

# SENATE BILL No. 1458

September 26, 2002, Introduced by Senator BYRUM and referred to the Committee on Government Operations.

A bill to amend 1954 PA 116, entitled  
"Michigan election law,"  
by amending sections 862, 868, 879, 881, 882, and 894 (MCL  
168.862, 168.868, 168.879, 168.881, 168.882, and 168.894), sec-  
tions 868, 881, and 882 as amended by 1995 PA 261 and section 879  
as amended by 1999 PA 216, and by adding section 877a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 862. (1) A candidate for ~~any~~ AN office, including a  
2 candidate at all school elections, ~~except an election for board~~  
3 ~~members in a primary school district,~~ at ~~any~~ A primary ~~or~~  
4 ELECTION, SPECIAL ELECTION, OR GENERAL election, ~~conceiving~~  
5 ~~himself~~ WHO BELIEVES HE OR SHE IS aggrieved on account of fraud  
6 or mistake in the canvass of the votes by the ELECTION  
7 inspectors, ~~of election,~~ or in the returns made ~~thereon~~ ON  
8 THE ELECTION by the ELECTION inspectors, may petition for a

1 recount of the votes cast for that office in any precinct or  
2 precincts as provided in this chapter.

3       (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF THE  
4 ELECTION RETURNS FOR AN OFFICE INDICATE THAT A CANDIDATE WAS  
5 DEFEATED OR ELIMINATED BY 1/10 OF 1% OR LESS OF THE VOTES CAST  
6 FOR THE OFFICE, THE BOARD OF CANVASSERS RESPONSIBLE FOR CERTIFY-  
7 ING THE ELECTION RETURNS FOR THAT OFFICE SHALL ORDER A RECOUNT OF  
8 THE VOTES CAST FOR THAT OFFICE. THE RESPONSIBLE BOARD OF CAN-  
9 VASSERS SHALL NOT ORDER A RECOUNT UNDER THIS SUBSECTION IF,  
10 WITHIN 48 HOURS AFTER THE ORIGINAL CANVASS IS COMPLETED, EACH  
11 CANDIDATE WHO WAS DEFEATED OR ELIMINATED BY 1/10 OF 1% OR LESS OF  
12 THE VOTES CAST REQUESTS IN WRITING THAT THE BOARD OF CANVASSERS  
13 NOT ORDER THE RECOUNT.

14       (3) SUBSECTION (2) DOES NOT APPLY TO A PRECINCT THAT USES A  
15 DIRECT RECORDING TYPE OF ELECTRONIC VOTING SYSTEM THAT UTILIZES A  
16 TOUCH SCREEN. AS USED IN THIS SUBSECTION, "TOUCH SCREEN" MEANS  
17 AN ELECTRONIC DISPLAY MONITOR THAT IS PART OF A DIRECT RECORDING  
18 VOTING SYSTEM AND ENABLES A VOTER TO VOTE FOR A CANDIDATE BY  
19 TOUCHING A DESIGNATED PORTION OF THE DISPLAY MONITOR.

20       Sec. 868. (1) If a candidate has filed a recount petition  
21 and made the deposit under sections 862 and 866, OR IF A RECOUNT  
22 IS ORDERED BY THE RESPONSIBLE BOARD OF CANVASSERS UNDER SECTION  
23 862, the clerk of the board of canvassers shall give notice of  
24 the recount petition OR ORDER to the ~~opposing~~ candidates  
25 described in this subsection within 24 hours after filing of the  
26 petition OR ORDERING OF THE RECOUNT by delivering to each  
27 candidate a copy of the recount petition ~~, or, if~~ OR ORDER. IF

1 the candidate cannot be found, NOTICE MAY BE GIVEN by leaving a  
2 copy at the candidate's last known place of residence with a  
3 member of the candidate's immediate family of suitable age. If a  
4 member of the candidate's family cannot be found, the clerk of  
5 the board of canvassers may give notice by posting the recount  
6 petition OR ORDER in a conspicuous place at the candidate's last  
7 known place of residence. The clerk of the board of canvassers  
8 is not required to give notice to candidates other than the 2  
9 candidates who, according to the return of the board of canvass-  
10 ers, received the lowest number of votes among those candidates  
11 who were nominated or elected, and the 2 candidates who, accord-  
12 ing to the return of the board of canvassers, received the high-  
13 est number of votes among those candidates who were not nominated  
14 or elected.

15 (2) A candidate may file a counter petition in the same  
16 manner as the original petition under section 866 within 48 hours  
17 after the original recount petition was filed with the board of  
18 canvassers. At the time of filing the counter petition, the  
19 counter petitioner shall deposit the sum of money as required in  
20 section ~~866~~ 867 for the original petitioner. The clerk of the  
21 board of canvassers shall refund to the counter petitioner the  
22 money deposited by the counter petitioner if the original peti-  
23 tioner does not establish fraud or receive a certificate of  
24 election. Except as otherwise provided in this subsection, the  
25 counter petitioner shall file a copy of the counter petition with  
26 the secretary of state within 4 days after the time the original  
27 petition is filed with the proper board of canvassers as provided

1 in this section. If the office or ballot question in question is  
2 a city, township, ward, village, or district office or ballot  
3 question, the counter petitioner is not required to file a copy  
4 of the counter petition with the secretary of state.

5 (3) On or before 4 p.m. of the seventh day after a recount  
6 petition has been filed under section 866 OR ORDERED UNDER SEC-  
7 TION 862, an opposing candidate may file objections to the  
8 recount petition with the appropriate board of canvassers. The  
9 opposing candidate shall set forth his or her objections to the  
10 recount petition in writing. Upon receipt of an objection under  
11 this subsection, the board of canvassers shall notify the peti-  
12 tioner OR EACH CANDIDATE WHO WAS DEFEATED OR ELIMINATED BY 1/10  
13 OF 1% OR LESS OF THE VOTES CAST FOR THE OFFICE and the objecting  
14 candidate of the date of the hearing of the board of canvassers  
15 to consider the objections. The board of canvassers shall allow  
16 the recount petitioner OR A CANDIDATE WHO WAS DEFEATED OR ELIMI-  
17 NATED BY 1/10 OF 1% OR LESS OF THE VOTES CAST FOR THE OFFICE and  
18 the objecting candidate to present oral or written, or both,  
19 arguments on the objections raised to the recount petition at the  
20 hearing. Not later than 5 business days following the hearing,  
21 the board of canvassers shall rule on the objections raised to  
22 the recount petition. The board of canvassers shall not begin a  
23 recount unless 2 or more business days have elapsed since the  
24 board ruled on the objections under this subsection, if  
25 applicable.

26 (4) If the time designated for filing a petition under this  
27 section falls on a Saturday, Sunday, or legal holiday, the

1 petition may be filed on the next ~~succeeding~~ FOLLOWING business  
2 day. Failure of the clerk of the board of canvassers or the sec-  
3 retary of state to give notice to the opposing candidate as  
4 required in this section ~~shall~~ DOES not affect the results of  
5 the recount.

6 SEC. 877A. THE COST OF A RECOUNT UNDER SECTION 862(2) SHALL  
7 BE BORNE BY THE SCHOOL DISTRICT, CITY, TOWNSHIP, OR VILLAGE HOLD-  
8 ING THE ELECTION. UPON RECEIVING A BILL FOR THE COSTS INCURRED  
9 BY THE COUNTY BOARD OF CANVASSERS, THE SCHOOL DISTRICT, CITY,  
10 TOWNSHIP, OR VILLAGE HOLDING THE ELECTION SHALL REIMBURSE THE  
11 COUNTY TREASURER.

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

15 (a) The office is an office for which the votes are can-  
16 vassed by the board of state canvassers under section 841 or is  
17 the office of representative in ~~Congress~~ CONGRESS, state repre-  
18 sentative, or state senator for a district located ~~wholly~~  
19 COMPLETELY within 1 county.

20 (b) The petition alleges that the candidate is aggrieved on  
21 account of fraud or mistake in the canvass of the votes by the  
22 inspectors of election or the returns made by the inspectors, or  
23 by a board of county canvassers or the board of state  
24 canvassers. The petition shall contain specific allegations of  
25 wrongdoing only if evidence of that wrongdoing is available to  
26 the petitioner. If evidence of wrongdoing is not available, the

1 petitioner is only required to allege fraud or a mistake in the  
2 petition without further specification.

3       (c) Except as otherwise provided in this subdivision, the  
4 petition for a recount is filed not later than 48 hours following  
5 the completion of the canvass of votes cast at an election. If  
6 the recount petition relates to a state senatorial or representa-  
7 tive district located ~~wholly~~ COMPLETELY within 1 county or to  
8 the district of a representative in ~~Congress~~ CONGRESS located  
9 ~~wholly~~ COMPLETELY within 1 county, the petition for a recount  
10 shall be filed not later than 48 hours following the adjournment  
11 of the meeting of the board of state canvassers at which the cer-  
12 tificate of determination for that office was recorded ~~pursuant~~  
13 ~~to~~ AS PROVIDED IN section 841. However, for a special election  
14 for representative in ~~Congress~~ CONGRESS, state senator, or  
15 state representative for a district located ~~wholly~~ COMPLETELY  
16 within 1 county, the petition for recount shall be filed not  
17 later than 48 hours after the certificate of determination is  
18 filed with the secretary of the board of state canvassers.

19       (d) The petition is presented to and filed with the secre-  
20 tary of state.

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

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

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

1 (h) If the office is the office of state representative, a  
2 copy of the petition is filed with the clerk of the house of  
3 representatives. If the office is the office of state senator, a  
4 copy of the petition ~~shall be~~ IS filed with the secretary of  
5 the senate.

6 (2) If a state senatorial race is determined by a vote dif-  
7 ferential of 500 votes or less or a state representative race is  
8 determined by a vote differential of 200 votes or less, the  
9 chairperson of a state political party may petition for a recount  
10 of the votes on behalf of a candidate in that race in the manner  
11 prescribed in subsection (1). Notwithstanding subsection (1)(b)  
12 and (f), the petition filed under this subsection need not allege  
13 fraud or mistake. Notwithstanding subsection (1)(e), the peti-  
14 tion shall be signed by the chairperson of the state political  
15 party filing the petition under this subsection.

16 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IF THE  
17 ELECTION RETURNS FOR AN OFFICE INDICATE THAT A CANDIDATE WAS  
18 DEFEATED OR ELIMINATED BY 1/10 OF 1% OR LESS OF THE VOTES CAST  
19 FOR THE OFFICE, THE BOARD OF CANVASSERS RESPONSIBLE FOR CERTIFY-  
20 ING THE ELECTION RETURNS FOR THAT OFFICE SHALL ORDER A RECOUNT OF  
21 THE VOTES CAST FOR THAT OFFICE. THE RESPONSIBLE BOARD OF CAN-  
22 VASSERS SHALL NOT ORDER A RECOUNT UNDER THIS SUBSECTION IF,  
23 WITHIN 48 HOURS AFTER THE ORIGINAL CANVASS IS COMPLETED, EACH  
24 CANDIDATE WHO WAS DEFEATED OR ELIMINATED BY 1/10 OF 1% OR LESS OF  
25 THE VOTES CAST REQUESTS IN WRITING THAT THE BOARD OF CANVASSERS  
26 NOT ORDER THE RECOUNT.

1       (4) SUBSECTION (3) DOES NOT APPLY TO A PRECINCT THAT USES A  
 2 DIRECT RECORDING TYPE OF ELECTRONIC VOTING SYSTEM THAT UTILIZES A  
 3 TOUCH SCREEN. AS USED IN THIS SUBSECTION, "TOUCH SCREEN" MEANS  
 4 AN ELECTRONIC DISPLAY MONITOR THAT IS PART OF A DIRECT RECORDING  
 5 VOTING SYSTEM AND ENABLES A VOTER TO VOTE FOR A CANDIDATE BY  
 6 TOUCHING A DESIGNATED PORTION OF THE DISPLAY MONITOR.

7       (5) ~~-(3)-~~ The ballots in a precinct petitioned for recount  
 8 in a legislative contest shall be recounted for that office by  
 9 the board of state canvassers and shall be preserved until the  
 10 contest is disposed of under the rules of the legislative body  
 11 that takes office beginning in January following the contested  
 12 general election. In legislative recounts of a special general  
 13 election, ballots in a precinct petitioned for recount shall be  
 14 preserved until the contest is disposed of under the rules of the  
 15 legislative body serving at the time the report in subsection  
 16 ~~-(4)-~~ (6) is filed.

17       (6) ~~-(4)-~~ Upon the completion of a recount for a legislative  
 18 office, the board of state canvassers, in addition to the certi-  
 19 fication required by section 892, shall forward to the appropri-  
 20 ate legislative body a report of the results of the recount.

21       (7) ~~-(5)-~~ This section does not limit the authority of the  
 22 legislature under section 16 of article IV of the state constitu-  
 23 tion of 1963.

24       Sec. 881. (1) A person filing a recount petition ~~-pursuant~~  
 25 ~~to~~ AS PROVIDED IN section 879 or 880 shall file the petition  
 26 with the SECRETARY OF state, bureau of elections. At the time of  
 27 filing the petition, the petitioner shall deposit the sum of



1 \$10.00 for each precinct in which a recount of the votes is  
2 demanded in cash or by check or other negotiable instrument made  
3 payable to the state of Michigan.

4 (2) If, by reason of the recount, the petitioner establishes  
5 fraud or mistake as set forth in his or her petition and receives  
6 a certificate of election or establishes sufficient fraud or mis-  
7 take to change the result, upon an amendment or proposition, the  
8 votes for and against, which were recounted, the SECRETARY OF  
9 state, bureau of elections shall refund the money deposited to  
10 the petitioner. The secretary of state shall refund the money  
11 deposited to a petitioner who is a chairperson of a state politi-  
12 cal party if the results of the race for which a recount was  
13 petitioned for under section 879 are changed. If a refund is not  
14 made as required by this section, then the secretary of state  
15 shall pay to the treasurer of each county its proportionate share  
16 of the deposit based upon the number of precincts in the county  
17 in which the votes were recounted.

18 Sec. 882. (1) If a candidate has filed a recount petition  
19 and paid the deposit under sections 879 and 881, OR A RECOUNT WAS  
20 ORDERED UNDER SECTION 879, the secretary of state shall give  
21 notice of the recount petition OR ORDER to each ~~opposing~~ candi-  
22 date within 48 hours after the filing of the petition OR ORDERING  
23 OF THE RECOUNT by delivering to each candidate a copy of the  
24 recount petition, or, if the candidate cannot be found, by leav-  
25 ing a copy at the candidate's last known place of residence with  
26 a member of the candidate's immediate family of suitable age. If  
27 a member of the candidate's family cannot be found, the secretary

1 of state may give notice by posting the recount petition OR THE  
2 ORDER FOR RECOUNT in a conspicuous place at the candidate's last  
3 known place of residence.

4 (2) A candidate may file a counter petition in the same  
5 manner as the original petition under section 881 not later than  
6 4 p.m. of the seventh day after the original recount petition has  
7 been filed with the secretary of state. At the time of filing  
8 the counter petition, the counter petitioner shall deposit the  
9 sum of money as required in section 881 for the original  
10 petitioner. The secretary of state shall refund to the counter  
11 petitioner the money deposited by the counter petitioner if the  
12 original petitioner does not establish fraud or receive a certif-  
13 icate of election.

14 (3) On or before 4 p.m. of the seventh day after a recount  
15 petition has been filed under section 881 OR ORDERED UNDER SEC-  
16 TION 879, an opposing candidate may file objections to the  
17 recount petition with the board of state canvassers. The oppos-  
18 ing candidate shall set forth his or her objections to the  
19 recount petition in writing. Upon receipt of an objection under  
20 this subsection, the board of state canvassers shall notify the  
21 petitioner OR EACH CANDIDATE WHO WAS DEFEATED OR ELIMINATED BY  
22 1/10 OF 1% OR LESS OF THE VOTES CAST FOR THE OFFICE and the  
23 objecting candidate of the date of the hearing of the board of  
24 state canvassers to consider the objections. The board of state  
25 canvassers shall allow the recount petitioner OR A CANDIDATE WHO  
26 WAS DEFEATED OR ELIMINATED BY 1/10 OF 1% OR LESS OF THE VOTES  
27 CAST FOR THE OFFICE and the objecting candidate to present oral

1 or written, or both, arguments on the objections raised to the  
2 recount petition at the hearing. Not later than 5 business days  
3 following the hearing, the board of state canvassers shall rule  
4 on the objections raised to the recount petition. The board of  
5 state canvassers shall not begin a recount unless 2 or more busi-  
6 ness days have elapsed since the board ruled on the objections  
7 under this subsection, if applicable.

8       Sec. 894. (1) ~~All~~ EXCEPT AS PROVIDED IN SUBSECTION (2),  
9 ALL expenses incurred in the conduct of the recount of ~~such~~  
10 votes UNDER SECTIONS 878 TO 893 in ~~any~~ A county shall be paid  
11 by the county. All expenses in connection with the direction,  
12 supervision and control of ~~such~~ THE recount by the board of  
13 state canvassers shall be paid from the general fund of the state  
14 on vouchers to be approved and audited by the state board of  
15 canvassers.

16       (2) THE COST OF A RECOUNT UNDER SECTION 879(3) SHALL BE  
17 BORNE BY THE SCHOOL DISTRICT, CITY, TOWNSHIP, OR VILLAGE HOLDING  
18 THE ELECTION. UPON RECEIVING A BILL FOR THE COSTS INCURRED BY  
19 THE COUNTY BOARD OF CANVASSERS, THE SCHOOL DISTRICT, CITY, TOWN-  
20 SHIP, OR VILLAGE HOLDING THE ELECTION SHALL REIMBURSE THE COUNTY  
21 TREASURER.