

# HOUSE BILL No. 4161

February 7, 2017, Introduced by Reps. Chang, Scott, Gay-Dagnogo, Byrd, Love, Robinson, Durhal, Hoadley, Green, Elder, Camilleri, Rabhi, Santana, Zemke, Hammoud, Moss, Pagan and LaGrand and referred to the Committee on Elections and Ethics.

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 2014 PA 406, 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 ~~pursuant to~~ **UNDER** section 862 or 863 shall file the recount  
 3 petition with the clerk of the appropriate board of county  
 4 canvassers. Except as otherwise provided in this section, at the  
 5 time of filing the recount petition, the petitioner shall deposit  
 6 with the clerk the sum of \$25.00 for each precinct referred to in

1 his or her recount petition.

2 (2) If 1 candidate is to be elected to the office and the  
3 official canvass of votes shows that the number of votes separating  
4 the winning candidate and the petitioner is more than 50 votes or  
5 0.5% of the total number of votes cast in the race, whichever is  
6 greater, the petitioner shall deposit with the clerk the sum of  
7 \$125.00 for each precinct referred to in his or her petition. For  
8 purposes of this subsection, the winning candidate in a primary for  
9 a nonpartisan office where only 1 candidate will be elected means  
10 the candidate nominated with the lesser number of votes.

11 (3) If more than 1 candidate is to be elected to the office  
12 and the official canvass of votes shows that the number of votes  
13 separating the winning candidate who received the least number of  
14 votes and the petitioner is more than 50 votes or 0.5% of the sum  
15 of the number of votes received by the 2 candidates, whichever is  
16 greater, the petitioner shall deposit with the clerk the sum of  
17 \$125.00 for each precinct referred to in his or her petition.

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

24 (5) If, by reason of the recount, the petitioner establishes  
25 sufficient fraud or mistake as set forth in his or her recount  
26 petition to change the result of the election and receives a  
27 certificate of election or establishes sufficient fraud or mistake

1 to change the result upon an amendment or proposition, the votes  
 2 for and against ~~which~~ **THAT** were recounted, the clerk of the board  
 3 of county canvassers shall refund the money deposited to the  
 4 petitioner.

5 (6) If a refund is not made as required under subsection (5),  
 6 the sum deposited ~~shall~~ **MUST** be paid by the clerk of the board of  
 7 county canvassers to the treasurer of the county.

8 ~~(7) If a precinct referred to in the petition is determined~~  
 9 ~~"not recountable" as provided in section 871(3) or, subject~~ **SUBJECT**  
 10 to subsection (8), if a precinct referred to in the petition is not  
 11 recounted due to the withdrawal of the petition, the money  
 12 deposited for the recount of that precinct ~~shall~~ **MUST** be refunded  
 13 to the petitioner.

14 (8) If the votes cast on the ballots voted in a precinct have  
 15 been examined and recounted, the withdrawal of the petition ~~shall~~  
 16 **MUST** not result in a refund of the money deposited for the recount  
 17 of that precinct.

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

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

27 ~~—— (b) The number of ballots to be recounted and the number of~~

1 ~~ballots issued on election day as shown on the poll list or the~~  
2 ~~computer printout do not match and the difference is not explained~~  
3 ~~to the satisfaction of the board of canvassers.~~

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

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

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

19 ~~(2) (4) A board of canvassers conducting a recount pursuant to~~  
20 **UNDER** this chapter may conduct a recount by the following means:

21 (a) A manual tally of the ballots.

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

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

27 (d) Any combination of methods in subdivision (a), (b), or

1 (c), as determined appropriate by the board of canvassers.

2 (3) ~~(5)~~—If a board of canvassers conducting a recount pursuant  
3 ~~to~~ **UNDER** this chapter intends to conduct a recount on a computer,  
4 the board of canvassers shall first test the software application  
5 by use of a test deck to determine if the program accurately counts  
6 the votes for the office or ballot question subject to the recount.  
7 If the test under this subsection fails to show that the software  
8 application accurately counts the votes for the office or ballot  
9 question subject to the recount, the board of canvassers shall use  
10 another means prescribed in subsection ~~(4)~~ **(2)** to conduct the  
11 recount.

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

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

10           (a) The ballots from any given precinct ~~shall~~ **MUST** first be  
11 counted and the total compared with the number of ballots issued on  
12 election day as shown on the poll list. ~~If the first count of the~~  
13 ~~number of ballots and the number of ballots issued on election day~~  
14 ~~as shown on the poll list do not match, the ballots from that~~  
15 ~~precinct shall be counted a second time and the total compared with~~  
16 ~~the number of ballots issued on election day as shown on the poll~~  
17 ~~list. If the second count of the number of ballots and the number~~  
18 ~~of ballots issued on election day as shown on the poll list do not~~  
19 ~~match, those ballots shall not be recounted as provided in section~~  
20 ~~871. If the second count of the number of ballots and the number of~~  
21 ~~ballots issued on election day as shown on the poll list match, the~~  
22 ~~ballots from that precinct shall be counted a third time and the~~  
23 ~~total compared with the number of ballots issued on election day as~~  
24 ~~shown on the poll list. If the third count of the number of ballots~~  
25 ~~and the number of ballots issued on election day as shown on the~~  
26 ~~poll list do not match, those ballots shall not be recounted as~~  
27 ~~provided in section 871.~~

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

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

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

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

23           (2) If 1 candidate is to be elected to the office and the  
24 official canvass of votes shows that the number of votes separating  
25 the winning candidate and the petitioner is more than 50 votes or  
26 0.5% of the total number of votes cast in the race, whichever is  
27 greater, the petitioner shall deposit with the state bureau of

1 elections the sum of \$125.00 for each precinct referred to in his  
2 or her petition. For purposes of this subsection, the winning  
3 candidate in a primary for a nonpartisan office where only 1  
4 candidate will be elected means the candidate nominated with the  
5 lesser number of votes.

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

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

20 (5) If, by reason of the recount, the petitioner establishes  
21 fraud or mistake as set forth in his or her petition and receives a  
22 certificate of election or establishes sufficient fraud or mistake  
23 to change the result upon an amendment or proposition, the votes  
24 for and against ~~which~~**THAT** were recounted, the state bureau of  
25 elections shall refund the money deposited to the petitioner. The  
26 secretary of state shall refund the money deposited to a petitioner  
27 who is a chairperson of a state political party if the results of



1 the race for which a recount was petitioned for under section 879  
2 are changed. If a refund is not made as required by this section,  
3 then the secretary of state shall pay to the treasurer of each  
4 county its proportionate share of the deposit based upon the number  
5 of precincts in the county in which the votes were recounted.

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

12 (7) If the votes cast on the ballots voted in a precinct have  
13 been examined and recounted, the withdrawal of the petition ~~shall~~  
14 **MUST** not result in a refund of the money deposited for the recount  
15 of that precinct.

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