

SENATE BILL NO. 164

March 05, 2019, Introduced by Senator CHANG and referred to the Committee on Elections.

A bill to amend 1954 PA 116, entitled
"Michigan election law,"
by amending sections 867, 871, 874, and 881 (MCL 168.867, 168.871,
168.874, and 168.881), sections 867 and 881 as amended by 2018 PA
130, section 871 as amended by 2012 PA 272, and section 874 as
amended by 1995 PA 261.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 867. (1) A candidate or elector filing a recount petition
2 under section 862 or 863 shall file the recount petition with the
3 clerk of the appropriate board of county canvassers. Except as

1 otherwise provided in this section, at the time of filing the
2 recount petition, the petitioner shall deposit with the clerk the
3 sum of \$25.00 for each precinct referred to in his or her recount
4 petition.

5 (2) If 1 candidate is to be elected to the office and the
6 official canvass of votes shows that the number of votes separating
7 the winning candidate and the petitioner is more than 75 votes or
8 5.0% of the total number of votes cast in the race, whichever is
9 greater, the petitioner shall deposit with the clerk the sum of
10 \$250.00 for each precinct referred to in his or her petition. For
11 purposes of this subsection, the winning candidate in a primary for
12 a nonpartisan office where only 1 candidate will be elected means
13 the candidate nominated with the lesser number of votes.

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

24 (4) If more than 1 candidate is to be elected to the office
25 and the official canvass of votes shows that the number of votes
26 separating the winning candidate who received the least number of
27 votes and the petitioner is more than 75 votes or 5.0% of the sum
28 of the number of votes received by the 2 candidates, whichever is
29 greater, the petitioner shall deposit with the clerk the sum of

1 \$250.00 for each precinct referred to in his or her petition.

2 (5) Subject to subsection (4), if more than 1 candidate is to
3 be elected to the office and the official canvass of votes shows
4 that the number of votes separating the winning candidate who
5 received the least number of votes and the petitioner is more than
6 50 votes or 0.5% of the sum of the number of votes received by the
7 2 candidates, whichever is greater, the petitioner shall deposit
8 with the clerk the sum of \$125.00 for each precinct referred to in
9 his or her petition.

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

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

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

27 ~~(9) If a precinct referred to in the petition is determined~~
28 ~~"not recountable" as provided in section 871(3) or, subject~~ **Subject**
29 to subsection (10), if a precinct referred to in the petition is

1 not recounted due to the withdrawal of the petition, the money
2 deposited for the recount of that precinct must be refunded to the
3 petitioner.

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

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

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

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

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

27 ~~(2) This section does not prohibit the recounting of absent~~
28 ~~voter ballots tallied in a precinct using an absent voter counting~~
29 ~~board or in a precinct in which 1 or more voting machines are~~

1 ~~recountable, if the absent voter ballots are securely packaged and~~
 2 ~~sealed.~~

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

7 (2) ~~(4)~~ A board of canvassers conducting a recount pursuant to
 8 **under** this chapter may conduct a recount by the following means:

9 (a) A manual tally of the ballots.

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

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

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

17 (3) ~~(5)~~ If a board of canvassers conducting a recount pursuant
 18 ~~to~~ **under** this chapter intends to conduct a recount on a computer,
 19 the board of canvassers shall first test the software application
 20 by use of a test deck to determine if the program accurately counts
 21 the votes for the office or ballot question subject to the recount.
 22 If the test under this subsection fails to show that the software
 23 application accurately counts the votes for the office or ballot
 24 question subject to the recount, the board of canvassers shall use
 25 another means prescribed in subsection ~~(4)~~ (2) to conduct the
 26 recount.

27 Sec. 874. (1) Pursuant to this chapter, the board of
 28 canvassers conducting the recount shall reject all previous returns
 29 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~~ **under** this subsection. All votes cast, whether for candidates or ballot questions, ~~shall~~ **must** be recounted in the following manner:

(a) The ballots from any given precinct ~~shall~~ **must** 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~~ **The** ballots shall **must** 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~~ **must** 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.

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

1 time of filing the petition, the petitioner shall deposit the sum
2 of \$25.00 for each precinct in which a recount of the votes is
3 demanded in cash or by check or other negotiable instrument made
4 payable to the state of Michigan.

5 (2) If 1 candidate is to be elected to the office and the
6 official canvass of votes shows that the number of votes separating
7 the winning candidate and the petitioner is more than 75 votes or
8 5.0% of the total number of votes cast in the race, whichever is
9 greater, the petitioner shall deposit with the state bureau of
10 elections the sum of \$250.00 for each precinct referred to in his
11 or her petition. For purposes of this subsection, the winning
12 candidate in a primary for a nonpartisan office where only 1
13 candidate will be elected means the candidate nominated with the
14 lesser number of votes.

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

25 (4) If more than 1 candidate is to be elected to the office
26 and the official canvass of votes shows that the number of votes
27 separating the winning candidate who received the least number of
28 votes and the petitioner is more than 75 votes or 5.0% of the sum
29 of the number of votes received by the 2 candidates, whichever is

1 greater, the petitioner shall deposit with the state bureau of
2 elections the sum of \$250.00 for each precinct referred to in his
3 or her petition.

4 (5) Subject to subsection (4), if more than 1 candidate is to
5 be elected to the office and the official canvass of votes shows
6 that the number of votes separating the winning candidate who
7 received the least number of votes and the petitioner is more than
8 50 votes or 0.5% of the sum of the number of votes received by the
9 2 candidates, whichever is greater, the petitioner shall deposit
10 with the state bureau of elections the sum of \$125.00 for each
11 precinct referred to in his or her petition.

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

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

1 of precincts in the county in which the votes were recounted.

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

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

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.