

HOUSE BILL NO. 4965

June 03, 2021, Introduced by Reps. Griffin, Borton, Carra, Reilly, Maddock, Wozniak, Eisen, Rendon and Paquette and referred to the Committee on Elections and Ethics.

A bill to amend 1954 PA 116, entitled "Michigan election law," by amending sections 862, 867, 871, 874, and 881 (MCL 168.862, 168.867, 168.871, 168.874, and 168.881), section 862 as amended by 2018 PA 128, 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. 862. **(1)** A candidate for office who believes he or she is

1 aggrieved on account of fraud or mistake in the canvass or returns
2 of the votes by the election inspectors may petition for a recount
3 of the votes cast for that office in any precinct or precincts as
4 provided in this chapter. The candidate must be able to allege a
5 good-faith belief that but for fraud or mistake, the candidate
6 would have had a reasonable chance of winning the election.

7 **(2) The county chairperson of a major political party may**
8 **petition for the recount of votes on behalf of 1 candidate in 1**
9 **precinct in that county. The petition must be signed by the county**
10 **chairperson of the major political party filing the petition under**
11 **this subsection. The county chairperson of a major political party**
12 **filing a petition under this subsection must deposit the sum of**
13 **money required under section 867.**

14 Sec. 867. (1) A candidate or elector filing a recount petition
15 under section 862 or 863 shall file the recount petition with the
16 clerk of the appropriate board of county canvassers. Except as
17 otherwise provided in this section, at the time of filing the
18 recount petition, the petitioner shall deposit with the clerk the
19 sum of \$25.00 for each precinct referred to in his or her recount
20 petition.

21 (2) If 1 candidate is to be elected to the office and the
22 official canvass of votes shows that the number of votes separating
23 the winning candidate and the petitioner is more than 75 votes or
24 5.0% of the total number of votes cast in the race, whichever is
25 greater, the petitioner shall deposit with the clerk the sum of
26 \$250.00 for each precinct referred to in his or her petition. For
27 purposes of this subsection, the winning candidate in a primary for
28 a nonpartisan office where only 1 candidate will be elected means
29 the candidate nominated with the lesser number of votes.

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

11 (4) 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 75 votes or 5.0% 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 \$250.00 for each precinct referred to in his or her petition.

18 (5) Subject to subsection (4), if more than 1 candidate is to
19 be elected to the office and the official canvass of votes shows
20 that the number of votes separating the winning candidate who
21 received the least number of votes and the petitioner is more than
22 50 votes or 0.5% of the sum of the number of votes received by the
23 2 candidates, whichever is greater, the petitioner shall deposit
24 with the clerk the sum of \$125.00 for each precinct referred to in
25 his or her petition.

26 (6) If the vote is on a proposal and the official canvass of
27 votes shows that the number of votes separating the "yes" votes and
28 the "no" votes is more than 50 votes or 0.5% of the total number of
29 votes cast on the proposal, whichever is greater, the petitioner

1 shall deposit with the clerk the sum of \$125.00 for each precinct
2 referred to in his or her petition.

3 (7) If, by reason of the recount, the petitioner establishes
4 sufficient fraud or mistake as set forth in his or her recount
5 petition to change the result of the election and receives a
6 certificate of election or establishes sufficient fraud or mistake
7 to change the result upon an amendment or proposition, the votes
8 for and against ~~which~~**that** were recounted, the clerk of the board
9 of county canvassers shall refund the money deposited to the
10 petitioner. **If the recount is done as an informational recount as**
11 **provided under section 871(5) and not done to change the result of**
12 **the election, the clerk of the board of county canvassers shall**
13 **refund the money deposited to the petitioner.**

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

17 (9) ~~If a precinct referred to in the petition is determined~~
18 ~~"not recountable" as provided in section 871(3) or, subject~~ **Subject**
19 to subsection (10), if a precinct referred to in the petition is
20 not recounted due to the withdrawal of the petition, the money
21 deposited for the recount of that precinct must be refunded to the
22 petitioner.

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

27 Sec. 871. (1) The board of canvassers conducting a recount
28 ~~pursuant to~~**under** this chapter shall recount all ballots of a
29 precinct using an electronic voting system. ~~unless 1 or more of the~~

1 ~~following circumstances exist:~~

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

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

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

17 ~~(2) This section does not prohibit the recounting of absent~~
 18 ~~voter ballots tallied in a precinct using an absent voter counting~~
 19 ~~board or in a precinct in which 1 or more voting machines are~~
 20 ~~recountable, if the absent voter ballots are securely packaged and~~
 21 ~~sealed.~~

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

26 ~~(2) (4) A board of canvassers conducting a recount pursuant to~~
 27 **under** this chapter may conduct a recount by the following means:

28 (a) A manual tally of the ballots.

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

1 application designed to specifically count only the office or
2 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 **(3)** ~~(5)~~—If a board of canvassers conducting a recount pursuant
8 ~~to~~ **under** this chapter intends to conduct a recount on a computer,
9 the board of canvassers ~~shall~~ **must** 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 to
13 show that the software application accurately counts the votes for
14 the office or ballot question subject to the recount, the board of
15 canvassers ~~shall~~ **must** use another means prescribed in subsection
16 ~~(4)~~ **(2)** to conduct the recount.

17 **(4)** If the number of ballots to be recounted in a precinct and
18 the number of ballots issued on election day as shown on the poll
19 list or computer printout for that precinct do not match, but the
20 difference is only 1 ballot, that precinct can be recounted and
21 that recount can be used to change the result of the election.

22 **(5)** If the number of ballots to be recounted in a precinct and
23 the number of ballots issued on election day as shown on the poll
24 list or computer printout for that precinct do not match, and the
25 difference is more than 1 ballot, that precinct can only be
26 recounted for informational purposes and, except as otherwise
27 provided in this subsection, that informational recount cannot be
28 used to change the result of the election. A court of competent
29 jurisdiction may use an informational recount to change the result

1 of the election.

2 Sec. 874. (1) Pursuant to this chapter, ~~Except as otherwise~~
3 **provided in this section**, the board of canvassers conducting the
4 recount shall reject all previous returns from the precincts,
5 townships, or wards. ~~, except the returns from a precinct that~~
6 ~~cannot be recounted as to that candidate or ballot question~~
7 ~~pursuant to section 871. If a recount is done as an informational~~
8 **recount as provided under section 871(5), the board of canvassers**
9 **conducting the informational recount shall accept all previous**
10 **returns from the precincts, townships, or wards.** In a public place
11 where the candidates or persons interested in the ballot question
12 and their counsel may be present, if they so desire, the board of
13 canvassers shall proceed in the manner prescribed in section 871.
14 If applicable, the board of canvassers shall open the ballot boxes
15 from the precincts, townships, or wards, and the rolls or packages
16 of ballots in the ballot boxes, and to make a recount of the
17 ballots as to the candidates or ballot question. ~~Upon~~ **Except as**
18 **otherwise provided in this subsection, upon** completion of the
19 recount, the board of canvassers shall make a full, complete, and
20 correct return in writing, showing the full number of votes given
21 to each candidate, or the total number of votes cast for and
22 against any ballot question, written out in words and figures. **Upon**
23 **completion of an informational recount, the board of canvassers**
24 **shall record those results, but, except as otherwise provided in**
25 **this subsection, those results must only be used for informational**
26 **purposes and must not be used to change the result of the election.**
27 **A court of competent jurisdiction may use an informational recount**
28 **to change the result of the election.**

29 (2) The board of canvassers shall conduct the recount so that

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

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

27 (b) ~~If the first count described in subdivision (a) or the~~
28 ~~second and third counts described in subdivision (a) match the~~
29 ~~number of ballots issued on election day, the~~ **The** ballots shall

1 **must** be placed face up on the table and 1 recount clerk shall call
2 the votes for each candidate or ballot question involved in the
3 recount.

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

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

13 Sec. 881. (1) A person filing a recount petition under section
14 879 or 880 shall file the petition with the state bureau of
15 elections. Except as otherwise provided in this section, at the
16 time of filing the petition, the petitioner shall deposit the sum
17 of \$25.00 for each precinct in which a recount of the votes is
18 demanded in cash or by check or other negotiable instrument made
19 payable to the state of Michigan.

20 (2) If 1 candidate is to be elected to the office and the
21 official canvass of votes shows that the number of votes separating
22 the winning candidate and the petitioner is more than 75 votes or
23 5.0% of the total number of votes cast in the race, whichever is
24 greater, the petitioner shall deposit with the state bureau of
25 elections the sum of \$250.00 for each precinct referred to in his
26 or her petition. For purposes of this subsection, the winning
27 candidate in a primary for a nonpartisan office where only 1
28 candidate will be elected means the candidate nominated with the
29 lesser number of votes.

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

11 (4) 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 75 votes or 5.0% of the sum
15 of the number of votes received by the 2 candidates, whichever is
16 greater, the petitioner shall deposit with the state bureau of
17 elections the sum of \$250.00 for each precinct referred to in his
18 or her petition.

19 (5) Subject to subsection (4), if more than 1 candidate is to
20 be elected to the office and the official canvass of votes shows
21 that the number of votes separating the winning candidate who
22 received the least number of votes and the petitioner is more than
23 50 votes or 0.5% of the sum of the number of votes received by the
24 2 candidates, whichever is greater, the petitioner shall deposit
25 with the state bureau of elections the sum of \$125.00 for each
26 precinct referred to in his or her petition.

27 (6) If the vote is on a proposal and the official canvass of
28 votes shows that the number of votes separating the "yes" votes and
29 the "no" votes is more than 50 votes or 0.5% of the total number of

1 votes cast on the proposal, whichever is greater, the petitioner
2 shall deposit with the state bureau of elections the sum of \$125.00
3 for each precinct referred to in his or her petition.

4 (7) If, by reason of the recount, the petitioner establishes
5 fraud or mistake as set forth in his or her petition and receives a
6 certificate of election or establishes sufficient fraud or mistake
7 to change the result upon an amendment or proposition, the votes
8 for and against ~~which~~**that** were recounted, the state bureau of
9 elections shall refund the money deposited to the petitioner. **If**
10 **the recount is done as an informational recount as provided under**
11 **section 871(5) and not done to change the result of the election,**
12 **the state bureau of elections shall refund the money deposited to**
13 **the petitioner.** The secretary of state shall refund the money
14 deposited to a petitioner who is a chairperson of a state political
15 party if the results of the race for which a recount was petitioned
16 for under section 879 are changed. If a refund is not made as
17 required by this section, then the secretary of state shall pay to
18 the treasurer of each county its proportionate share of the deposit
19 based upon the number of precincts in the county in which the votes
20 were recounted.

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

27 (9) If the votes cast on the ballots voted in a precinct have
28 been examined and recounted, the withdrawal of the petition must
29 not result in a refund of the money deposited for the recount of

1 that precinct.