

2000 PUBLIC AND LOCAL ACTS

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[No. 207]

(HB 5139)

AN ACT to amend 1954 PA 116, entitled "An act to reorganize, consolidate, and add to the election laws; to provide for election officials and prescribe their powers and duties; to prescribe the powers and duties of certain state departments, state agencies, and state and local officials and employees; to provide for the nomination and election of candidates for public office; to provide for the resignation, removal, and recall of certain public officers; to provide for the filling of vacancies in public office; to provide for and regulate primaries and elections; to provide for the purity of elections; to guard against the abuse of the elective franchise; to define violations of this act; to provide appropriations; to prescribe penalties and provide remedies; and to repeal certain acts and all other acts inconsistent with this act," by amending sections 14a, 24j, 666a, 669, 805, and 871 (MCL 168.14a, 168.24j, 168.666a, 168.669, 168.805, and 168.871), sections 14a and 805 as amended by 1995 PA 261 and section 871 as amended by 1996 PA 583; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

168.14a "Ballot container" and "metal seal" or "seal" defined.  
[M.S.A. 6.1014(1)]

Sec. 14a. As used in this act:

(a) "Ballot container" means a container that is used for transporting and storing voted ballots, as described and approved under section 24j.

(b) "Metal seal" or "seal" means a seal of high tensile strength that is approved by the secretary of state under section 36.

168.24j Ballot container; examination by board of county canvassers; approval; procurement; use of disapproved container.  
[M.S.A. 6.1024(10)]

Sec. 24j. (1) A ballot container includes a ballot box, transfer case, or other container used to secure ballots, including optical scan ballots and electronic voting systems and data.

(2) A manufacturer or distributor of ballot containers shall submit a nonmetal ballot container to the secretary of state for approval under the requirements of subsection (3) before the ballot container is sold to a county, city, township, village, or school district for use at an election.

(3) A ballot container shall not be approved unless it meets both of the following requirements:

(a) It is made of metal, plastic, fiberglass, or other material, that provides resistance to tampering.

(b) It is capable of being sealed with a metal seal.

(4) Before June 1 of 2002, and every fourth year after 2002, a county board of canvassers shall examine each ballot container to be used in any election conducted under this act. The board shall designate on the ballot container that the ballot container does or does not meet the requirements under subsection (3). A ballot container that has not been approved by the board shall not be used to store voted ballots.

(5) A city, village, or township clerk may procure ballot containers as provided in section 669 and as approved under this section.

(6) A clerk who uses or permits the use of a ballot container that has not been approved under this section is guilty of a misdemeanor.

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168.666a Sealing devices for ballot boxes or containers.  
[M.S.A. 6.1666(1)]

Sec. 666a. In addition to the supplies furnished under section 666, the secretary of state shall furnish to each county clerk devices to enable ballot boxes or other ballot containers to be sealed easily and securely with self-sealing metal seals.

168.669 Ballot boxes to be provided by city, township, or village.  
[M.S.A. 6.1669]

Sec. 669. For a federal, state, district, or county primary or election, a city, township, or village board of election commissioners shall provide, at the expense of the respective city, township, or village, each of the following:

(a) For each election precinct, a ballot box with lock and key approved under section 24j. Each ballot box shall have an opening through the inside lid of the proper size to admit a single ballot into the box. Each ballot box shall be provided with a second cover or a metal or wooden device for closing the opening to prevent access without unlocking the ballot box and breaking the seal. The city, township, or village clerk shall provide and keep adequate ballot boxes for each precinct.

(b) For each election precinct, if another ballot container in addition to a ballot box is utilized in the precinct, a ballot container approved under section 24j.

(c) For each polling place, a United States flag and any additional items needed to display the flag. The flag shall measure not less than 3 feet wide and 5 feet long. The election inspectors shall ensure that the flag is displayed at or in each polling place during an election.

168.805 Ballots; packaging; statement; placement in ballot box; seal; delivery. [M.S.A. 6.1805]

Sec. 805. (1) After the ballots are counted as provided in this chapter, the board of election inspectors shall securely tie the ballots in packages or rolls, and the board of election inspectors shall attach to each ballot bag an endorsed statement showing the number and kind of ballots included in the ballot bag. The statement shall be securely attached to the outside of the bag, as prescribed by the secretary of state.

(2) After all ballots are tied in packages or rolls, the board of election inspectors shall place the ballots in ballot bags approved by the secretary of state. The board of election inspectors shall then seal the bags with an approved seal that shall be furnished with the election supplies. The bags shall be placed in the ballot box or other ballot container provided for ballots under section 669 along with 1 tally sheet, if the tally sheet is not combined with the statement of returns. The board of election inspectors shall securely fasten and seal the ballot box or other ballot container with an approved seal furnished with the election supplies. The seal shall be affixed to render it impossible to open the ballot box or other ballot container without breaking the seal. The board of election inspectors shall then deliver the ballot box or other ballot container to the township, city, or village clerk.

168.871 Recount; counting of paper ballots; use of electronic voting system; use of voting machines; recount of absent voter ballots; ballots ineligible for recount; procedures for conduct of recount; use of computer; testing software application. [M.S.A. 6.1871]

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

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

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

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

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

(2) Except as otherwise provided in this section, 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.

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

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

(b) A voting machine used in a precinct shall not be recounted if the voting machine is not sealed with the seal of record in such a manner as to render it impossible to vote on the machine or to otherwise change the totals appearing on the individual candidate or ballot question counters.

(c) A voting machine used in a precinct shall not be recounted if the number appearing on the protective counter of the voting machine at the time of the recount does not equal

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the sum of the number appearing on the protective counter at the opening of the polls as shown by the certificate of the board of election inspectors and the number appearing on the public counter at the time of the recount.

(4) In a precinct in which voting machines are used, which precinct cannot be recounted under subsection (3), absent voter ballots tallied in that precinct shall not be recounted unless recorded separately. 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.

(5) 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.

(6) 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.

(7) 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 (6) to conduct the recount.

Repeal of § 169.218.

Enacting section 1. Section 18 of the Michigan campaign finance act, 1976 PA 388, MCL 169.218, as added by 1999 PA 237, is repealed.

This act is ordered to take immediate effect.

Approved June 26, 2000.

Filed with Secretary of State June 27, 2000.

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