

Responsibilities and Rights of County Boards of Canvassers

A SUMMARY
OF MCL 168

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Responsibilities and Rights of County Boards of Canvassers

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Foreword

I have reviewed *Responsibilities and Rights of County Boards of Canvassers* sponsored by the Michigan Fair Elections Institute and find it well written and timely.

As a former, 13-year member of Michigan's four-person board of state canvassers, I received many inquiries from county canvassers asking a variety of questions. Often the county canvasser is appointed to the position with little assistance as to the nature of the job and the responsibilities.

Often bad advice is given to canvassers that usually is verbal. Having a document to refer to would be invaluable and I recommend county canvassers keep this work by their sides.

--Norman B. Shinkle, former Michigan State Senator and Ranking Member of the Michigan State Board of Canvassers

The 2024 election will be one of the most contested in US history. Trust in the recount process is vital to ensuring faith in our republican system of government.

Use this book as a guide to serve the United States and the State of Michigan. We need this resource now, more than ever.

--Patrick Shaughnessy, Founder and CEO, *Politylitics*

Table of Contents

INFORMATIONAL:	9
What constitutes a county board of canvassers?	9
What is the purpose of a county board of canvassers?	9
What constitutional authority do county boards of canvassers have?	9
Who is eligible to serve on a county board of canvassers?	9
What is the role of the county clerk in regard to the board of county canvassers?	10
What role does the board of county canvassers play in determining election results?	10
What elections are within the county board of canvassers' jurisdiction to declare results for?	10
Must cured ballots be counted in the presence of the county board of canvassers?	11
What is the penalty for interfering in a recount?	11
What constitutes prohibited interference?	12
POWERS	13

Under what conditions may a county clerk, in connection with the county canvass, prevent release of ballots and voting machines after an election?	13
What is the role of the county board of canvassers in determining how many ballots are printed?	14
What should county boards of canvassers do to examine ballot containers prior to an election?	14
What may county boards of canvassers do to provide physical security for election materials?	15
What can the county board of canvassers do if returns they're supposed to canvass are questionable?	16
Can a county board of canvassers conduct recounts after an election has been certified?	17
Can the board of county canvassers issue subpoenas if they don't receive the materials they need?	17
Under what circumstances are county boards of canvassers allowed by law to conduct a hand recount?	18
What may a county board of canvassers do if they receive a petition and have reason to believe laws have been broken or fraud committed?	19
PROCEDURAL	21
Do the duties of county boards of canvassers in a general election apply in a primary?	21

What if a district involved in a recount spans more than one county?	21
How should ill or absent members of the board be replaced?	21
How should a retabulation of votes take place?	22
What timeframe should the county board of canvassers follow in canvassing results?	23
What if a board of canvassers doesn't observe this timeframe?	23
What does it mean to "certify" in this context?	24
What should county boards of canvassers do upon completing their canvass?	24
What information should a canvass statement have in it?	24
Should county boards of canvassers disclose precinct results unable to be reconciled?	25
What happens if the presidential margin of victory is less than 25,000 votes?	25
What can any eligible voter do if he believes there has been fraud or error?	26
Who should notify a county board of canvassers if they are to participate in a state-wide recount?	27
May a recount be petitioned-for by a candidate or ballot question committee?	28
What rules govern the carrying-out of a petitioned recount?	28

What procedures should a county board of canvassers follow in carrying out a recount?	33
What timeline should be observed in a recount?	35
Is a county board of canvassers responsible for canvassing recall elections as well?	36
What can a citizen or candidate do to challenge recount results, and how should the board of state canvassers?	36
What is the vote threshold for a recount of all state precincts?	37
What remedy exists for county boards of canvassers if fraudulent or illegal voting, or tampering with ballots takes place before a recount?	37
What may a candidate or citizen do if an apparent error appears in the final totals?	37
Under what circumstances are county boards of canvassers to conduct concurrent recounts?	38

Informational:

What constitutes a county board of canvassers?

Every county in this state should have a 4-member board of county canvassers. Members of the board of county canvassers shall be appointed for terms of 4 years beginning on November 1 following their appointment. Of the members first appointed, 1 member of each of the political parties represented on the board of county canvassers shall be appointed for a term of 4 years and 1 for a term of 2 years. The county clerk shall notify members of the board of county canvassers of their appointment within 5 days of being appointed. ([MCL 168.24 \(a\)](#))

What is the purpose of a county board of canvassers?

The board of county canvassers shall conduct all recounts of elections in cities, townships, villages, school districts, metropolitan districts, or any other districts and be vested with all of the powers and required to perform all the duties in connection with any recount. ([MCL 168.24 \(a\)](#))

What constitutional authority do county boards of canvassers have?

All powers granted and duties required by law to be performed by any board of canvassers except for the board of state canvassers, are granted to and required to be performed by the board of county canvassers. ([MCL 168.24 \(a\)](#))

Who is eligible to serve on a county board of canvassers?

Members of the board shall be qualified electors of the county and shall take and subscribe to the constitutional oath of office. No person holding an elective public office shall be eligible for membership on the

board of county canvassers. If any member of the board of county canvassers, during his term of office, becomes a candidate for any elective public office, his office shall be vacant. ([MCL 168.24 \(b\)](#))

What is the role of the county clerk in regard to the board of county canvassers?

The county clerk is the clerk of the board of county canvassers. The county clerk may employ any assistants as are necessary to adequately perform the duties of the board. ([MCL 168.24 \(e\)](#))

What role does the board of county canvassers play in determining election results?

The board of county canvassers shall determine which candidate has received the greatest number of votes and shall declare that candidate to be duly elected if that candidate's district of election is in their jurisdiction. The board of state canvassers shall canvass the returns received from the boards of county canvassers and certify the statewide and congressional district results of the presidential primary election to the secretary of state. The secretary of state shall certify the statewide and congressional district results of the presidential primary election to the chairperson of the state central committee of each participating political party. ([MCL 168.171](#)), ([MCL 168.616 \(a\)](#))

What elections are within the county board of canvassers' jurisdiction to declare results for?

The board of county canvassers shall determine and declare the result of the election for county and local officers, and for all county and local ballot questions. If a state senatorial or representative district is located solely within 1 county, the board of county canvassers shall determine

and declare the result of the election for that office. Upon making the determination under this subsection, the board of county canvassers shall prepare a certificate of determination and deliver the properly certified certificate of determination to the county clerk. If the determination relates to a state senatorial or representative district located solely within 1 county, the board of county canvassers shall also deliver the properly certified certificate of determination to the board of state canvassers.

Upon receipt of a properly certified certificate of determination from a board of county canvassers, the county clerk shall file the certificate in his or her office. The county clerk may have a statement of the total county or district votes cast for the various candidates and the total vote cast for and against the various ballot questions at the election to be published in at least 1 newspaper printed or circulated in that county. The county clerk shall immediately execute and deliver to the persons declared elected, a properly certified certificate of election.

[\(MCL 168.826\)](#)

Must cured ballots be counted in the presence of the county board of canvassers?

Yes. Not later than the sixth day after election day, each city or township clerk shall deliver the absent voter ballot return envelopes that have been cured to the county clerk in a ballot container. The absent voter ballots in these cured absent voter ballot return envelopes shall be tabulated by the county clerk in a meeting of the board of county canvassers. [\(MCL 168.766\)](#)

What is the penalty for interfering in a recount?

Any officer, assistant, clerk, or employee engaged in conducting a recount, who willfully interfere with a fair and impartial recount of the votes is guilty of a felony. [\(MCL 168.873\)](#)

What constitutes prohibited interference?

An individual who intimidates an election official because of the election official's status as an election official, with the specific intent of interfering with the performance of that election official's election-related duties, is guilty of a crime as provided below. An individual who prevents an election official from performing the election official's duties in conducting an election is guilty of a crime as follows:

- For a first offense, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- For a second offense, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
- For a third or subsequent offense, the individual is guilty of a felony.

This section does not apply to constitutionally protected activity, including, but not limited to, engaging in reporting, news gathering, protesting, lobbying, advocacy, or other activities intended to inform or influence the public or public officials, including election officials, on matters of public interest or public concern. As used in this section, "Duties" include, but are not limited to, any of the following:

- Creating, disseminating, collecting, or delivering applications or ballots, including absent voter ballots or absent voter ballot applications.
- Registering voters.
- Opening, closing, and maintaining order at polling places, early voting sites, and absent voter counting board locations.
- Processing and assisting voters at polling places or early voting sites.

- Processing and tabulating ballots at polling places, early voting sites, and absent voter counting board locations.
- Tallying ballots at polling places and absent voter counting board locations.
- Certifying election results by a board of county canvassers or the board of state canvassers.

"Election official" means a public officer, public employee, election inspector, member of the board of state canvassers, member of a board of county canvassers, member of an absent voter counting board, or a county, city, or township clerk who has a duty to perform in connection with an election conducted under this act. "Intimidate" means a willful course of conduct involving harassment of another individual that is intended to cause the individual to fear physical injury, that would cause a reasonable individual to fear physical injury, and that actually causes the individual to fear physical injury. Intimidate does not include constitutionally protected activity or conduct that serves a legitimate purpose. ([MCL 168.931 \(b\)](#))

Powers:

Under what conditions may a county clerk, in connection with the county canvass, prevent release of ballots and voting machines after an election?

Notwithstanding sections 831 and 847 or an administrative rule promulgated pursuant to section 794c, after the canvass by the board of state canvassers, the secretary of state may authorize the immediate release of all ballots, ballot boxes, voting machines, and equipment used in each precinct of a city that conducts a city election in the first week of April if both of the following requirements are met:

- The county clerk certifies that no defect in or mechanical malfunction of a voting machine, voting device, ballot, or other election equipment or material was discovered or alleged before the date of the completion of the state canvass.
- The county clerk certifies that no other election for offices or questions appeared on the same election equipment used in the precinct for the presidential primary election. ([MCL 168.616 \(a\)](#))

What is the role of the county board of canvassers in determining how many ballots are printed?

It is the duty of the board of city election commissioners to prepare the primary ballots to be used by the electors. The returns shall be canvassed by the board of county canvassers and the results certified to the board of city election commissioners, who shall prepare and furnish ballots for the ensuing election. ([MCL 168.323](#))

What should county boards of canvassers do to examine ballot containers prior to an election?

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 following requirements:

- It is made of metal, plastic, fiberglass, or other material that provides resistance to tampering.
- It is capable of being sealed with a metal seal. ([MCL 168.24 \(j\)](#))

What may county boards of canvassers do to provide physical security for election materials?

Upon request of the county clerk, a member of the board of county canvassers, or the county chair of a major political party, a city or township clerk, as appropriate, shall provide for security of the ballots, ballot boxes, and other election material described in the request and used in a precinct on election day. The city or township clerk shall provide the required security until 1 p.m. on the day immediately following the election, unless additional security is required of the clerk by the board of county canvassers as described below. Subject to this section, the city or township clerk shall retain possession of the ballots, ballot boxes, keys to the boxes, keys to voting machines, and other election materials as otherwise required by law, until otherwise directed by the board of county canvassers.

Upon receipt of the election materials described above, the clerk shall immediately place the described election materials in a secure location. The clerk shall ensure that he or she is the only person who has access to the election materials placed in the secure location. A major political party may designate individuals to monitor all access points to the secure location that contains the election material. The clerk shall provide space for an individual designated by the county chair of a major political party to monitor all access points to the secure location that contains the election materials until 1 p.m. on the day immediately following the election, unless additional security is required of the clerk by the board of county canvassers, as described here:

On and after 1 p.m. on the day immediately following the election, the county clerk, a member of the board of county canvassers, or the county chair of a major political party may petition the board of county canvassers for security as prescribed in this section of the ballots,

ballot boxes, voting machines, and other election material described in the petition and used in a precinct on election day.

If the board of county canvassers grants the petition for additional security, the board of county canvassers shall prescribe the amount of security to be provided and the persons responsible for that security. ([MCL 168.810\(a\)](#))

What can the county board of canvassers do if returns they're supposed to canvass are questionable?

If it is found, upon the convening of the board of county canvassers, that the returns from any of the boards of election inspectors of the several election precincts are missing, incomplete, or incorrect, or for any other reason it is found necessary, then the board of county canvassers shall have power to adjourn from day to day until the returns shall have been procured or corrected.

The board of county canvassers is empowered to summon the persons having the boxes containing the ballots cast at the election and the keys and seals of the boxes, or having the returns or the poll lists or tally sheets used and made at the elections, to bring the boxes, keys, seals, returns, poll lists, and tally sheets before the board of county canvassers, and the board of county canvassers is authorized to open the boxes and take any books or papers bearing upon the count and return of the election inspectors of the election precincts, but the board of county canvassers shall not remove or mark the ballots.

The board of county canvassers shall correct obvious mathematical errors in the tallies and returns. The board of county canvassers may, if necessary for a proper determination, summon the election inspectors before them, and require them to count any ballots that the election inspectors failed to count, to make correct returns in case, in the judgment of the board of county canvassers after examining

the returns, poll lists, or tally sheets, the returns already made are incorrect or incomplete, and the board of county canvassers shall canvass the votes from the corrected returns.

In the alternative to summoning the election inspectors before them, the board of county canvassers may designate staff members from the county clerk's office to count any ballots that the election inspectors failed to count, to make correct returns in case, in the judgment of the board of county canvassers after examining the returns, poll lists, or tally sheets, the returns already made are incorrect or incomplete, and the board of county canvassers shall canvass the votes from the corrected returns. When the examination of the papers is completed, or the ballots have been counted, they shall be returned to the ballot boxes or delivered to the persons entitled by law to their custody, and the boxes shall be locked and sealed and delivered to the legal custodians. ([MCL 168.823](#))

Can a county board of canvassers conduct recounts after an election has been certified?

For fraudulent or illegal voting, or tampering with the ballots or ballot boxes before a recount by the board of county canvassers, the remedy by *quo warranto* shall remain in full force, together with any other remedies now existing. ([MCL 168.861](#))

Can the board of county canvassers issue subpoenas if they don't receive the materials they need?

Yes. The county board of canvassers shall have the power to issue subpoenas requiring the person in charge of the ballot boxes used in the election precinct or precincts referred to in the petition, as well as the poll lists, tally sheets, statements of returns and such other documents or reports as may be deemed necessary, to the county board. Said board shall safely guard such ballots, poll lists, tally sheets and returns and when

no longer required shall deliver them to the officials charged with the custody thereof. Whoever, being so subpoenaed, shall fail to appear or shall fail to produce any such box, shall be deemed guilty of a misdemeanor. ([MCL 168.870](#))

Under what circumstances are county boards of canvassers allowed by law to conduct a hand recount?

The board of county canvassers conducting a recount shall recount all ballots of a precinct using an electronic voting system unless 1 or more of the following circumstances exist:

- 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.
- 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.
- 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.

This 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.

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.

A board of canvassers conducting a recount pursuant to this chapter may conduct a recount by the following means:

- A manual tally of the ballots.
- 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.
- A tabulation of the ballots on a computer using the same software application used in the precinct on election day.
- Any combination of the above methods as determined appropriate by the board of canvassers.

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 above conduct the recount. ([MCL 168.871](#))

What may a county board of canvassers do if they receive a petition and have reason to believe laws have been broken or fraud committed?

Whenever a petition has been filed for a recount by any person thinking himself aggrieved on account of any fraud, wrongdoing or violation of the law perpetrated or committed by any election

inspector or inspectors or any other person in respect to the election for which the recount has been petitioned, in any primary or election, and it shall appear to the board of canvassers having jurisdiction over the recount that there is probably cause to believe that there has been fraud, wrongdoing or a violation of the law in respect to the election for which said recount has been petitioned, the county canvassers shall make full and complete investigation of the same.

The canvassers shall have full power and authority to subpoena witnesses and to open any ballot box, regardless of the condition in which the same may be found, and may break open, if sealed, the seal thereon and examine the ballots contained therein. If, after the investigation, the board has good reason to believe that any fraud, wrongdoing or a violation of the law has been committed in respect to said election, then the board of canvassers shall forthwith make a written report of their findings to the prosecuting attorney and to the circuit judge or judges of the county where the petitioner resides if it be a county, city, township or village election, and to the attorney general and to the circuit judge of the county of Ingham if it be a district or state election.

These reports shall be signed by each of the canvassers having jurisdiction of said recount, or a majority of them. Pending the making of such report, the board of canvassers having jurisdiction of such recount shall carefully preserve and safeguard the ballot boxes and the ballots contained therein until an order of the court, to which said report was submitted, is made authorizing the disposition of the same. Any action taken in such investigation shall not preclude any official recount of the ballots cast at any such election, if otherwise allowed by the general election laws. The

powers of investigation referred to in this section shall terminate with the completion of the recount. ([MCL 168.872](#))

PROCEDURAL:

Do the duties of county boards of canvassers in a general election apply in a primary?

Except as otherwise provided, the laws governing nominating petitions, the conduct of general primary elections, the furnishing of ballots, and the depositing, counting, and canvassing of ballots shall, as near as may be, apply to primaries held under the provisions of this chapter.

Recounts shall be conducted by the board of county canvassers. ([MCL 168.347](#))

What if a district involved in a recount spans more than one county?

If a city, village, metropolitan district, or any other district, other than a school district, lies in more than 1 county, and a duty is to be performed by the board of county canvassers, the board of county canvassers in the county in which the greatest number of registered voters of the city, village, metropolitan district or other district resides at the close of registration for the election involved shall perform the duty. ([MCL 168.24\(a\)](#))

How should ill or absent members of the board be replaced?

If a board of county canvassers created under this act is required to perform its statutory duties and because of illness or absence of members of the board of county canvassers a quorum is not present, the clerk of the county may appoint a sufficient number of temporary members to

constitute a quorum. The appointment shall be made by the county clerk from party recommendations on file, if available. The appointments shall be of the same political party as the ill or absent members of the board of county canvassers. A temporary appointee to the board of county canvassers must possess all of the qualifications required for regular membership on that board of county canvassers. Temporary appointees shall serve only until the business on hand has been transacted. ([MCL 168.30 \(g\)](#))

How should a retabulation of votes take place?

If, during the county canvass of the votes, it is necessary to retabulate ballots from a precinct, and any ballots from that precinct are sealed in 1 or more ballot containers from an early voting site that contain ballots from multiple precincts, each necessary ballot container must be opened and the ballots sorted by precinct so that the ballots needing to be retabulated can be identified and segregated.

The sorting must be done at the canvass. Similarly, if there is a recount of a precinct and any ballots from that precinct are sealed in 1 or more ballot containers from an early voting site that contain ballots from multiple precincts, each ballot container must be opened and the ballots sorted by precinct so that the ballots subject to the recount can be identified and segregated. Early voting results must not be generated or reported until after 8 p.m. on election day. An individual shall not intentionally disclose an election result from an early voting site before 8 p.m. on election day. An individual who violates this subsection is guilty of a felony. ([MCL 168.720 \(j\)](#))

What timeframe should the county board of canvassers follow in canvassing results?

The board of county canvassers shall proceed without delay to canvass the returns of votes cast for all candidates for offices voted for and all questions voted on at the election, according to the precinct returns, early voting returns, and absent voter counting board returns filed with the probate judge or presiding probate judge by the county, city, and township clerks, or for local elections according to the precinct returns filed with the county clerk, and must conclude the canvass at the earliest possible time, and in every case no later than the fourteenth day after the election. ([MCL 168.822](#))

What if a board of canvassers doesn't observe this timeframe?

If the board of county canvassers fails to certify the results of any election for any officer or proposition by the fourteenth day after the election as provided, the board of county canvassers shall immediately deliver to the secretary of the board of state canvassers all records and other information pertaining to the election. The board of state canvassers shall meet immediately and make the necessary determinations and certify the results not later than the twentieth day after the election.

The board of county canvassers and all other county staff necessary to complete the canvass must be present at all times during the completion of the canvass by the board of state canvassers. All costs associated with the completion of the canvass must be borne by the county involved.

It is the ministerial, clerical, and nondiscretionary duty of each board of county canvassers, and each of the members of the board of county canvassers, to certify election results based solely on the statements of returns from the election day precincts, early voting sites,

and absent voter counting boards in the county and any corrected returns. ([MCL 168.822](#))

What does it mean to “certify” in this context?

As used in this section and in the case of a recount, “to certify” means to make a signed, written statement. ([MCL 168.822](#))

What should county boards of canvassers do upon completing their canvass?

Upon completion of the canvass, the board of county canvassers shall prepare a statement in detail of the number of votes cast for each office, the names of the persons for whom such votes were given, and the number of votes given to each person, as shown by the returns of the boards of inspectors of election of the various voting precincts of the county.

The board of county canvassers shall also prepare a statement in detail of the number of votes cast on any proposed constitutional amendment or other ballot question submitted to the electors at the election and the number of votes cast in favor of and the number of votes cast against such proposed amendment or other ballot question, as shown by such returns. Immediately upon completion of the canvass, the board of county canvassers shall seal the statement of returns or combined tally and statement and poll list, if applicable, received from the board of election inspectors in an envelope to prevent tampering with those items. ([MCL 168.824](#))

What information should a canvass statement have in it?

Any statement prepared under ([MCL 168.824](#)) must state the total number of votes given for each office, the names of the candidates and the number of votes given to each, the whole number of votes given on

any proposed constitutional amendment or other proposition submitted to the electors at such election, and the number of votes given for and the number of votes given against such proposed amendment or other proposition shall be written out in words at length, and the number of votes shall in each case be also stated in figures. Each such statement shall be certified to by the said board of county canvassers, under their hands and the seal of the circuit court of the county, and shall be attested by the clerk of said board. Thus certified and attested, each such statement shall be filed with the county clerk and kept by him in his office. ([MCL 168.825](#))

Should county boards of canvassers disclose precinct results unable to be reconciled?

Yes. In any statement prepared under ([MCL 168.824](#)), the board of county canvassers shall disclose the number of out-of-balance precincts that were not reconciled during the county canvass process. ([MCL 168.824 \(a\)](#))

What happens if the presidential margin of victory is less than 25,000 votes?

If the unofficial election returns show that the election of electors of President and Vice President of the United States is determined by a vote differential between the first place and second place candidates for President and Vice President of the United States of less than 25,000 votes, the secretary of state shall direct the boards of county canvassers to canvass returns for electors of President and Vice President of the United States on an expedited schedule.

The secretary of state may direct the boards of county canvassers to complete the canvass and certify the statements as required by law by as soon as the seventh day after the election, or as late as the fourteenth

day after the election. The secretary of the board of state canvassers may appoint the day for the board of state canvassers to conduct the expedited canvass of the returns and determine the results of that election.

The day appointed for the expedited canvass must be as soon as practicable after receipt of the returns from the boards of county canvassers, but the board of state canvassers shall complete the canvass and announce the board's determination no later than the twentieth day after the election. It is the ministerial, clerical, and nondiscretionary duty of the board of state canvassers, and each of the members of the board of state canvassers, to certify election results based solely on the certified statements of votes from counties. ([MCL 168.842](#))

What can any eligible voter do if he believes there has been fraud or error?

Any elector in this state who believes that there has been fraud or error committed by the inspectors of election in the return made by said inspectors or of any county canvassing board in the canvass of votes cast upon the question of a proposed amendment to the constitution or any other question or proposition, the votes for which are canvassed by the board of state canvassers, may, not later than 2 days after final certification and determination by the board of state canvassers of the canvass of votes cast at an election, present to and file with the secretary of state a written or printed petition.

This petition shall be sworn to by the elector presenting the same and which shall set forth as nearly as may be the nature and character of the fraud or error of which the complaint is made and the counties, cities or townships or the precincts thereof in which it is believed that the fraud or error occurred, and such petition shall contain

a prayer that a correction thereof be made by a recount of the votes cast therein. ([MCL 168.880](#))

Who should notify a county board of canvassers if they are to participate in a state-wide recount?

The secretary of state, upon receipt of any petition for recount, shall immediately notify the county clerk of each county in which are located any precincts included in the petition for recount that a petition for recount by the board of state canvassers has been filed and the ballots for the precincts must be carefully preserved. Ballots and ballot containers must remain in the possession of city or township clerks until requisitioned by the canvass board.

The board of state canvassers, at as early a date as possible after the receipt of such petition and the deposit required, shall investigate the facts set forth in said petition and cause a recount of the votes cast in the several precincts included in the petition. ([MCL 168.883](#)) Whenever a recount in any county shall be completed, it shall be the duty of the county boards of canvassers to return forthwith the results of such recount to the board of state canvassers, which board shall compile said returns and certify the result.

The returns made by the said boards of county canvassers of any recount shall be deemed to be correct, anything in the previous return of any board of election inspectors or any county canvassing board to the contrary notwithstanding. The final report on the results of any recount shall be open to public inspection immediately following its certification by the board of canvassers. ([MCL 168.892](#))

May a recount be petitioned-for by a candidate or ballot question committee?

Yes. For a candidate petition, a candidate for office who believes he is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts as provided in this chapter. The candidate must be able to allege a good-faith belief that but for fraud or mistake, the candidate would have had a reasonable chance of winning the election. ([MCL 168.862](#))

For a ballot question, a qualified and registered elector voting in a city, township, or village election who believes there has been fraud or error committed by the inspectors of election in its canvass or returns of the votes cast at the election, upon a proposed amendment to the charter of the city or village or other ballot question submitted to the voters of the county, city, township, school district, community college district, metropolitan district, or village, may petition for a recount of the votes cast in any precinct or precincts of that county, city, township, school district, community college district, metropolitan district, or village, upon that proposed amendment or other ballot question as provided in this chapter. ([MCL 168.863](#))

What rules govern the carrying-out of a petitioned recount?

Recount petitions, either for an office or proposition, other than those filed with the secretary of state, shall be filed with the clerk of the board of county canvassers that originally conducted the canvass. For a school district election, recount petitions, either for an office or proposition, shall be filed with the clerk of the board of county canvassers that certified the result of the school district election. Recount petitions shall be filed within 6 days after the original canvass has been completed by

the board of county canvassers. A copy of the recount petition shall also be filed with the secretary of state within 2 days after the time the original recount petition is filed with the board of county canvassers as provided in this section. ([MCL 168.866](#)) A candidate or elector filing a recount petition shall file the petition with the clerk of the appropriate board of county canvassers. Except as otherwise provided in this section, at the time of filing the recount petition, the petitioner shall deposit with the clerk the sum of \$25.00 for each precinct referred to in his or her recount petition.

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

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

¹ Please note for clarity's sake, this language references only "the winning candidate in a primary for a nonpartisan office where only 1 candidate will be elected" and not races where more than 1 candidate will be elected, or partisan elections.

votes. If more than 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate who received the least number of votes and the petitioner is more than 75 votes or 5.0% of the sum of the number of votes received by the 2 candidates, whichever is greater, the petitioner shall deposit with the clerk the sum of \$250.00 for each precinct referred to in his or her petition.

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

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

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

If a refund is not made, the sum deposited must be paid by the clerk of the board of county canvassers to the treasurer of the county.

If a precinct referred to in the petition is determined "not recountable," if a precinct referred to in the petition is not recounted due to the withdrawal of the petition, the money deposited for the recount of that precinct must be refunded to the petitioner.

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

[\(MCL 168.867\)](#)

If a candidate has filed a recount petition and made the deposit under sections 862 and 867, the clerk of the board of county canvassers shall give notice of the recount petition to the opposing candidates described in this subsection within 24 hours after filing of the recount petition by delivering to each candidate a copy of the recount petition, or, if the candidate cannot be found, by leaving a copy at the candidate's last known place of residence with a member of the candidate's immediate family of suitable age.

If a member of the candidate's family cannot be found, the clerk of the board of county canvassers may give notice by posting the recount petition in a conspicuous place at the candidate's last known place of residence. The clerk of the board of county canvassers is not required to give notice to candidates other than the 2 candidates who, according to the return of the board of county canvassers, received the lowest number of votes among those candidates who were nominated or elected, and the 2 candidates who, according to the return of the board of county canvassers, received the highest number of votes among those candidates who were not nominated or elected.

A candidate may file a counter petition in the same manner as the original petition within 48 hours after the original recount petition was filed with the board of county canvassers. At the time of filing the counter petition, the counter petitioner shall deposit the sum of money

as required for the original petitioner. The clerk of the board of county canvassers shall refund to the counter petitioner the money deposited by the counter petitioner if the original petitioner does not establish fraud or receive a certificate of election. The counter petitioner shall file a copy of the counter petition with the secretary of state within 4 days after the time the original petition is filed with the appropriate board of county canvassers as provided in this section.

On or before 4 p.m. of the seventh day after a recount petition has been filed an opposing candidate may file objections to the recount petition with the appropriate board of county canvassers. The opposing candidate shall set forth his or her objections to the recount petition in writing. Upon receipt of an objection under this subsection, the board of county canvassers shall notify the petitioner and the objecting candidate of the date of the hearing of the board of county canvassers to consider the objections.

The board of county canvassers shall allow the recount petitioner and the objecting candidate to present oral or written, or both, arguments on the objections raised to the recount petition at the hearing. Not later than 5 business days following the hearing, the board of county canvassers shall rule on the objections raised to the recount petition. The board of county canvassers shall not begin a recount unless 2 or more business days have elapsed since the board of county canvassers ruled on the objections, if applicable.

If the time designated for filing a recount petition under this section falls on a Saturday, Sunday, or legal holiday, the recount petition may be filed on the next succeeding business day. Failure of the clerk of the board of county canvassers or the secretary of state to give notice to the opposing candidate as required in this section shall not affect the results of the recount. ([MCL 168.868](#))

Upon the filing of a petition for recount, and the giving of notice, if notice is required to be given, the board of county canvassers shall be summoned by the clerk of the board and here make an investigation of the facts set forth in the petition.

Should the recount involve a county or district office or proposition, the recount shall not be commenced until the board shall determine by communicating with the secretary of state that no petition has been filed requesting a recount by the board of state canvassers of ballots cast in the same district. In case said board shall be advised by the secretary of state that a petition has been filed with him praying for a recount by the board of state canvassers of the ballots cast in the same county or district, then no action shall be taken upon the recount until the county board shall receive instructions from the board of state canvassers.

Nothing herein contained shall act to delay any recount of the ballots cast at any city, ward, township or village election if the ballots cast at such election are not sealed in the same ballot boxes with the state and county offices. With respect to any recount of ballots cast in any city, ward, township, village, school or district election, the board of county canvassers shall charge the appropriate local unit the actual and necessary expenses of conducting the recount, and the local unit shall pay such charges to the county treasurer. ([MCL 168.869](#))

What procedures should a county board of canvassers follow in carrying out a recount?

The board of canvassers conducting the recount shall reject all previous returns from the precincts, townships, or wards, except the returns from a precinct that cannot be recounted as to that candidate or ballot question. 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 ([MCL 168.871](#)). 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.

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 this subsection. All votes cast, whether for candidates or ballot questions, shall be recounted in the following manner:

- The ballots from any given precinct shall 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 ([MCL 168.871](#)). 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.

- If the first count described above or the second and third counts described above match the number of ballots issued on election day, the ballots shall 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.
- Two tally clerks shall simultaneously record the called votes on forms provided for that purpose.

The candidates or persons interested in the ballot question, their counsel, watchers, and talliers shall 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 by [\(MCL 168.871\)](#). From [\(MCL 168.874\)](#)

What timeline should be observed in a recount?

All recounts shall be completed for a primary election not later than the twentieth day and for any other election not later than the thirtieth day immediately following the last day for filing counter petitions or the first day that recounts may lawfully begin. As soon as the recount is completed, the board shall return any ballots to their respective containers and seal the containers. The board shall then return the ballots, voting devices, machines, any related keys, and seals to the officer or officers having the care and custody of those items. [\(MCL 168.875\)](#)

Is a county board of canvassers responsible for canvassing recall elections as well?

If a recall petition is filed under [\(MCL 168.960\)](#), the board of county canvassers in the county where the recall petition is filed shall conduct the canvass of the recall election. The canvass of other recall elections shall be by the board of state canvassers. [\(MCL 168.968\)](#)

What can a citizen or candidate do to challenge recount results, and how should the board of state canvassers?

If a proper challenge is raised by a candidate or an elector interested in a ballot question during a recount being conducted by the board of state canvassers, a member of the board of state canvassers or other representative designated by the board of state canvassers under section 890 shall resolve that challenge before the recount is completed in that county.

A candidate or elector interested in a ballot question who is involved in the recount and who disagrees with the resolution of the challenge may petition the state board of canvassers for a de novo review of the challenge. The candidate or elector shall file a petition disagreeing with the resolution of a challenge not later than 5 business days after the board of state canvassers mails notice that the recount has been completed to the candidates or electors.

Upon receipt of a petition disagreeing with the resolution of a challenge under this section, the board of state canvassers shall notify all candidates and electors involved in the recount of the date of the hearing of the board of state canvassers to consider the petition. The board of state canvassers shall allow the candidates and electors involved in the recount to present oral or written, or both, arguments on the challenge at the hearing. The board of state canvassers shall rule on the challenge at that meeting. [\(MCL 168.871\)](#)

What is the vote threshold for a recount of all state precincts?

A recount of all precincts in the state shall be conducted at any time a statewide primary or election shall be certified by the board of state canvassers as having been determined by a vote differential of 2,000 votes or less. This section shall not apply to partisan offices to which more than 1 person is to be elected. ([MCL 168.880](#))

What remedy exists for county boards of canvassers if fraudulent or illegal voting, or tampering with ballots takes place before a recount?

"For fraudulent or illegal voting or tampering with the ballots or ballot boxes before a recount by the board of county canvassers, the remedy by *quo warranto*² shall remain in full force, together with any other remedies now existing." ([MCL 168.861](#))

What may a candidate or citizen do if an apparent error appears in the final totals?

Any candidate for a county, city, ward, township or village office not receiving a certificate of election, or any qualified and registered elector voting at the last preceding election when any amendment or proposition has been voted on, may, for error apparent upon the face of

² *Quo warranto*, noun, an English writ formerly requiring a person to show by what authority he exercises a public office, franchise, or liberty; a legal proceeding for a like purpose begun by an information; the legal action begun by a quo warranto. Source: Merriam-Webster.com, 2024 <https://www.merriam-webster.com/dictionary/quo%20warranto>.

the returns, have the same examined and corrected upon *certiorari*³ to the circuit court of the county, according to the rules and practices applicable to such writs. ([MCL 168.877](#))

Under what circumstances are county boards of canvassers to conduct concurrent recounts?

The board of state canvassers shall have the right and authority to demand and cause the ballot boxes, poll books, tally sheets, the statement of votes returned in connection with any such election, and such other documents and reports as may be deemed necessary, to be brought before the several boards of county canvassers, and shall order that a concurrent recount of the votes upon any office or proposition petitioned, where such votes appear upon the same ballots as those which are to be recounted by the board of state canvassers, be conducted, which concurrent recount shall be under the exclusive jurisdiction and control of the said board of state canvassers. All ballots, poll lists, tally sheets, returns and reports shall be safely guarded and when no longer required shall be delivered to the officials charged with the custody thereof. ([MCL 168.888](#))

³ *Certiorari*: a writ of superior court to call up the records of an inferior court or a body acting in a quasi-judicial capacity. Source: Merriam-Webster.com, 2024, <https://www.merriam-webster.com/dictionary/certiorari>.