



Election Officials Manual

Chapter 18: Recounts and Special Mail Elections

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I. Introduction

This chapter explains the recount and special mail election processes available to candidates who are aggrieved by the conduct of an election or an election outcome. Questions about the content of this chapter should be directed to Elections@Michigan.gov.

II. The recount process

A recount is the process by which the final precinct and county vote totals reported at the completion of the canvass may be once again counted and checked for accuracy. A recount is an administrative process limited to determining the number of votes cast on ballots for each candidate seeking a particular office or determining the number of votes cast for or against a ballot question.

Any candidate for office who believes that the county or precinct vote totals reported for that office are incorrect, and can meet the petition requirements in statute, may petition for a recount. Ballot question committees participating in an election may also petition for a recount if the committee believes that the county or precinct vote totals reported are incorrect and can meet the petition requirements in statute. Additionally, a registered voter of a city, township, or village where a proposed charter amendment or other city, township, or village ballot question appears on the ballot may petition for a recount of the votes cast on that local charter amendment or ballot question if no ballot question committee participated in the election and the voter believes that the precinct vote totals reported are incorrect and can meet the petition requirements in statute.

If a board of canvassers receives a petition to conduct an investigation or an audit of the conduct of an election, a petition to assess the qualifications of electors participating in an election or the manner in which ballots are applied for or issued to electors, or a petition to do anything other than determine the number of votes cast, the board of canvassers must deny that petition. MCL 168.861.

Authority to conduct a recount

The boards of county and state canvassers have the authority to conduct a requested recount, depending on the office or ballot question for which a recount is sought.



The Board of County Canvassers is responsible for conducting recounts of the following:

- County, city, township, village, and school district elections
- Probate Judge elections in single county districts
- Municipal Court Judge elections
- County, city, township, village, and school ballot proposal results

The Board of State Canvassers is responsible for conducting recounts of the following:

- Statewide elections
- United States Senator elections
- United States Representative elections
- State Legislature elections
- Judicial elections, except for Probate Judge in single county districts and Municipal Court Judge elections
- Statewide ballot proposals

Petitioning to conduct a recount

A person seeking a recount must submit a petition requesting that recount.

The petition must be filed with the Secretary of State if the election was canvassed by the Board of State Canvassers, or otherwise with the clerk of the county board of canvassers that conducted the canvass.¹ A petition for a recount by the Board of State Canvassers must be received no later than 5 p.m. of the second day after the day the Board of State Canvassers certifies the results of the election. A petition for a recount by a board of county canvassers must be filed within 48 hours after the certification of the canvass by the board of county canvassers.²

The petition form requirements are set out in MCL 168.865. Petitions must include a written, notarized statement that specifies the following:

¹ For school district elections, recount petitions must be filed with the clerk of the board of county canvassers that certified the result of the school district election. MCL 168.866(2).

² If the deadline for filing a recount petition or counter recount petition with a board of county canvassers falls on a Saturday, Sunday, or legal holiday, the petition may be filed on the next succeeding business day. MCL 168.868(4).



- The office or ballot question and election for which a recount is sought
- A statement that the candidate is aggrieved and has a good-faith belief that but for the error the candidate would have had a reasonable chance of winning the election; or that the ballot question committee has a good-faith belief that but for the error the result would have been the opposite
- The precinct or precincts, absent over counting board precinct(s), and early voting precinct(s) for which the recount is sought
- An explanation of the error in the canvass or returns of votes
- The amount of the enclosed deposit
- The candidate or ballot question committee representative's signature and date of signing

In addition to the written, notarized statement, the person seeking a recount must also submit a deposit for each precinct that the person requests be recounted. If the person seeking the recount is a candidate, the amount of the deposit will increase in correspondence to the difference between the votes that the candidate was reported to receive and the person elected to office was reported to receive after the canvass. If multiple candidates are elected to the office sought, the amount of the deposit will increase in correspondence to the difference between the votes that the candidate requesting the recount was reported to receive and the votes that the person who was elected to office with the fewest votes was reported to receive. If a person is seeking a recount regarding a ballot question, the deposit will increase in correspondence to the difference between the votes cast for the losing outcome and the votes cast for the winning outcome.

The deposit amount is as follows, based on the difference between the winning candidate or winning ballot question and the petitioner:

- If the official canvass of votes shows that the number of votes separating the winning candidate or winning ballot question and the petitioner is more than (a) 75 votes or (b) more than 5% of the total number of votes cast in the election, whichever is greater, the deposit is \$500 per precinct where a recount is sought.
- If the official canvass of votes shows that the number of votes separating the winning candidate or winning ballot question and the petitioner is more than (a) 50 votes or (b) more than 0.5% of the total



number of votes cast in the election, whichever is greater, the deposit is \$250 per precinct where a recount is sought.

- In a statewide election for statewide office determined by a vote differential of more than 4,000 votes, the deposit is \$500 for each precinct requested to be recounted.
- In a statewide election for statewide office determined by a vote differential of more than 2,000 votes and less than 4,001 votes, the deposit is \$250 for each precinct requested to be recounted.
- In a statewide primary election for statewide office determined by a vote differential of more than 1,400 votes, the deposit is \$500 for each precinct requested to be recounted.
- In a statewide primary election for statewide office determined by a vote differential of more than 700 votes and less than 1,401 votes, the deposit is \$250 for each precinct requested to be recounted.
- In a state senate election, other than a state senate primary, determined by a vote differential of more than 150 votes, the deposit is \$500 for each precinct requested to be recounted.
- In a state senate election, other than a state senate primary, determined by a vote differential of more than 75 votes and less than 151 votes, the deposit is \$250 for each precinct requested to be recounted.
- In a state representative election, other than a state representative primary election, determined by a vote differential of more than 50 votes, the deposit is \$500 for each precinct requested to be recounted.
- In a state representative election, other than a state representative primary election, determined by a vote differential of more than 25 votes and less than 51 votes, the deposit is \$250 for each precinct requested to be recounted.
- If none of the preceding bullets apply, the deposit is \$50 per precinct where a recount is sought.

If more than one candidate is elected to an office, the percentage referred to in these deposit thresholds is calculated by comparing the number of votes received by the petitioner to the number of votes received by the person who was elected to office with the fewest votes.

If the recount results in the candidate seeking the recount being elected to office, or results in the outcome of the ballot question being changed, the



deposit is refunded. If the recount does not result in a change in the election or ballot question's outcome, the deposit is retained by the county. If a precinct is unrecountable, as explained on page 8, the deposit for that precinct is refunded. Finally, if a petition for a recount is withdrawn, the deposit for any precincts for which the recount process has not yet begun is refunded. A candidate, ballot question committee, or elector may withdraw a recount petition at any time.

Recount notice and opportunity for counter petition

Within 24 hours of receiving a recount petition and required deposit, the Secretary of State or clerk of the board of county canvassers receiving the petition must give notice of the petition's filing to the ballot question committee and to the two candidates who were nominated or elected with the lowest number of votes and to the two candidates who received the largest number of votes without being nominated or elected.³ It is a best practice, but not required, that the county clerk also notify any other candidates involved in the election for the office to be recounted.

A candidate or ballot question committee who receives notice of a recount petition may submit a counter petition using the form prescribed by MCL 168.865, requesting that additional precincts be recounted. A counter petition must be received within 48 hours of the submission of the original recount petition and is subject to the same requirements as the original recount petition. The deposit for the counter petition is calculated using the vote totals of the candidate originally seeking the recount, not the vote totals of the candidate filing the counter petition. If a counter petition for a recount is filed, and the original recount does not change the results of the election, the counter-petitioner's deposit is refunded.

A candidate, ballot question committee, or elector may withdraw a counter recount petition at any time.

Objections to a recount petition

An opposing candidate or ballot question committee may file objections to a recount petition—objections must be filed not later than 48 hours after the original recount petition is filed.

The county board of canvassers or Board of State Canvassers—whichever is conducting the recount—must notify the petitioner and the objecting

³ Failure to give notice of a recount petition as required does not affect the results of the recount. MCL 168.868(4); MCL 168.882(4)



candidate or ballot question committee of the date of the meeting at which it will consider the objections. Both the recount petitioner and the objecting candidate or ballot question committee may present oral and/or written arguments on the objections raised at the meeting. Written arguments must be submitted to the relevant board before the meeting.

The relevant board must rule on the objections not later than 4 calendar days following the deadline to file objections to the recount petition. MCL 168.868(3); MCL 168.882(3).

The manner in which a recount is conducted depends on the type of recount requested and whether there are other recounts arising from the same election that might affect the county. If part or all of a county's precincts are part of a recount supervised by the Board of State Canvassers, the Board customarily directs Bureau of Elections staff to supervise all state and local recounts in the county. If no precinct in a county is part of a recount supervised by the Board of State Canvassers, the recount is handled by the county clerk's staff.

Timing of the recount

Because the staff carrying out a recount cannot be determined until both the deadline for statewide recounts and for local recounts has passed, a recount cannot commence until all of the following conditions are met:

The deadline for statewide recounts has passed—this deadline is not later than 5 p.m. of the second day after the day the Board of State Canvassers certifies the results of the election.

The deadline for local recounts has passed—this deadline is 48 hours after the certification of the canvass by the board of county canvassers.

If, after all timing conditions have been satisfied, no precincts in the county are involved in a statewide recount, the board of county canvassers may direct the county clerk's staff to begin the recount.

For Presidential elections, under statute recounts will not be delayed even if the Michigan Supreme Court is considering a complaint for mandamus brought by a presidential or vice presidential candidate aggrieved by the Board of State Canvassers' certification or determination of the election result. MCL 168.845a.



Recount process

The board of canvassers conducting the recount is responsible for laying out the specific recount process to be followed in the county. The recount must occur in a public place where the candidates or ballot question committees and their counsel may be present. The board should determine the following:

- Which assistants or staff members will conduct the recount
- Whether the recount will be conducted by hand, by tabulation, or by a combination of the two methods
- Who will answer procedural questions from either staff or interested parties
- How challenges to the determination of assistants or staff will be recorded and resolved, in compliance with legally required procedures, detailed in the following subsection.

Challenges

Candidates and ballot question committees, their counsel, and other individuals checking the work of the recount clerks must be allowed to observe each ballot as it is called, take notes, and challenge the tabulation of any ballot.

All ballots counted or rejected under challenge must be identified by an exhibit number, and challenges must be recorded. The board of canvassers must rule on all challenges before the conclusion of the recount.

A candidate or ballot question committee may appeal the decision of a county board of canvassers to the representative designated by the Board of State Canvassers. Finally, a candidate or ballot question committee may petition the Board of State Canvassers for a de novo review of the challenge.

The Board of State Canvassers will only accept petitions for de novo review of challenges that concern the determination of how a specific vote on a ballot for a candidate or for or against a ballot question is counted.

The Board of State Canvassers will only hear the challenge and rule on it if the total number of challenges submitted could change the result of the election. If the Board of State Canvassers conducts a de novo review, it must notify all candidates and ballot question committees involved in the recount of the date of the meeting. Candidates and ballot question



committees involved in the recount may present oral and written arguments on the challenges at the meeting.

Because the board of canvassers conducting the recount is responsible for adjudicating disputes or challenges concerning the recount, board members should not take part in the physical handling or tabulation of ballots. Instead, board members should be present to supervise the process and available to adjudicate disputes or challenges as they arise. For more information regarding best practices for conducting recounts, contact the Bureau of Elections.

Unrecountable precincts

The only documents that a board of canvassers may use to determine whether a precinct may be recounted are the poll book, the poll lists, the statement of results, the ballot container certificate, the total ballots counted by a tabulator, the county canvass notations on the number of ballots and electors in the poll book, affidavits as described below, and tabulator tapes.

A precinct must be recounted if the ballot container is properly sealed and the seal number on the seal is accurately recorded in at least one of the following: the poll book, the ballot container certificate, or the statement of results. Additionally, at least one of the following two scenarios must be found:

- The precinct is in balance for purposes of a recount, which is the case if the number of physical ballots to be recounted matches one of the following:
 - The number of ballots issued in the precinct as shown in the poll book
 - The number of ballots tabulated as shown on the tabulator tape
 - The number of ballots cast as shown by the county canvass
- The precinct was certified as out of balance during the county canvass and remains out of balance by an identical or fewer number of ballots after review during the recount.

A precinct that does not satisfy the criteria for recount may still be recounted if a satisfactory explanation in a sworn affidavit is provided by an election inspector, a clerk, or a member of the clerk's staff to the board of canvassers. "An explanation must not be accepted by a board of canvassers



as satisfactory unless the explanation documents that the security of the ballots is otherwise preserved.” MCL 168.871.

An explanation is satisfactory if the reason for the discrepancy does not affect the security of the ballots and demonstrates that a recount of the ballots will yield a reliable and accurate result. For example, a discrepancy that was caused by innocent human error and specifically explained in the poll book remarks, or when evaluating whether the total number of ballots and the total number of voters match, a discrepancy that was caused by spoiled or defective ballots, ballots that were duplicated for proper reasons or provisional envelope ballots not included in the ballot container.

If a precinct is deemed unrecountable, staff must report the vote totals from that precinct as indicated in the original canvass.

If a two-page ballot was used in an election, the recountability of a precinct is determined by counting only the page on which the election or ballot question appears. If the number of pages on which the election or ballot question to be recounted appears corresponds to the number of voters recorded in the pollbook, and neither a seal issue nor a seal number issue is present, the precinct is recountable even if the precinct has an unexplained difference between the number of the ballot pages where the race to be recounted does not appear and the number of voters recorded in the pollbook.

Cost of the recount

If a board of county canvassers recounts the votes cast on a city, township, village or school office or on a ballot 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.

III. Special mail elections

Special mail elections may be conducted if a defect or malfunction in the voting equipment used to conduct an election prevents a voter from casting a vote which may have changed the outcome of an election or ballot question. Only a candidate for office may request a special mail election be held for that office, but any registered voter who participated in the original election where the defect or malfunction occurred may request a special mail election be held for a ballot question.



A typed or printed petition signed and certified by the candidate or voter requesting a special mail election must be filed within 10 days after the date of the election with the clerk of the county whose Board of County Canvassers certified the election, or with the Director of Elections if the Board of State Canvassers certified the election. The petition must do the following:

- Describe the problem that may have affected the outcome of the vote on the office or ballot question
- Identify the precincts involved
- List the serial number of the voting devices involved, if applicable

If the county clerk determines that the petition complies with these requirements, the clerk must schedule a meeting of the Board of County Canvassers within five days of the petition's filing. The county clerk must also contact the following interested parties by phone or First-Class mail to advise them of the Board of County Canvassers' meeting to consider the petition:

- The clerk or clerks of the city and/or townships of the precincts where the allegedly faulty voting equipment was present.
- All candidates who sought the office in question, if the office appeared on a general election, special election, or nonpartisan election ballot.
- All candidates who sought nomination to the office in question, if the office appeared on a primary ballot.
- The sponsor of the ballot question and any ballot question committees organized to support or oppose the ballot question, as well as the voter requesting the special mail election, if a ballot question is involved.

When the Board of County Canvassers meets, the board reviews the petition and the facts surrounding the election. If the following are established, the board should order a special mail election be held in each affected precinct:

- A voter could not cast a valid vote in the precinct in the race corresponding to the petitioning candidate, or in the race corresponding to the ballot question at issue, because of a defect or malfunction in the voting equipment.



- Based on the canvass of votes, the number of voters who could not cast valid votes in the race corresponding to the office or the ballot question at issue, because of that defect or malfunction is:
 - greater than the number of votes separating the candidates who won the election and the candidate with the most votes who lost the election, if only one candidate was elected; or
 - greater than the number of votes received by the candidate receiving the most votes who was not elected and the candidate receiving the least votes who was elected, if multiple candidates were elected; or
 - greater than the number of votes separating the total votes cast for the ballot question.

If the Board of County Canvassers orders a special mail election, mail ballots are sent to voters who voted in the affected precinct or precincts by the clerk of the city or township in which the affected precincts are located. Ballots are sent only to voters who actually voted or attempted to vote in person on Election Day in the precinct or precincts involved in the special mail election, and may be sent to voters who actually voted or attempted to vote in person during the early voting period if those voters were affected by the defect causing the special mail election. A ballot should not be sent to any voter registered in an affected precinct who did not cast or attempt to cast a ballot. Ballots are also not sent to absent voters registered in the precinct if those absent voters' ballots were not affected by the defect causing the special mail election.

The ballots must be sent within five calendar days of the board's order that a special mail election be held. The ballot mailing must include a note from the Board of County Canvassers specifying that the voter must cast their vote in the special mail election as they cast their vote, or attempted to cast their vote, in the original election. Voters have five days to return the ballots to the clerk. The ballots are tabulated by a specially convened counting board. Votes cast in a special mail election cannot be recounted.



IV. Procedure for contesting a presidential election

A candidate for president or vice president who is aggrieved by an error in the Board of State Canvassers' determination of the results or certification of the presidential election may seek judicial review of the determination or certification by filing a complaint for mandamus with the Michigan Supreme Court.

A candidate is aggrieved if the candidate would have received the largest number of votes in the election if the error had not occurred. A complaint for mandamus must be filed within 48 hours after the Board of State Canvassers certifies or determines the results of the election and must name the Board as a defendant. In order for the Supreme Court's decision to affect the appointment of Michigan's electors, the decision must be issued by the day before Michigan's electors convene.⁴

These proceedings cannot delay the Board's certification or determination of results of the presidential election, the Governor's issuance or transmission of a certificate of ascertainment, or a recount.

⁴ The electors must convene on the first Tuesday after the second Wednesday in December.

