



# **Election Officials Manual**

## **Chapter 18: Recounts and Special Mail Elections**

July 2024

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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](mailto:Elections@Michigan.gov).

## II. Pending recount rules

Public Acts 74 and 75 of 2024 revise the requirements surrounding county and statewide recounts for candidates and ballot questions. They were passed by the Legislature in late June and signed by the Governor on July 8, 2024. Because they did not receive immediate effect, they will take effect 91 days after the Legislature adjourns for the year and will *not* be in effect for the November 2024 General Election. The Board of State Canvassers and Bureau of Elections (BOE) are also working to promulgate administrative rules with requirements for recounts conducted by the Board of State Canvassers that generally mirror the requirements in the bills, and those rules *may* be in effect for November 2024. The BOE will update this chapter when the rules and Acts take effect.

## III. 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. Recounts can be petitioned for by 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. 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 the voter believes that the precinct vote totals reported are incorrect and can meet the petition requirements in statute.



## **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 clerk of the jurisdiction whose board of canvassers certified the results of the election or ballot question. A petition for a recount by the Board of State Canvassers must be received no later than 48 hours following the completion of the state canvass. A petition for a recount by a board of county canvassers must be received on or before the sixth day following the completion of the county canvass. If a recount petition is filed with a board of county canvassers, the person seeking the recount must also file a copy of the petition with the Secretary of State within 48 hours of filing the petition with the county clerk.

The petition must include a written, notarized statement that specifies the following:



- The office or ballot question for which a recount is sought
- The reason that the person believes that the county and/or precinct *Statement of Votes* produced by the county canvass is incorrect
- The precinct or precincts for which the recount is sought
- If the person seeking a recount is a candidate, an affirmation that the candidate has a good-faith belief that, but for the errors alleged in the recount petition, the candidate would have had a reasonable chance of winning the election

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 to equal 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 to equal 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 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 \$250 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 \$125 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 less than both (a) 50 votes and (b) 0.5% of the total



number of votes cast in the election, the deposit is \$25 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 6, 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.

## **Recount notice and opportunity for counter petition**

Within 24 hours of receiving a recount petition filed by a candidate, the county clerk receiving the petition must give notice of the petition's filing 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. 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 who receives notice of a recount petition may submit a counter-petition 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.

## **Conducting the recount**

The manner in which a recount is conducted depends on both the type of recount requested and all 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:

- Six days have elapsed since the end of the county canvass.
- If any local recounts have been requested, 48 hours have elapsed since those recount petitions were received.
- 48 hours have elapsed since the end of the state canvass.

If, after all three 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.

### *Recount process*

The Board of County Canvassers is responsible for laying out the specific recount process to be followed in the county. The board must ensure that all interested parties, or representatives of those parties, are present at the recount. 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



Because the Board of County Canvassers 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*

There are three scenarios that can cause a precinct to be unrecountable:

- The ballot container's seal is not placed on the ballot container in such a way as to ensure that ballots could not have been inserted or removed without breaking the seal or damaging the ballot container.
- The number on the ballot container seal is not the seal number recorded in either or both the pollbook or the completed *Statement of Votes*.
- The total number of ballots, as reflected by a physical count, is not the same as the number of voters recorded in the pollbook, and an acceptable explanation for the discrepancy cannot be identified. "Out of balance" precincts often can be recounted following review. Before determining that the total number of ballots and the total number of voters do not match, the Board of County Canvassers should account for any discrepancy caused by any of the following:
  - Spoiled or defective ballots
  - Ballots that were duplicated for proper reasons using procedures mandated by the local clerk
  - Any provisional envelope ballots not included in the ballot container
  - Any other notes or remarks in the poll book explaining another source of discrepancy

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.

# **IV. 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 Canvasser's 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.

## **V. 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.<sup>1</sup>

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.

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<sup>1</sup> The electors must convene on the first Tuesday after the second Wednesday in December.

