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## CHAPTER 17 LEGAL REMEDIES

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**RECOUNTS:** A candidate for a federal, state, county, city, township, village or school office who believes that the canvass of the votes cast on the office is incorrect because of fraud or error in the precinct returns may petition for a recount of the votes cast in the precincts involved. Candidates seeking a precinct delegate position do not have the right to petition for a recount. (MCL 168.862)

In addition, a registered elector eligible to vote on a question appearing on the ballot who feels that the canvass of the votes cast on the question is incorrect because of fraud or error in the precinct returns may petition for a recount of the votes cast in the precincts involved. (MCL 168.863)

- A recount of the votes cast for a county, city township, village or school office or on a county, city, township, village or school ballot question is conducted by the Board of County Canvassers. (MCL 168.24a) A recount of the votes cast for 1) a statewide office 2) the office of representative in congress, state senator or state representative or 3) a judicial office (except probate judge in a single county district) is conducted by the Board of State Canvassers. (MCL 168.879)

**PETITION:** A person who wishes to obtain a recount must submit a written, notarized statement which specifies the office or question involved; alleges that they possess a good-faith belief that they would have had a reasonable chance of winning the election, but for the canvass of the vote cast for the office or on the question is in error; and identifies the precincts in which a recount of the votes cast is desired. (MCL 168.865) The written statement is commonly referenced as a “recount petition.”

**DEPOSIT:** A deposit must be submitted with a recount petition for each precinct in which a recount is requested. The deposit amount is either \$25 per precinct, \$125 per precinct or \$250 per precinct depending on the vote differential between the petitioner and winning candidate (or, in the case of a proposal, the differential between Yes and No votes). The deposit is refunded if the recount changes

the outcome of the election. If the recount does not change the result of the election, the deposit is kept by the county. The required per-precinct deposit amount is determined as follows (MCL 168.867):

- \$25 per precinct; or
- \$125 per precinct, if the official canvass of votes shows that the number 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**; or
- \$250 per precinct, if the official canvass of votes shows that the number 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**.
  - Note: If more than one candidate is to be elected to the office, the applicable vote differential is between the petitioner and the winning candidate who received the least number of votes. The 0.5% or 5.0% figure is calculated based on the sum of the number of votes received by the petitioner and the winning candidate who received the least number of votes, to determine if the deposit amount is \$125 per precinct or \$250 per precinct.
  - In the case of a proposal, the applicable vote differential is between the “Yes” and the “No” votes. The 0.5% or 5.0% figure is calculated based on the total number of votes cast on the proposal, to determine if the deposit amount is \$125 per precinct or \$250 per precinct.

**PETITION FILING LOCATION AND DEADLINES:** A recount petition is filed with the clerk of the board of canvassers that certified the office or ballot question. (EXCEPTION: A petition for a recount of the votes cast for the office of representative in congress, state senator or state representative is filed with the Secretary of State – even if the office is certified on the county level.) If the recount petition is filed on the county level, it must be received by the clerk no later than the sixth day after the completion of the canvass. If the recount petition is filed on the county level, a copy of the petition must be forwarded to the Secretary of State within two (2) days after its receipt.

- Upon the receipt of a recount petition on the county level, the Board of County Canvassers is summoned by the county clerk to conduct the recount. If the recount involves a county or district office or ballot question, the Board cannot begin the recount until after the county clerk has determined whether the county must participate in any recounts requested on the state level. If a recount petition has been filed on the state level which involves the county, the conduct of both recounts (the recount requested on the county level and the recount requested on the state level)

are coordinated through the Department of State's Bureau of Elections. The Board of County Canvassers is not required to obtain state clearance to proceed with a recount of votes cast on a city, township, village or school office or on a question if the ballots involved are not sealed in ballot boxes containing ballots cast on state or county offices or questions. (MCL 168.869)

- If a Board of County Canvassers recounts the votes cast on a city, township, village or school office or on a question, the expense of conducting the recount is charged back to the local unit. The local unit is then responsible for paying the expenses to the county treasurer. (MCL 168.869)
- A recount is conducted as provided under Michigan election law, MCL 168.841 – 894 and Electronic Voting Rules, R 168.793.

## THE CONDUCT OF MAIL ELECTIONS TO REMEDY BALLOT DEFECTS AND

**EQUIPMENT MALFUNCTIONS:** The vote cast on an office or a ballot question is void if it can be proven under the procedures detailed below that a “defect in or a mechanical malfunction of a voting machine, voting device, ballot or other election equipment or material” could have made a difference in the outcome of the vote on the office or question. A special mail election is then conducted to correct the matter. (MCL 168.831 – 839)

- If an office is involved, the procedures for conducting a special mail election are not initiated unless a candidate affected by the problem files a petition which requests that a special mail election be held. If a ballot question is involved, the procedures for conducting a special mail election are not initiated unless a registered elector who participated in the election (as evidenced by the Poll Book) files a petition which requests that a special mail election be held. (MCL 168.832)
- A petition making such a request must be filed within 10 days *after the date of the election* with the clerk or secretary of the board of canvassers that certified the office or ballot question. (MCL 168.832) (Note that the petition filing deadline could fall before the completion of the canvass.) The petition must describe the problem which may have affected the outcome of the vote on the office or ballot question; identify the precincts involved; list the number appearing on the voting machine(s) or voting device(s) involved (if applicable); and be signed and certified by the candidate or registered elector as appropriate. (MCL 168.833)
- The clerk or secretary of the canvassing board reviews the contents of the petition to determine whether it complies with the requirements noted above. If the requirements have been met, the clerk or secretary schedules a meeting of the canvassing board. The meeting must be held within

five days after the filing of the petition. The clerk or secretary must contact the following persons by phone or a first-class letter to advise them of the time and place of the meeting (MCL 168.835):

- The appropriate local election official.
  - If an office on a special, general or nonpartisan ballot is involved: all other candidates who sought the same office.
  - If an office on a partisan primary ballot is involved: all other candidates who sought nomination to the same office under the same party column header.
  - If a ballot question is involved: the sponsor of the ballot question, any Ballot Question Committees organized to support or oppose the proposal, and the registered elector who filed the petition.
- When the meeting is held, the canvassing board reviews the facts involved and orders that a special mail election be held in each precinct affected by a “defect in or a mechanical malfunction of a voting machine, voting device, ballot or other election equipment or material” if the following is established: 1) an elector could not cast a valid vote in the precinct for the petitioning candidate or for or against the ballot question because of the defect or mechanical malfunction and 2) based on the available canvass, the number of electors who could not cast valid votes for the office or for or against the ballot question is greater than the number of votes separating the candidates getting the most and the second most number of votes or is greater than the number of votes separating the total “YES” votes and the total “NO” votes. If the number of votes for an office or for or against a ballot question recorded on a voting machine exceeds the number of electors who voted on the machine, then a special election is held if the number of excess votes recorded on the machine is greater than the number of votes separating the candidate getting the most and the second most number of votes or is greater than the number of votes separating the total “YES” votes and total “NO” votes. (MCL 168.836)
  - If a special election is ordered by the canvassing board, mail ballots are sent to the electors who voted in the affected precinct(s) by the clerk of the city or township in which the precinct or precincts are located. The ballots must be sent within five days after the order for the special mail election is issued by the canvassing board. A note from the canvassing board must be included with each ballot which requests the elector to vote on the office or question as he or she voted (or attempted to vote) in the primary or election. (MCL 168.837) It is important to note that the special mail ballots are sent to only those electors who *actually voted* in the precinct or precincts involved at the primary or election. If the absent voter ballots cast in the precinct were not affected, the special mail ballots are not sent to the absentee voters.

- The electors who are sent special mail ballots have five days to return them. (MCLA 168.837) The ballots are counted by a specially convened counting board. If the absent voter ballots cast in the precinct were not affected, the votes cast on the office or question by the precinct's absent voters must be added to the tally of the special mail ballots. (MCL 168.838)
- A recount of the votes cast under the special mail election provisions cannot be requested or conducted. (MCL 168.839)