued to an elector whose name did not appear in the ePollbook or on the QVF Precinct List.** All of the information needed to determine the validity of a Provisional Envelope ballot issued to such an elector is recorded on the *Provisional Ballot Form* completed by the precinct board.

**The provisional envelope ballot can be counted if:**

- A valid voter registration application for the elector is located and the registration application was submitted by the elector on or before 8:00 p.m. election day;

OR

- The elector completed the *Provisional Ballot Form* properly by:
  - Signing the affidavit and confirming registration prior to 8:00 p.m. on election day.
  - Completing the voter registration form portion of the Provisional Ballot Form
  - Showing an acceptable form of photo ID<sup>1</sup>
  - Showing an acceptable form of proof of residency<sup>2</sup>

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<sup>1</sup> Acceptable IDENTIFICATION documents include: Michigan Driver's License, Michigan Personal Identification Card, other government-issued photo identification card or a photo identification card issued by a Michigan university or college.

<sup>2</sup> Acceptable proof of RESIDENCY documents include: Any of the above identification documents OR a current utility bill, current bank statement, current paycheck or government check or any other government document.

In either case, ensure that the Provisional Envelope ballot was voted in the proper precinct. Only Provisional Envelope ballots processed in the proper precinct are valid.

**Submission of picture ID and residence confirmation document during 6-day evaluation period permitted.**

- In an instance where the elector was unable to identify himself or herself with acceptable form of picture ID<sup>1</sup> and/or an acceptable form of proof of residency<sup>2</sup> (see above), the ballot can be counted if the voter is able to produce the required document(s) during the 6-day evaluation period. The voter can appear in person in the city or township clerk's office to show the document(s), fax the document(s) to the clerk or mail a copy of the document(s) to the clerk. The document(s) must reach the city or township clerk no later than the sixth calendar day after the date of the election.
- In any instance where a Provisional Envelope ballot is counted because the voter was able to produce the required picture ID<sup>1</sup> and/or residence confirmation<sup>2</sup> document(s) during the 6-day evaluation period, the clerk must enter a notation on the *Provisional Ballot Form* completed when the voter was issued the Provisional Envelope ballot in the polls.

**The provisional envelope ballot cannot be counted if:**

- The elector was unable to identify him or herself at the polls or during the 6-day evaluation period by showing an acceptable form of picture ID<sup>1</sup> and/or an acceptable form of proof of residency<sup>2</sup>. Both ID and residency must be verified before a Provisional Envelope ballot can be counted.

**Important note regarding electors who voted in wrong precinct:**

In any situation where a Provisional Envelope ballot has been issued to a voter who 1) appeared to vote in the wrong precinct and 2) declined to travel to his or her proper precinct to vote, you must make every effort to accurately confirm that the voter did, in fact, vote in the wrong precinct before rejecting the Provisional Envelope ballot as invalid. The evaluation must include a check of the QVF street index to verify that the voter was not assigned to the wrong precinct in error. If a check of the street index reveals that a voter in this situation actually voted in the **proper precinct**, the Provisional Envelope ballot must be counted.

**FEDERAL ID REQUIREMENT: Determining the validity of a Provisional Envelope ballot issued to an elector subject to the federal identification requirement.**

- The Provisional Envelope ballot can be counted if during the 6-day Provisional Envelope ballot evaluation period the elector provides an acceptable form of picture ID<sup>1</sup> **OR** an acceptable form of proof of residency<sup>2</sup> (see above). Only one of these forms is necessary to meet the federal ID requirement. The voter can appear in person in the city or township clerk's office to show the required ID, fax the required ID to the clerk or mail a copy of the required ID to the clerk. In an instance where a Provisional Envelope ballot is counted because the voter was able to produce the required ID during the 6-day evaluation period, the clerk must enter a notation on the *Provisional Ballot Form*.
- The Provisional Envelope ballot cannot be counted if the voter fails to provide the proper identification to satisfy the federal ID requirement during the 6-day evaluation period.

**MICHIGAN VOTER IDENTIFICATION REQUIREMENT: Determining the validity of a Provisional Envelope ballot issued to a voter because questions over the voter's identity remained after an inspection of the picture identification produced by the voter.**

- The Provisional Envelope ballot can be counted if the elector **appears in person** and provides a Michigan Driver's License or a Michigan Personal Identification Card during the 6-day evaluation period. Voters can also show any of the following forms of picture identification as long as they are current: a driver's license or personal identification card issued by another state; a federal or state-government issued photo identification; a U.S. passport; a military identification card with photo; a student identification with photo from a high school or an accredited institution of higher education; or a tribal identification with photo. In all cases, the picture identification must resolve the questions over the voter's identity which prompted the issuance of a Provisional Envelope ballot to the voter.
- The Provisional Envelope ballot cannot be counted if the voter fails to personally appear in the clerk's office during the 6-day evaluation period and provide an acceptable form of picture ID.

**PROCESSING & TABULATING OF VALID PROVISIONAL ENVELOPE BALLOTS**

Using two people of differing political parties:

- If the Provisional Envelope ballot can be counted, remove the ballot from the *Provisional Ballot Form* and remove the stub from the ballot. Do not remove the ballot from its secrecy sleeve during this step.
- Place the ballot in a ballot container.

- After you have placed all of the valid Provisional Envelope ballots that can be counted in the container, remove the ballots and count the valid votes on the ballots.
- After counting the valid votes on the ballots, document the votes cast using a tally sheet. After completing the tally sheet, submit it to the county canvassing board. The form must be transmitted to the canvassing board no later than the 7<sup>th</sup> day after the election so the valid votes can be added to the canvass.
- After recording the valid votes on the ballots that can be counted, seal the counted ballots into an approved ballot container, attaching a ballot tag to the seal which indicates that the container holds the provisional envelope ballots returned after the election which were determined valid and counted. Retain the *Provisional Ballot Forms* in a separate secure place in your office.
- Register each voter who completed a *Provisional Ballot Form* regardless if the ballot was determined valid or invalid, envelope or affidavit, and associated voter history as necessary.

Reporting: No later than the 7<sup>th</sup> day after the election, the city or township clerk must complete a "Provisional Ballot Report" in the eLearning Center. The Provisional Ballot Report documents the number of provisional ballots which were 1) Affidavit ballots 2) Envelope ballots 3) the number of Envelope ballots determined valid and counted 4) the number of Envelope ballots determined invalid and not counted and 5) the number of Affidavits of Voter Not in Possession of Picture ID that were signed. A Provisional Ballot Report Worksheet is provided in the Appendix I.

Free Access System: All voters who were issued a provisional ballot must have access to a free informational system which the voters can use to obtain information on whether their ballot counted, and, if the ballot was not counted, the reason why the ballot was not counted. (HAVA refers to such systems as "free access systems.") A Notice to Voter must be distributed to each voter issued a provisional ballot as it advises the voter of his or her right to obtain this information.

To ensure compliance with this requirement, all city and township clerks must be prepared to handle inquiries from voters who were issued Envelope ballots. When handling such inquiries the clerk has an obligation to advise the voter on whether his or her Envelope ballot was counted or was not counted. If the voter's Envelope ballot was not counted, the clerk must explain the reason why and the actions the voter can take to ensure that the next time the voter wishes to participate in an election, his or her ballot will count.

The free-access system may be “a telephone number that does not require a toll charge, a toll-free telephone number, an internet website, or a mailed notice.” If a mailed notice is employed, the notice must be sent to each and every voter who was issued an Envelope ballot.

**TIE VOTES:** In those rare instances where it is revealed through the canvass that two candidates are tied for nomination or election to an office certified by the canvassing board, the tie is determined by a drawing. (A tie vote on a ballot question defeats the ballot question; a tie breaking procedure is not followed.) As an initial step, the canvassing board sets a date when the tied candidates and all interested parties can assemble to participate in the drawing. Upon the establishment of a date, the canvassing board sends notice of the meeting to the candidates and interested parties. At the meeting, the county clerk handling the procedure writes the word “ELECTED” on a slip of paper and the words “NOT ELECTED” on an identical slip of paper. Both of the slips are folded so that the words written on them cannot be seen and the two slips are indistinguishable from one another. Each candidate then draws one of the slips from a box. The candidate who draws the slip which bears the word “ELECTED” is deemed legally elected to the office involved. (MCL 168.851; 852)

- If an affected candidate fails to appear at the meeting, the county clerk or local clerk handling the procedure has the authority to appoint any person present to draw a slip for the absent candidate. If both candidates fail to appear at the meeting, persons are appointed to draw a slip for both of the candidates.
- If the office of county clerk is involved, the drawing must be conducted before the county sheriff.
- The defeated candidate may petition for a recount of the votes cast on the office if he or she feels that a mistake has occurred in the canvass of the votes.
- It is recommended that a written record of the drawing be kept by the county clerk or local clerk handling the procedure.

## **DOCUMENT RETENTION AND PUBLIC AVAILABILITY OF VOTED BALLOTS**

**Canvass Documents:** Michigan election law requires the Board of County Canvassers to seal all Statement of Votes forms and Poll Books in envelopes upon the completion of the canvass. Red paper seals may be used to comply with the security requirement.



**Retention of Secured Ballots:** The following outlines the federal and state provisions governing the retention of election ballots, voting equipment and related materials.

- **State Retention Requirements:** During the ballot retention period specified under Michigan election law, local election officials must ensure that the seal of record used to secure 1) voting devices/tabulators and 2) ballot containers containing the used and unused ballots, programs, test decks, accuracy test results, edit listings and any other related materials *remain intact*.

The seals may be broken only after security is released by the proper authority. Ballot security for the August primary and November general election is under the authority of the Secretary of State. The Secretary of State notifies the county clerk of each county in writing after the primary and general election when ballot security is released under Michigan election law. Further ballot retention and security provisions apply to partisan ballots used in the August primary and November general election as discussed under “Federal retention requirements.”

Rules for Electronic Voting Systems require election official to secure 1) voting devices (tabulators) and 1) ballot containers, used and unused ballots, programs, test decks, accuracy test results, edit listings and any other related materials for *30-days* after the certification of the primary or election. The retention period is extended if a recount is in progress, a defect in the ballot or voting equipment is being investigated, the destruction of the ballots is stayed by an order of the court, or the Secretary of State orders the extension of the retention period. Michigan election law provides the following allowance:

“Unless a petition for recount has been filed and the recount has not been completed, ballots, ballot labels, programs, test results, and other sealed materials may be released from their original seal after 7 days following the final determination of the board of canvassers with respect to the election at which the ballots were voted. However, the released materials shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state.”

The above provision of law was enacted to accommodate situations where electronic voting equipment subject to the 30-day retention period explained above must be readied for an upcoming election. Essentially, the provision allows an election official responsible for the security of optical scan ballots, ballot labels, programs, test results and associated materials to break the original seal of record after seven days and transfer the materials involved to sealed ballot bags for the duration of the retention period.

- **Federal Retention Requirements:** If the office of President, U.S. Senator or Representative in Congress appears on the ballot, federal law requires that all documents relating to the election – including, ballots and programs used to tabulate optical scan ballots – be retained for 22 months. To comply with this requirement, the Department of State's Bureau of Elections recommends that ballots and programs relating to federal elections be stored in *sealed ballot bags* in a secure place during the 22-month retention period. This will free the city or township's ballot containers for use in other elections. The documents subject to the federal retention requirements must not be transferred to ballot bags for extended retention until after the retention requirements specified under Michigan election law have been fulfilled.

For retention time frames for other election materials, see the Retention Schedule in the Appendix.

## POST-ELECTION ACCESS TO VOTED BALLOTS

The Freedom of Information Act (FOIA) provides access to public records. Based on Attorney General Opinion No. 7247, issued on May 13, 2010, FOIA applies to voted ballots. While the opinion notes that voted ballots are not available for public inspection during specific times immediately after an election unless the Board of State Canvassers concurs, all ballots used in an election must be made available following the completion of the canvass, any requested recounts, or a court ordered date, whichever is later.

The opinion goes on to state that Rule 168.790(19) that empowers the Board of State Canvassers as the official source to grant access to ballots cannot operate to totally exempt ballots from FOIA. Only a statute can exempt a document from FOIA, not an administrative rule.

When a federal office is on the ballot there is a 22-month ballot retention period. This requirement comes from the Voting Rights Act, a federal law. The Department of Justice permits access to ballots during this time period but only if the review is conducted under more stringent constraints. The purpose of the 22-month retention is to preserve ballots as evidence in the event of a civil or criminal trial. To maintain the purity of the chain of custody, it is imperative that no one, other than an election official or their staff, handles the ballots or be left alone in a room with the ballots.

**POST-ELECTION AUDITS:** PA 271 of 2012 instructed the Secretary of State to develop an election audit program that details the documents to be inspected and the procedures used in preparation for and during an election. The post-election audit process thoroughly reviews procedures performed

before, during, and after the conduct of an election. Precincts are selected randomly after most elections. The Bureau of Elections posts the list of precincts selected in the News Update the week following an election. Information collected as part of the post-election audit process is used as an educational tool for all levels of election administration. Assignments are made in the eLearning Center to reinforce deficiencies found of the local and/or county clerks.

**Audit Process:** Following the canvass of an election, counties and Bureau of Elections staff will conduct a thorough review of pre-election and election day documents to determine if procedures were properly followed according to state law and established procedure.

**Selection Process:** The Bureau of Elections will randomly select precincts for counties following each election and may select additional precincts to be audited at the state level.

**Focus of the Audit:** Election notices, election inspector appointments and training, e-Pollbook security, test deck procedures, military and overseas voter applications, and a review of the pollbook and ballot containers used on election day will be the primary focus of the audit.

**Audit Findings:** Discrepancies and deficiencies found as a result of the post-election audit will be used as training points for the local clerk who is participating in the audit as well as aid in the determination of future training needs to be provided at both the county and state level.

For more information, refer to the [Post-Election Audit Manual](#) & [Checklist](#) found in the eLearning Center or on the Information for Election Administrators webpage.

**EAC SURVEY REPORTING REQUIREMENTS:** Biennially, the Election Assistance Commission (EAC) requires local clerks to report data that relates to NVRA, the MOVE Act, and other election related items. QVF tracks much of this data when entered properly. The following is an overview of the data collection requirements of this survey. At the end of every even year, the Bureau of Elections will request this data through a survey in the eLearning Center.

**NVRA REPORTING – VOTER REGISTRATION:** The National Voter Registration Act (NVRA) of 1993 requires data collection regarding voter registration activity. After every General Election, the Federal Election Assistance Commission (FEAC) sends a survey to each state to collect this data. The Qualified Voter File (QVF) has been designed to collect a substantial amount of this data simply through regular data entry. However, not all data is captured and care must be taken to enter the data into QVF correctly.

**Items QVF tracks automatically when entered into the system:**

- Number of new voter registrations
- Location where the voter registered to vote
- Address changes within a jurisdiction
- Rejected applications if able to enter into QVF
- Cancellations
- Confirmation cards sent
- Duplicate registrations (except SOS Branch Office forms)
- Confirmation cards returned
- Result of returned confirmation card (cancellation, address change, undeliverable, etc.)

**Items QVF does not track automatically and requires manual tracking by the Clerk:**

- Invalid or rejected applications if unable to enter into QVF

## **MOVE REPORTING – ABSENTEE BALLOTS**

In addition to voter registration statistics, the EAC also requires reporting of absentee ballot activity for the November general election. Use of QVF is required by all Clerks for tracking absentee ballot activity. If properly utilized, the system will automatically track much of the reporting necessary to complete the EAC survey.

**Items QVF tracks automatically when entered into the system:**

- number of absentee ballots distributed to all voters
- number of absentee ballots distributed to military, overseas civilian and domestic civilian voters
- number of absentee ballots distributed to military and overseas voters by regular mail, email or fax
- number of absentee ballots distributed to military and overseas voters requested via the FPCA
- number of absentee ballots returned by all voters in time to be counted
- number of absentee ballots returned by military and overseas voters
- Number of Federal Write-in Absentee Ballots (FWAB's) returned by military and overseas voters in time to be counted.