

MICHIGAN ELECTION LAW (EXCERPT)

Act 116 of 1954

CHAPTER XXXIII

RECOUNTS

COUNTY, CITY, TOWNSHIP AND VILLAGE BOARDS OF CANVASSERS

168.861 Fraudulent or illegal voting, or tampering with ballots or ballot boxes; remedy by quo warranto.

Sec. 861. For fraudulent or illegal voting, or tampering with the ballots or ballot boxes before a recount by the board of county canvassers, the remedy by quo warranto shall remain in full force, together with any other remedies now existing.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963.

Popular name: Election Code

168.862 Fraud or mistake in canvass or returns of votes; recount petition by candidate; good-faith belief in winning.

Sec. 862. A candidate for office who believes he or she is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided in this chapter. The candidate must be able to allege a good-faith belief that but for fraud or mistake, the candidate would have had a reasonable chance of winning the election.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1958, Act 192, Eff. Sept. 13, 1958;—Am. 1976, Act 141, Imd. Eff. June 2, 1976;—Am. 2003, Act 302, Eff. Jan. 1, 2005;—Am. 2018, Act 128, Eff. Aug. 1, 2018.

Popular name: Election Code

168.863 Fraud or error as to proposed charter amendment or other ballot question; recount petition by elector.

Sec. 863. A qualified and registered elector voting in a city, township, or village election who believes there has been fraud or error committed by the inspectors of election in its canvass or returns of the votes cast at the election, upon a proposed amendment to the charter of the city or village or other ballot question submitted to the voters of the county, city, township, school district, community college district, metropolitan district, or village, may petition for a recount of the votes cast in any precinct or precincts of that county, city, township, school district, community college district, metropolitan district, or village, upon that proposed amendment or other ballot question as provided in this chapter.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1976, Act 141, Imd. Eff. June 2, 1976;—Am. 2003, Act 302, Eff. Jan. 1, 2005;—Am. 2012, Act 586, Imd. Eff. Jan. 7, 2013.

Popular name: Election Code

168.864 Repealed. 1996, Act 261, Eff. Mar. 28, 1996.

Compiler's note: The repealed section pertained to conducting recount in primary election.

Popular name: Election Code

168.865 Recount petition; contents.

Sec. 865. Such petition shall be sworn to and shall set forth as near as may be the nature of the mistakes or frauds complained of and the city, ward, township, village and precinct in which they are alleged to have occurred, and shall ask for a correction thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.866 Recount petition; filing; deadline; filing of copy with secretary of state.

Sec. 866. (1) Except as otherwise provided in subsection (2), recount petitions, either for an office or proposition, other than those filed with the secretary of state, shall be filed with the clerk of the board of county canvassers that originally conducted the canvass.

(2) For a school district election, recount petitions, either for an office or proposition, shall be filed with the clerk of the board of county canvassers that certified the result of the school district election.

(3) Recount petitions shall be filed within 6 days after the original canvass has been completed by the board of county canvassers. A copy of the recount petition shall also be filed with the secretary of state within

2 days after the time the original recount petition is filed with the board of county canvassers as provided in this section.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963;—Am. 2010, Act 53, Imd. Eff. Apr. 22, 2010;—Am. 2013, Act 51, Imd. Eff. June 11, 2013.

Popular name: Election Code

168.867 Recount petition; filing; deposit; refund; disposition of sum deposited.

Sec. 867. (1) A candidate or elector filing a recount petition under section 862 or 863 shall file the recount petition with the clerk of the appropriate board of county canvassers. Except as otherwise provided in this section, at the time of filing the recount petition, the petitioner shall deposit with the clerk the sum of \$25.00 for each precinct referred to in his or her recount petition.

(2) If 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate and the petitioner is more than 75 votes or 5.0% of the total number of votes cast in the race, whichever is greater, the petitioner shall deposit with the clerk the sum of \$250.00 for each precinct referred to in his or her petition. For purposes of this subsection, the winning candidate in a primary for a nonpartisan office where only 1 candidate will be elected means the candidate nominated with the lesser number of votes.

(3) Subject to subsection (2), if 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate and the petitioner is more than 50 votes or 0.5% of the total number of votes cast in the race, whichever is greater, the petitioner shall deposit with the clerk the sum of \$125.00 for each precinct referred to in his or her petition. For purposes of this subsection, the winning candidate in a primary for a nonpartisan office where only 1 candidate will be elected means the candidate nominated with the lesser number of votes.

(4) If more than 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate who received the least number of votes and the petitioner is more than 75 votes or 5.0% of the sum of the number of votes received by the 2 candidates, whichever is greater, the petitioner shall deposit with the clerk the sum of \$250.00 for each precinct referred to in his or her petition.

(5) Subject to subsection (4), if more than 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate who received the least number of votes and the petitioner is more than 50 votes or 0.5% of the sum of the number of votes received by the 2 candidates, whichever is greater, the petitioner shall deposit with the clerk the sum of \$125.00 for each precinct referred to in his or her petition.

(6) If the vote is on a proposal and the official canvass of votes shows that the number of votes separating the "yes" votes and the "no" votes is more than 50 votes or 0.5% of the total number of votes cast on the proposal, whichever is greater, the petitioner shall deposit with the clerk the sum of \$125.00 for each precinct referred to in his or her petition.

(7) If, by reason of the recount, the petitioner establishes sufficient fraud or mistake as set forth in his or her recount petition to change the result of the election and receives a certificate of election or establishes sufficient fraud or mistake to change the result upon an amendment or proposition, the votes for and against which were recounted, the clerk of the board of county canvassers shall refund the money deposited to the petitioner.

(8) If a refund is not made as required under subsection (7), the sum deposited must be paid by the clerk of the board of county canvassers to the treasurer of the county.

(9) If a precinct referred to in the petition is determined "not recountable" as provided in section 871(3) or, subject to subsection (10), if a precinct referred to in the petition is not recounted due to the withdrawal of the petition, the money deposited for the recount of that precinct must be refunded to the petitioner.

(10) If the votes cast on the ballots voted in a precinct have been examined and recounted, the withdrawal of the petition must not result in a refund of the money deposited for the recount of that precinct.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1980, Act 200, Imd. Eff. July 18, 1980;—Am. 2013, Act 51, Imd. Eff. June 11, 2013;—Am. 2014, Act 406, Imd. Eff. Dec. 30, 2014;—Am. 2018, Act 130, Eff. Aug. 1, 2018.

Popular name: Election Code

168.868 Recount petition; notice to opposing candidates; counter petition; objections to recount petition; hearing; ruling; failure to give notice to opposing candidate.

Sec. 868. (1) If a candidate has filed a recount petition and made the deposit under sections 862 and 867, the clerk of the board of county canvassers shall give notice of the recount petition to the opposing candidates described in this subsection within 24 hours after filing of the recount petition by delivering to each candidate

a copy of the recount petition, or, if the candidate cannot be found, by leaving a copy at the candidate's last known place of residence with a member of the candidate's immediate family of suitable age. If a member of the candidate's family cannot be found, the clerk of the board of county canvassers may give notice by posting the recount petition in a conspicuous place at the candidate's last known place of residence. The clerk of the board of county canvassers is not required to give notice to candidates other than the 2 candidates who, according to the return of the board of county canvassers, received the lowest number of votes among those candidates who were nominated or elected, and the 2 candidates who, according to the return of the board of county canvassers, received the highest number of votes among those candidates who were not nominated or elected.

(2) A candidate may file a counter petition in the same manner as the original petition under section 866 within 48 hours after the original recount petition was filed with the board of county canvassers. At the time of filing the counter petition, the counter petitioner shall deposit the sum of money as required in section 867 for the original petitioner. The clerk of the board of county canvassers shall refund to the counter petitioner the money deposited by the counter petitioner if the original petitioner does not establish fraud or receive a certificate of election. The counter petitioner shall file a copy of the counter petition with the secretary of state within 4 days after the time the original petition is filed with the appropriate board of county canvassers as provided in this section.

(3) On or before 4 p.m. of the seventh day after a recount petition has been filed under section 866, an opposing candidate may file objections to the recount petition with the appropriate board of county canvassers. The opposing candidate shall set forth his or her objections to the recount petition in writing. Upon receipt of an objection under this subsection, the board of county canvassers shall notify the petitioner and the objecting candidate of the date of the hearing of the board of county canvassers to consider the objections. The board of county canvassers shall allow the recount petitioner and the objecting candidate to present oral or written, or both, arguments on the objections raised to the recount petition at the hearing. Not later than 5 business days following the hearing, the board of county canvassers shall rule on the objections raised to the recount petition. The board of county canvassers shall not begin a recount unless 2 or more business days have elapsed since the board of county canvassers ruled on the objections under this subsection, if applicable.

(4) If the time designated for filing a recount petition under this section falls on a Saturday, Sunday, or legal holiday, the recount petition may be filed on the next succeeding business day. Failure of the clerk of the board of county canvassers or the secretary of state to give notice to the opposing candidate as required in this section shall not affect the results of the recount.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1955, Act 271, Imd. Eff. June 30, 1955;—Am. 1959, Act 24, Eff. Mar. 19, 1960;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963;—Am. 1969, Act 188, Imd. Eff. Aug. 5, 1969;—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 2013, Act 51, Imd. Eff. June 11, 2013.

Popular name: Election Code

168.869 Recount petition; investigation, delay; expenses of local recount.

Sec. 869. Upon the filing of a petition for recount, and the giving of notice, if notice is required to be given, the board of county canvassers shall be summoned by the clerk of the board and here make an investigation of the facts set forth in the petition. Should the recount involve a county or district office or proposition, the recount shall not be commenced until the board shall determine by communicating with the secretary of state that no petition has been filed requesting a recount by the board of state canvassers of ballots cast in the same district. In case said board shall be advised by the secretary of state that a petition has been filed with him praying for a recount by the board of state canvassers of the ballots cast in the same county or district, then no action shall be taken upon the recount until the county board shall receive instructions from the board of state canvassers. Nothing herein contained shall act to delay any recount of the ballots cast at any city, ward, township or village election if the ballots cast at such election are not sealed in the same ballot boxes with the state and county offices. With respect to any recount of ballots cast in any city, ward, township, village, school or district election, the board of county canvassers shall charge the appropriate local unit the actual and necessary expenses of conducting the recount, and the local unit shall pay such charges to the county treasurer.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1963, 2nd Ex. Sess., Act 38, Imd. Eff. Dec. 27, 1963.

Popular name: Election Code

168.870 Board of canvassers; investigation of recount.

Sec. 870. For the purpose of such investigation, the clerk, if no meeting be already appointed, shall call a meeting of such board of canvassers and the said board shall have power to issue subpoenas requiring the

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person in charge thereof to bring before it the ballot boxes used in the election precinct or precincts referred to in the petition, as well as the poll lists, tally sheets, statements of returns and such other documents or reports as may be deemed necessary. Said board shall safely guard such ballots, poll lists, tally sheets and returns and when no longer required shall deliver them to the officials charged with the custody thereof. Whoever, being so subpoenaed, shall fail to appear or shall fail to produce any such box, shall be deemed guilty of a misdemeanor. The persons who are required to appear before the board of canvassers shall be paid the same fees and mileage as are paid circuit court witnesses in the county. They shall be paid by the political subdivision before whose board of canvassers they appear.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.871 Recount; use of electronic voting system; use of voting machines; recount of absent voter ballots; procedures for conduct of recount; use of computer; testing software application.

Sec. 871. (1) The board of canvassers conducting a recount pursuant to this chapter shall recount all ballots of a precinct using an electronic voting system unless 1 or more of the following circumstances exist:

(a) The seal on the transfer case or other ballot container is broken or bears a different number than that recorded on the poll book, the breaking or discrepancy is not explained to the satisfaction of the board of canvassers, and security of the ballots has not been otherwise preserved.

(b) The number of ballots to be recounted and the number of ballots issued on election day as shown on the poll list or the computer printout do not match and the difference is not explained to the satisfaction of the board of canvassers.

(c) The seal used to seal the ballot label assembly to a voting device in the precinct is broken or bears a different number than that recorded in poll records and the ballot labels or rotation of candidates' names is different than that shown by other voting devices in the precinct and records of the board of election commissioners.

(2) This section does not prohibit the recounting of absent voter ballots tallied in a precinct using an absent voter counting board or in a precinct in which 1 or more voting machines are recountable, if the absent voter ballots are securely packaged and sealed.

(3) If a board of canvassers conducting a recount pursuant to this chapter determines that the ballots of a precinct are not eligible for recount under this section, the original return of the votes for that precinct shall be taken as correct.

(4) A board of canvassers conducting a recount pursuant to this chapter may conduct a recount by the following means:

(a) A manual tally of the ballots.

(b) A tabulation of the ballots on a computer using a software application designed to specifically count only the office or ballot question subject to the recount.

(c) A tabulation of the ballots on a computer using the same software application used in the precinct on election day.

(d) Any combination of methods in subdivision (a), (b), or (c), as determined appropriate by the board of canvassers.

(5) If a board of canvassers conducting a recount pursuant to this chapter intends to conduct a recount on a computer, the board of canvassers shall first test the software application by use of a test deck to determine if the program accurately counts the votes for the office or ballot question subject to the recount. If the test under this subsection fails to show that the software application accurately counts the votes for the office or ballot question subject to the recount, the board of canvassers shall use another means prescribed in subsection (4) to conduct the recount.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1965, Act 96, Imd. Eff. June 28, 1965;—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 1996, Act 583, Eff. Mar. 31, 1997;—Am. 2000, Act 207, Imd. Eff. June 27, 2000;—Am. 2012, Act 272, Imd. Eff. July 3, 2012.

Popular name: Election Code

168.871a Challenge raised by candidate or elector; resolution; petition disagreeing with resolution; notice; hearing; ruling.

Sec. 871a. If a proper challenge is raised by a candidate or an elector interested in a ballot question during a recount being conducted by the board of state canvassers, a member of the board of state canvassers or other representative designated by the board of state canvassers under section 890 shall resolve that challenge before the recount is completed in that county. A candidate or elector interested in a ballot question who is involved in the recount and who disagrees with the resolution of the challenge may petition the state board of

canvassers for a de novo review of the challenge. The candidate or elector shall file a petition disagreeing with the resolution of a challenge not later than 5 business days after the board of state canvassers mails notice that the recount has been completed to the candidates or electors. Upon receipt of a petition disagreeing with the resolution of a challenge under this section, the board of state canvassers shall notify all candidates and electors involved in the recount of the date of the hearing of the board of state canvassers to consider the petition. The board of state canvassers shall allow the candidates and electors involved in the recount to present oral or written, or both, arguments on the challenge at the hearing. The board of state canvassers shall rule on the challenge at that meeting.

History: Add. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.872 Board of canvassers; investigation, report to prosecutor and circuit judge.

Sec. 872. Whenever a petition has been filed for a recount by any person conceiving himself aggrieved on account of any fraud, wrongdoing or violation of the law perpetrated or committed by any election inspector or inspectors or any other person in respect to said election for which said recount has been petitioned, in any primary or election, and it shall appear to the board of canvassers having jurisdiction over said recount that there is probably cause to believe that there has been fraud, wrongdoing or a violation of the law in respect to said election for which said recount has been petitioned, the said canvassers shall make full and complete investigation of the same. Said canvassers shall have full power and authority to subpoena witnesses and to open any ballot box, regardless of the condition in which the same may be found, and may break open, if sealed, the seal thereon and examine the ballots contained therein. If, after the investigation, said board has good reason to believe that any fraud, wrongdoing or a violation of the law has been committed in respect to said election, then said board of canvassers shall forthwith make a written report of their findings to the prosecuting attorney and to the circuit judge or judges of the county where the petitioner resides if it be a county, city, township or village election, and to the attorney general and to the circuit judge of the county of Ingham if it be a district or state election. Said reports shall be signed by each of the canvassers having jurisdiction of said recount, or a majority thereof. Pending the making of such report, the board of canvassers having jurisdiction of such recount shall carefully preserve and safeguard the ballot boxes and the ballots contained therein until an order of the court, to which said report was submitted, is made authorizing the disposition of the same. Any action taken in such investigation shall not preclude any official recount of the ballots cast at any such election, if otherwise allowed by the general election laws. The powers of investigation referred to in this section shall terminate with the completion of the recount.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1965, Act 82, Imd. Eff. June 24, 1965.

Popular name: Election Code

168.873 Recount; misconduct of employees, felony.

Sec. 873. Any officer, assistant, clerk or employee engaged in the conduct of a recount who shall wilfully commit any act which shall interfere with a fair and impartial recount of the votes cast for a contested office, amendment or proposition shall be deemed guilty of a felony and subject to the penalties thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.874 Recount; return of ballots; manner of counting votes.

Sec. 874. (1) Pursuant to this chapter, the board of canvassers conducting the recount shall reject all previous returns from the precincts, townships, or wards, except the returns from a precinct that cannot be recounted as to that candidate or ballot question pursuant to section 871. In a public place where the candidates or persons interested in the ballot question and their counsel may be present, if they so desire, the board of canvassers shall proceed in the manner prescribed in section 871. If applicable, the board of canvassers shall open the ballot boxes from the precincts, townships, or wards, and the rolls or packages of ballots in the ballot boxes, and to make a recount of the ballots as to the candidates or ballot question. Upon completion of the recount, the board of canvassers shall make a full, complete, and correct return in writing, showing the full number of votes given to each candidate, or the total number of votes cast for and against any ballot question, written out in words and figures.

(2) The board of canvassers shall conduct the recount so that the complete procedure may be observed and noted by the candidates or persons interested in the ballot question, their counsel, and not to exceed 1 watcher and 1 tallier at each table to check the work of the recount clerks. The secretary of state shall develop instructions consistent with this act for conducting a recount pursuant to this subsection. All votes cast, whether for candidates or ballot questions, shall be recounted in the following manner:

(a) The ballots from any given precinct shall first be counted and the total compared with the number of ballots issued on election day as shown on the poll list. If the first count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, the ballots from that precinct shall be counted a second time and the total compared with the number of ballots issued on election day as shown on the poll list. If the second count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, those ballots shall not be recounted as provided in section 871. If the second count of the number of ballots and the number of ballots issued on election day as shown on the poll list match, the ballots from that precinct shall be counted a third time and the total compared with the number of ballots issued on election day as shown on the poll list. If the third count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, those ballots shall not be recounted as provided in section 871.

(b) If the first count described in subdivision (a) or the second and third counts described in subdivision (a) match the number of ballots issued on election day, the ballots shall be placed face up on the table and 1 recount clerk shall call the votes for each candidate or ballot question involved in the recount.

(c) Two tally clerks shall simultaneously record the called votes on forms provided for that purpose.

(3) The candidates or persons interested in the ballot question, their counsel, watchers, and talliers shall be allowed to observe each ballot as it is called and to take notes as they desire for their own records. The board of canvassers shall identify by an exhibit number a ballot counted or rejected under protest, keep a record of the protest, and proceed as required under section 871a.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.875 Recount; completion.

Sec. 875. All recounts shall be completed for a primary election not later than the twentieth day and for any other election not later than the thirtieth day immediately following the last day for filing counter petitions or the first day that recounts may lawfully begin. As soon as the recount is completed, the board shall return any ballots to their respective containers and seal the containers. The board shall then return the ballots, voting devices, machines, any related keys, and seals to the officer or officers having the care and custody of those items.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1965, Act 82, Imd. Eff. June 24, 1965;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.876 Recount; returns by board of canvassers, withdrawal of petition; final report open to public inspection.

Sec. 876. The returns made by the said board of canvassers upon recount shall be deemed to be correct, anything in the previous returns from such city, township, ward or precinct to the contrary Notwithstanding: Provided, however, That if the person petitioning for such recount shall withdraw his petition or discontinue the recount before the completion thereof, then in such event the original return shall be deemed to be correct regardless of any change shown by the recount at the time of the withdrawal of the petition or the discontinuance of such recount: Provided further, That the final report on the results of any recount shall be open to public inspection immediately following its certification by the board of canvassers.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.877 Review of apparent error by certiorari.

Sec. 877. Any candidate for a county, city, ward, township or village office not receiving a certificate of election, or any qualified and registered elector voting at the last preceding election when any amendment or proposition has been voted on, may, for error apparent upon the face of the returns, have the same examined and corrected upon certiorari to the circuit court of the county, according to the rules and practices applicable to such writs.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

STATE CANVASSERS

168.878 Construction of sections; action against board of state canvassers by mandamus.

Sec. 878. Nothing in the following sections of this chapter contained shall be construed to repeal any action or remedy which may now exist by reference of any controversy to the courts, except that any

proceeding intended to restrain, enjoin, modify, control or otherwise interfere with the action of the board of state canvassers, the board of county canvassers or any other representative of the board of state canvassers operating under the provisions of the following sections of this chapter, shall be instituted only against the board of state canvassers and by no other action than mandamus.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.879 Petition for recount; requirements; good-faith belief in winning; petition by state political party chairperson; recount and preservation of ballots; report; authority of legislature.

Sec. 879. (1) A candidate voted for at a primary or election for an office may petition for a recount of the votes if all of the following requirements are met:

(a) The office is an office for which the votes are canvassed by the board of state canvassers under section 841 or is the office of Representative in Congress, state representative, or state senator for a district located wholly within 1 county.

(b) The petition alleges that the candidate is aggrieved on account of fraud or mistake in the canvass of the votes by the inspectors of election or the returns made by the inspectors of election, or by a board of county canvassers or the board of state canvassers. The candidate must be able to allege a good-faith belief that but for fraud or mistake, the candidate would have had a reasonable chance of winning the election. The petition must contain specific allegations of wrongdoing only if evidence of that wrongdoing is available to the petitioner. If evidence of wrongdoing is not available, the petitioner is only required to allege fraud or a mistake in the petition without further specification.

(c) Except as otherwise provided in this subdivision, the petition for a recount is filed not later than 48 hours following the completion of the canvass of votes cast at an election. If the recount petition relates to a state senatorial or representative district located wholly within 1 county or to the district of a Representative in Congress located wholly within 1 county, the petition for a recount must be filed not later than 48 hours following the adjournment of the meeting of the board of state canvassers at which the certificate of determination for that office was recorded under section 841. However, for a special election for Representative in Congress, state senator, or state representative for a district located wholly within 1 county, the petition for recount must be filed not later than 48 hours after the certificate of determination is filed with the secretary of the board of state canvassers.

(d) The petition is presented to and filed with the secretary of state.

(e) The petition is written or printed and is signed and sworn to by the candidate.

(f) The petition sets forth as nearly as possible the nature and character of the fraud or mistakes alleged and the counties, cities, or townships and the precincts in which they exist.

(g) The petition specifies the counties, cities, townships, and precincts in which the recount is requested.

(h) If the office is the office of state representative, a copy of the petition is filed with the clerk of the house of representatives. If the office is the office of state senator, a copy of the petition is filed with the secretary of the senate.

(2) If a state senatorial race is determined by a vote differential of 500 votes or less or a state representative race is determined by a vote differential of 200 votes or less, the chairperson of a state political party may petition for a recount of the votes on behalf of a candidate in that race in the manner prescribed in subsection (1). Notwithstanding subsection (1)(b) and (f), the petition filed under this subsection need not allege fraud or mistake. Notwithstanding subsection (1)(e), the petition must be signed by the chairperson of the state political party filing the petition under this subsection.

(3) The ballots in a precinct petitioned for recount in a legislative contest must be recounted for that office by the board of state canvassers and must be preserved until the contest is disposed of under the rules of the legislative body that takes office beginning in January following the contested general election. In legislative recounts of a special general election, ballots in a precinct petitioned for recount must be preserved until the contest is disposed of under the rules of the legislative body serving at the time the report in subsection (4) is filed.

(4) Upon the completion of a recount for a legislative office, the board of state canvassers, in addition to the certification required by section 892, shall forward to the appropriate legislative body a report of the results of the recount.

(5) This section does not limit the authority of the legislature under section 16 of article IV of the state constitution of 1963.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1973, Act 157, Imd. Eff. Dec. 6, 1973;—Am. 1980, Act 61, Imd. Eff. Apr. 1, 1980;

—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 1999, Act 216, Imd. Eff. Dec. 28, 1999;—Am. 2018, Act 128, Eff. Aug. 1, 2018.

Popular name: Election Code

168.879a Section 168.879 inapplicable to presidential primary election.

Sec. 879a. Section 879 does not apply to a presidential primary election.

History: Add. 1988, Act 275, Eff. Sept. 1, 1988.

Popular name: Election Code

168.880 Recount of votes; petition by elector on constitutional amendment or question, deadline, contents.

Sec. 880. Any elector in this state who believes that there has been fraud or error committed by the inspectors of election in the return made by said inspectors or of any county canvassing board in the canvass of votes cast upon the question of a proposed amendment to the constitution or any other question or proposition, the votes for which are canvassed by the board of state canvassers, may, not later than 2 days after final certification and determination by the board of state canvassers of the canvass of votes cast at an election, present to and file with the secretary of state a written or printed petition which shall be sworn to by the elector presenting the same and which shall set forth as nearly as may be the nature and character of the fraud or error of which the complaint is made and the counties, cities or townships or the precincts thereof in which it is believed that the fraud or error occurred, and such petition shall contain a prayer that a correction thereof be made by a recount of the votes cast therein.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.880a Recount of votes; grounds; notice to candidates; elections involving propositions procedures.

Sec. 880a. (1) A recount of all precincts in the state shall be conducted at any time a statewide primary or election shall be certified by the board of state canvassers as having been determined by a vote differential of 2,000 votes or less. This section shall not apply to partisan offices to which more than 1 person is to be elected.

(2) If the election is an election involving candidates, the board of state canvassers forthwith shall notify all candidates whose vote could be affected by the recount that a recount shall be conducted and of the time and place the board of state canvassers will meet to determine recount procedures.

(3) If the election involves a proposition, the board of state canvassers shall meet on the seventh day following certification at the office of the secretary of state for the purpose of determining procedures. Persons or groups interested in being authorized to have challengers and observers at the recount shall petition the board at that meeting to be considered interested parties for such purpose. The board at that meeting shall determine which persons or groups shall be considered interested parties for the recount of the proposition.

History: Add. 1969, Act 268, Eff. Mar. 20, 1970.

Popular name: Election Code

168.881 Recount petition; filing; deposit; refund; disposition of sum deposited.

Sec. 881. (1) A person filing a recount petition under section 879 or 880 shall file the petition with the state bureau of elections. Except as otherwise provided in this section, at the time of filing the petition, the petitioner shall deposit the sum of \$25.00 for each precinct in which a recount of the votes is demanded in cash or by check or other negotiable instrument made payable to the state of Michigan.

(2) If 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate and the petitioner is more than 75 votes or 5.0% of the total number of votes cast in the race, whichever is greater, the petitioner shall deposit with the state bureau of elections the sum of \$250.00 for each precinct referred to in his or her petition. For purposes of this subsection, the winning candidate in a primary for a nonpartisan office where only 1 candidate will be elected means the candidate nominated with the lesser number of votes.

(3) Subject to subsection (2), if 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate and the petitioner is more than 50 votes or 0.5% of the total number of votes cast in the race, whichever is greater, the petitioner shall deposit with the state bureau of elections the sum of \$125.00 for each precinct referred to in his or her petition. For purposes of this subsection, the winning candidate in a primary for a nonpartisan office where only 1 candidate will be elected means the candidate nominated with the lesser number of votes.

(4) If more than 1 candidate is to be elected to the office and the official canvass of votes shows that the

number of votes separating the winning candidate who received the least number of votes and the petitioner is more than 75 votes or 5.0% of the sum of the number of votes received by the 2 candidates, whichever is greater, the petitioner shall deposit with the state bureau of elections the sum of \$250.00 for each precinct referred to in his or her petition.

(5) Subject to subsection (4), if more than 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate who received the least number of votes and the petitioner is more than 50 votes or 0.5% of the sum of the number of votes received by the 2 candidates, whichever is greater, the petitioner shall deposit with the state bureau of elections the sum of \$125.00 for each precinct referred to in his or her petition.

(6) If the vote is on a proposal and the official canvass of votes shows that the number of votes separating the "yes" votes and the "no" votes is more than 50 votes or 0.5% of the total number of votes cast on the proposal, whichever is greater, the petitioner shall deposit with the state bureau of elections the sum of \$125.00 for each precinct referred to in his or her petition.

(7) If, by reason of the recount, the petitioner establishes fraud or mistake as set forth in his or her petition and receives a certificate of election or establishes sufficient fraud or mistake to change the result upon an amendment or proposition, the votes for and against which were recounted, the state bureau of elections shall refund the money deposited to the petitioner. The secretary of state shall refund the money deposited to a petitioner who is a chairperson of a state political party if the results of the race for which a recount was petitioned for under section 879 are changed. If a refund is not made as required by this section, then the secretary of state shall pay to the treasurer of each county its proportionate share of the deposit based upon the number of precincts in the county in which the votes were recounted.

(8) If a precinct referred to in the petition is determined "not recountable" as provided in section 871(3) or, subject to subsection (9), if a precinct referred to in the petition is not recounted due to the withdrawal of the petition, the money deposited for the recount of that precinct must be refunded to the petitioner.

(9) If the votes cast on the ballots voted in a precinct have been examined and recounted, the withdrawal of the petition must not result in a refund of the money deposited for the recount of that precinct.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1980, Act 200, Imd. Eff. July 18, 1980;—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 2014, Act 406, Imd. Eff. Dec. 30, 2014;—Am. 2018, Act 130, Eff. Aug. 1, 2018.

Popular name: Election Code

168.882 Notice of recount petition; filing counter petition; refund of deposit money; filing objections to recount petition; notice; meeting; ruling.

Sec. 882. (1) If a candidate has filed a recount petition and paid the deposit under sections 879 and 881, the secretary of state shall give notice of the recount petition to each opposing candidate within 48 hours after the filing of the petition by delivering to each candidate a copy of the recount petition, or, if the candidate cannot be found, by leaving a copy at the candidate's last known place of residence with a member of the candidate's immediate family of suitable age. If a member of the candidate's family cannot be found, the secretary of state may give notice by posting the recount petition in a conspicuous place at the candidate's last known place of residence.

(2) A candidate may file a counter petition in the same manner as the original petition under section 881 not later than 48 hours after the original recount petition is filed with the secretary of state. At the time of filing the counter petition, the counter petitioner shall deposit the sum of money as required in section 881 for the original petitioner. The secretary of state shall refund to the counter petitioner the money deposited by the counter petitioner if the original petitioner does not establish fraud or receive a certificate of election.

(3) Not later than 48 hours after an original recount petition is filed under section 881, an opposing candidate may file objections to the recount petition with the board of state canvassers. The opposing candidate shall set forth the objections to the recount petition in writing. Upon receipt of an objection under this subsection, the board of state canvassers shall notify the petitioner and the objecting candidate of the date of the meeting of the board of state canvassers to consider the objections. The board of state canvassers shall allow the recount petitioner and the objecting candidate to present oral or written, or both, arguments on the objections raised to the recount petition at the meeting. The board of state canvassers shall rule on the objections no later than 4 calendar days after the deadline for filing objections.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1955, Act 271, Imd. Eff. June 30, 1955;—Am. 1969, Act 188, Imd. Eff. Aug. 5, 1969;—Am. 1980, Act 61, Imd. Eff. Apr. 1, 1980;—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 2023, Act 269, Eff. Feb. 13, 2024.

Popular name: Election Code

168.883 Recount petition; notice to county clerk; preservation of ballots; investigation and recount by state canvassers.

Sec. 883. The secretary of state, upon receipt of any such petition for recount, shall immediately notify the county clerk of each county in which are located any precincts included in such petition for recount that a petition for such recount by the board of state canvassers has been filed and the ballots for such precincts shall be carefully preserved. Ballots and boxes shall remain in the possession of city or township clerks until requisitioned by the canvass board. The board of state canvassers, at as early a date as possible after the receipt of such petition and the deposit required, shall investigate the facts set forth in said petition and cause a recount of the votes cast in the several precincts included in the petition.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.884 Boards of county canvassers; clerks and assistants for conduct of recount.

Sec. 884. The boards of county canvassers shall employ such assistants and clerks as shall be deemed necessary for the conduct of any such recount.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.885 Boards of state and county canvassers; right to subpoena witnesses; noncompliance, penalty.

Sec. 885. The board of state canvassers or any member or representative thereof and the county boards of canvassers shall each have the right to subpoena any inspector of election, county officer or other person to appear before it or him for any purpose as may be desired in connection with the matter of such recount. Whoever being so subpoenaed shall fail to obey same shall be deemed guilty of a misdemeanor.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.886 Witnesses; compensation and mileage.

Sec. 886. The persons who are subpoenaed to appear as herein required shall receive the same compensation and mileage therefor as is prescribed by law for witnesses in the circuit courts of this state.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.887 Recount of votes; misconduct of employees, felony.

Sec. 887. Any officer, assistant, clerk or employee engaged in the conduct of a recount who shall wilfully commit any act which shall interfere with a fair and impartial recount of the votes cast for a contested office, amendment or proposition shall be deemed guilty of a felony and subject to penalties thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.888 Board of state canvassers; return of ballot boxes, poll books, tally sheets, and statements of votes; concurrent recount.

Sec. 888. The board of state canvassers shall have the right and authority to demand and cause the ballot boxes, poll books, tally sheets, the statement of votes returned in connection with any such election, and such other documents and reports as may be deemed necessary, to be brought before the several boards of county canvassers, and shall order that a concurrent recount of the votes upon any office or proposition petitioned for under the provisions of sections 861 et seq. hereof, where such votes appear upon the same ballots as those which are to be recounted by the board of state canvassers, be conducted, which concurrent recount shall be under the exclusive jurisdiction and control of the said board of state canvassers. All ballots, poll lists, tally sheets, returns and reports shall be safely guarded and when no longer required shall be delivered to the officials charged with the custody thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.889 Board of state canvassers; time and place, rules and regulations for recounts in counties.

Sec. 889. All recounts provided for in sections 878 et seq. of this act shall be conducted in the several counties wherein the votes to be counted were cast by the respective boards of county canvassers in each of the several counties, subject to the direction, supervision and control of the said board of state canvassers. The said board of state canvassers shall prescribe the time and the place in each county where the recount of any

votes shall be conducted, which recount shall be in public. Said board shall provide each board of county canvassers with such rules and regulations as in the opinion of the said board of state canvassers shall be necessary to conduct such recount in a fair, impartial and uniform manner in the said several counties. Observance of such rules and regulations shall be enforced by said board or its representatives hereinafter provided for.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

Administrative rules: R 168.901 et seq. of the Michigan Administrative Code.

168.890 Board of state canvassers; authority of members as to supervision of recounts in counties.

Sec. 890. It is not necessary for all of the members of the board of state canvassers to be present in order to direct, supervise, or control the recount in a county. A member of the board of state canvassers or state officer, state employee or member of the board of county canvassers may direct, supervise, and control the recount if designated by the board of state canvassers, so that fairness, impartiality, and uniformity in the conduct of the recount may be obtained and the result of the election determined at the earliest possible moment. A member of the board of state canvassers or other representative designated by the board of state canvassers under this subsection has the same authority as the board of state canvassers to enforce and carry out the rules and regulations provided for the recount by the board.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

Administrative rules: R 168.901 et seq. of the Michigan Administrative Code.

168.891 Recounts; manner of conduct under board of state canvassers.

Sec. 891. Any recount conducted under the direction, supervision and control of the state board of canvassers, unless otherwise herein provided, shall be conducted in the same manner as is provided in sections 861 et seq. for the conduct of recounts by county boards of canvassers, so far as the provisions thereof are applicable.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.892 Board of state canvassers; recounts in counties, certification of results.

Sec. 892. Whenever a recount in any county shall be completed, it shall be the duty of the county boards of canvassers to return forthwith the results of such recount to the board of state canvassers, which board shall compile said returns and certify the result. The returns made by the said boards of county canvassers of any recount shall be deemed to be correct, anything in the previous return of any board of election inspectors or any county canvassing board to the contrary notwithstanding. The final report on the results of any recount shall be open to public inspection immediately following its certification by the board of canvassers.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.893 Discontinuance of recount; original return deemed correct.

Sec. 893. If the person petitioning for such recount shall withdraw his petition or discontinue the recount before the completion thereof, then in such event the original return shall be deemed to be correct regardless of any change shown by the recount at the time of the withdrawal of the petition or the discontinuance of such recount.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.894 Recounts in counties; expenses, payment.

Sec. 894. All expenses incurred in the conduct of the recount of such votes in any county shall be paid by the county. All expenses in connection with the direction, supervision and control of such recount by the board of state canvassers shall be paid from the general fund of the state on vouchers to be approved and audited by the state board of canvassers.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code