

HOUSE BILL No. 4992

July 17, 2003, Introduced by Reps. Byrum, Jamnick, Accavitti, Bieda and Hardman and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
by amending section 871 (MCL 168.871), as amended by 2000
PA 207.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 871. (1) In a precinct using paper ballots, the board
2 of canvassers conducting a recount ~~pursuant to~~ **under** this
3 chapter shall conduct the recount, subject to all of the
4 following:

5 (a) The ballots in packages or ballot bags that are secured
6 and sealed so that a ballot cannot be removed or inserted unless
7 the ballot corresponds in number with the poll list delivered to
8 the appropriate clerk by the board of election inspectors, shall
9 be recounted even though the ballot box or other ballot container
10 is not securely sealed with the seal of record.

1 (b) If the ballot box or other ballot container is securely
2 sealed with the seal of record, only the ballots that correspond
3 in number with the poll list delivered to the appropriate clerk
4 by the board of election inspectors shall be recounted even
5 though the ballots are not secured and sealed in packages or
6 ballot bags.

7 (c) If the ballot box or other ballot container is not
8 securely sealed or if the seal on the ballot box or other ballot
9 container is not the seal of record and the ballots in packages
10 or ballot bags are not secured and sealed so that a ballot cannot
11 be removed or inserted, the ballots shall not be recounted and
12 the original count of the ballots as reported by the board of
13 election inspectors shall stand as the correct count.

14 (d) If the number of ballots in a secured and sealed package
15 or bag and the number of ballots issued on election day as shown
16 on the poll list do not match and the difference is not explained
17 to the satisfaction of the board of canvassers, the ballots shall
18 not be recounted and the original count of the ballots as
19 reported by the board of election inspectors shall stand as the
20 correct count.

21 (2) Except as otherwise provided in this section, the board
22 of canvassers conducting a recount ~~pursuant to~~ **under** this
23 chapter shall recount all ballots of a precinct using an
24 electronic voting system unless 1 or more of the following
25 circumstances exist:

26 (a) The seal on the transfer case or other ballot container
27 is broken or bears a different number than that recorded on the

1 poll book, the breaking or discrepancy is not explained to the
2 satisfaction of the board of canvassers, and security of the
3 ballots has not been otherwise preserved.

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

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

14 (3) In a precinct in which voting machines are used, the
15 board of canvassers conducting a recount ~~pursuant to~~ **under** this
16 chapter shall recount all voting machines used in the precinct
17 unless 1 or more of the following circumstances exist:

18 (a) All voting machines used in a precinct shall not be
19 recounted if the sum of the numbers appearing on the public
20 counters of all voting machines used in the precinct exceeds the
21 total number of voters who voted in the precinct as shown by the
22 poll book, plus the number of times the machine was operated by
23 the ~~inspectors of~~ election **inspectors** and custodians, as shown
24 by the record of the board of election inspectors, and the excess
25 is not explained to the satisfaction of the board of canvassers
26 by the ~~inspectors of~~ election **inspectors** of that precinct.

27 (b) A voting machine used in a precinct shall not be

1 recounted if the voting machine is not sealed with the seal of
2 record in such a manner as to render it impossible to vote on the
3 machine or to otherwise change the totals appearing on the
4 individual candidate or ballot question counters.

5 (c) A voting machine used in a precinct shall not be
6 recounted if the number appearing on the protective counter of
7 the voting machine at the time of the recount does not equal the
8 sum of the number appearing on the protective counter at the
9 opening of the polls as shown by the certificate of the board of
10 election inspectors and the number appearing on the public
11 counter at the time of the recount.

12 (4) In a precinct in which voting machines are used, which
13 precinct cannot be recounted under subsection (3), absent voter
14 ballots tallied in that precinct shall not be recounted unless
15 recorded separately. This section does not prohibit the
16 recounting of absent voter ballots tallied in a precinct using an
17 absent voter counting board or in a precinct in which 1 or more
18 voting machines are recountable, if the absent voter ballots are
19 securely packaged and sealed.

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

24 (6) A board of canvassers conducting a recount ~~pursuant to~~
25 **under** this chapter may conduct a recount by the following means:

26 (a) A manual tally of the ballots.

27 (b) A tabulation of the ballots on a computer using a

1 software application designed to specifically count only the
2 office or ballot question subject to the recount.

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

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

7 (7) If a board of canvassers conducting a recount ~~pursuant~~
8 ~~to~~ **under** this chapter intends to conduct a recount on a
9 computer, the board of canvassers shall first test the software
10 application by use of a test deck to determine if the program
11 accurately counts the votes for the office or ballot question
12 subject to the recount. If the test under this subsection fails
13 to show that the software application accurately counts the votes
14 for the office or ballot question subject to the recount, the
15 board of canvassers shall use another means prescribed in
16 subsection (6) to conduct the recount.

17 **(8) The secretary of state shall consult with the clerk**
18 **having jurisdiction of a precinct that was determined under this**
19 **section to be ineligible for recount to identify corrections**
20 **necessary to prevent the conditions that caused the ineligibility**
21 **from recurring.**