

**From:** [Rozell, Joseph](#)  
**To:** [MDOS-Elections-PublicComment](#)  
**Subject:** Public Comment on Recount Rules  
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Good Evening,

Please see the attached comments on the proposed recount rules.

Thanks,



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DEPARTMENT OF STATE  
BOARD OF STATE CANVASSERS  
CONDUCT OF ELECTION RECOUNTS

Filed with the secretary of state on

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the board of state canvassers by section 889 of Act No. 116 of the Public Acts of 1954, being S168.889 of the Michigan Compiled Laws the Michigan election law, 1954 PA 116, MCL 168.889)

R 168.901, R 168.902, R 168.903, R 168.904, R 168.905, R 168.906, R 168.906a, R 168.908, R 168.909, R 168.910, R 168.911, R 168.912, R 168.915, R 168.916, R 168.917, R 168.922, R 168.923, R 168.925, R 168.925b, R 168.927, R 168.928, R 168.929, and R 168.930 of the Michigan Administrative Code are amended, R 168.901a is added, and R 168.907, R 168.909a, R 168.913, R 168.914, R 168.918, R 168.919, R 168.920, R 168.921, R 168.924, R 168.925a, and R 168.926 are rescinded, as follows:

R 168.901 Enforcement of rules; decisions subject to appeal. **Definitions.**

Rule 1. The rules and regulations prescribed herein shall be enforced by the board of state canvassers and its representatives to insure the fair, impartial, and uniform conduct of recounts. Decisions of the boards of county canvassers, under these rules and regulations, applicable statutes and court decisions, shall be subject to appeal to the board of state canvassers, as hereinafter set forth. (1) As used in these rules:

(a) "Act" means the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(b) "Change the result of the election" means either the candidate who lost the election and is requesting the recount would be elected or the recount would result in the opposite outcome for a ballot question.

(c) "Election materials" means equipment used in administering elections, including, but not limited to, electronic voting systems, seals, ballots, ballot containers, ballot container certificates, poll books, results report, statement book, tabulator tape, or another document or report considered necessary by the boards of county or state canvassers.

(d) "Interested party" means the individual or individuals who filed a recount petition or a counter recount petition. More specifically, a candidate, 1 representative of a ballot question committee, or if a ballot question committee did not participate in an election in which there was a ballot question on the ballot, 1 elector who voted in that election.

(e) "Poll book" includes the physical poll book and any poll lists.

(f) "Precinct" as used in a recount means any of the following:

April 8, 2024



- A precinct at*
- (i) An election day precinct.
  - (ii) ~~An~~ absent voter counting board.
  - (iii) A precinct at an early voting site.
  - (g) "Recount center" means a single location where recounts of multiple precincts from multiple counties are conducted.
- (2) Unless otherwise defined in these rules, a term defined in the act has the same meaning when used in these rules.

**R 168.901a Enforcement of rules; decisions subject to appeal.**

Rule 1a. The board of state canvassers and its representatives enforce these rules and regulations to ensure the fair, impartial, and uniform conduct of recounts. Decisions of the boards of county canvassers, under these rules and regulations, applicable statutes, and court decisions, are subject to appeal to the board of state canvassers under R 168.925.

**R 168.902 Security arrangements.**

Rule 2. (1) ~~Upon~~ On the filing of a petition for recount, the board of state canvassers shall will make arrangements with the state police law enforcement to provide for security of the recount staff and all ballots, ballot boxes containers, and voting machines electronic voting systems used in the election precincts to be recounted until the recount is completed and the results thereof are certified by the board of state canvassers.

(2) All such ballots, ballot boxes, their keys, voting machines and the keys thereto election materials shall must remain in the possession of the city or township clerks charged by law with the custody thereof clerk responsible for the election until requisitioned by the boards of county canvassers as hereinafter provided under R 168.903.

**R 168.903 Time and place of recount.**

Rule 3. (1) The board of state canvassers will shall publicly announce the time and place for the recount of votes east in each county affected by such petition for a recount petition.

(2) The board of state canvassers may mandate the use of 1 or more recount centers where multiple counties or jurisdictions are recounted at a central location.

(3) The boards of county canvassers shall arrange for the delivery of the ballots, ballot boxes containers, ballot box keys, poll lists, tally sheets, statements of returns and such other documents and reports including registration cards as election materials the boards of county canvassers may deem determine are necessary, at the time and place designated for the recount by the board of state canvassers.

(4) Electronic voting machines systems and the keys thereto shall must remain in the possession of the officials clerk charged with their security and custody thereof, as above provided under the act and the rules promulgated by the secretary of state.

*electronic  
voting  
systems*

*not delivered to the  
board of county canvassers,*

**R 168.904 Review of rules, regulations, and arrangements prior to recount.**

Rule 4. ~~Before~~ Prior to commencement of beginning the recount, the board of state canvassers or its representatives and the board of county canvassers or its representatives shall meet for the purpose of reviewing these rules and regulations and the arrangements



made or to be made by the board of county canvassers for the proper conduct of the recount as herein provided.

R 168.905 Meeting between state board and county board.

Rule 5. At the time and place designated for the commencement of the recount in each county, the board of county canvassers ~~therefor~~ shall meet with the board of state canvassers or its representatives ~~for the purpose of commencing to begin~~ the recount.

R 168.906 ~~Court reporter or stenographer~~ Meeting minutes.

Rule 6. The boards of county canvassers shall ~~provide a court reporter or a competent stenographer who shall be present at all times during the recount and who shall make a stenographic record of the proceeding as hereinafter provided~~ conduct a recount in an open meeting and keep meeting minutes. Meeting minutes must be provided to the board of state canvassers on request.

R 168.906a Order of counting precincts.

Rule 6a. ~~Paper ballot precincts within a county shall be counted first unless otherwise specifically provided by the board of state canvassers.~~ Precincts shall be counted in the order which ~~that will~~ results in the most expeditious conduct of the recount without regard for who requested the counting of a particular precinct.

#### VOTING MACHINES

R 168.907 ~~Persons present at recount; procedure~~ Rescinded.

~~Rule 7. (1) Representatives of the board of county canvassers and of the board of state canvassers together with 1 recount clerk, 2 tally clerks and a court reporter or competent stenographer as above provided, and not more than 2 representatives and an attorney of each candidate for the office or offices the votes for which are being recounted and of each of the petitioners in the case of a recount of a proposition shall be present during the opening and recount of each such voting machine. Prior to the opening of the counter compartment of any of the automatic machines or the unsealing of the rear door on any of the Shoup machines used in a precinct, a representative of the board of county canvassers shall dictate for the record, any part of which may be on forms prepared by the board of state canvassers, the following:~~

- ~~—(a) The precinct in which the voting machines were used;~~
  - ~~—(b) Any unusual conditions relative to any of the voting machines;~~
  - ~~—(c) The identification numbers on each voting machine;~~
  - ~~—(d) The seal number on each of the voting machines;~~
  - ~~—(e) The condition of the seal on each of the voting machines;~~
  - ~~—(f) The numbers recorded on the public and protective counters of each voting machine.~~
- ~~(2) Such representative shall also dictate for the record the entries contained in the poll book and inspectors' return sheets relative to the number of voters who voted in the precinct, the identification numbers on the various voting machines, the number shown on the respective protective counters prior to the opening of the polls, the readings on the~~



various public and protective counters upon the close of the polls, and the number on the various seals used to seal the voting machines.

~~(3) A representative of any interested party or of the board of state canvassers shall have the right to dictate into the stenographic record any objection, proposed correction, or addition to such information.~~

R 168.908 Machine not to be recounted; conditions-Performance of recount; materials not subject to a recount.

Rule 8. If a voting machine is not locked and sealed in such manner as to render it impossible to vote on the machine or to otherwise change the totals appearing on the individual candidate or proposition counters, or if the seal contains a number other than the number recorded by the inspectors on their returns, that voting machine shall not be recounted and the original return of the inspectors of election for that machine shall be taken as correct. (1) A recount is performed only if the number of ballots to be recounted is enough to change the result of the election.

(2) 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.

(3) If the board of state canvassers or the board of county 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 conduct a recount as described in this rule, the board of state canvassers or the board of county canvassers must deny that request for a recount.

(4) When conducting a recount, the only materials available to be reviewed in the recount are the ballots, poll book, and any poll lists necessary to complete the recount.

R 168.909 Machine not to be recounted; additional condition-Electronic voting system recount.

Rule 9. If the number appearing on the protective counter of a machine at the time of the recount does not equal the total of:

(a) The number appearing on the protective counter at the opening of the polls as shown by the certificate of election inspectors; and

(b) The number appearing on the public counter at the close of the polls, as shown on the certificate of election inspectors, the voting machine shall not be recounted and the original return of the inspectors of election shall be taken as correct. Recounts performed using an electronic voting system software application under section 871(4) of the act, MCL 168.871, are governed by the procedures set forth in R 168.793 and the act.

R 168.909a Machine not to be recounted; additional condition-Rescinded.

Rule 9a. If the sum of the numbers appearing on the public counters of all machines used in a precinct is in excess of the total of:

(a) The number of voters who voted in the precinct as shown by the poll book; and

(b) The number of times the machine was operated by the inspectors and custodians, as shown by the record of the election inspectors, the returns for that precinct as made by



the election inspectors shall be deemed correct and no machines shall be recounted in that precinct.

R 168.910 Opening or unsealing machine subject to recount **Determining when to recount precinct.**

Rule 10. If 1 or more voting machines in a precinct is subject to recount, these voting machines shall be opened and if necessary unsealed. A representative of the board of county canvassers shall enter into the record the name and position of the person opening or unsealing the machines, a description of any unusual conditions relating to any of the machines and a description of their contents. The recount clerk shall read and announce in a distinct voice the name and number, if any, of each candidate for the office involved in the recount and the number of votes shown on the individual candidate counters for each candidate, and shall, in like manner, read and announce the vote on each proposition involved in the recount. The votes so called shall be recorded simultaneously by the 2 tally clerks on proper forms provided for that purpose and shall then be called back from the tally sheets by one of the tally clerks and verified on the voting machine by the other tally clerk. The count as shown by the inspectors' returns shall be used for those machines not subject to recount. (1) A precinct shall be recounted if all the following are satisfied:

(a) The ballots are properly sealed in a ballot container in a manner that does not allow a ballot to be added to, or removed from, the ballot container.

(b) The seal number on the seal is accurately recorded in the poll book, on the ballot container certificate, or on the statement of results.

(c) The precinct is in balance, which means the number of ballots to be recounted is the same as 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, or the number of ballots cast as shown by the county canvass; or 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.

(2) A recount may still be conducted even if the precinct does not satisfy the conditions under subrule (1) of this rule, if there is a satisfactory explanation in a sworn affidavit demonstrating that the security of the ballots is preserved.

(3) 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 notes, 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 under procedures mandated by the local clerk, or provisional envelope ballots not included in the ballot container. *Remarks*

(4) 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, and tabulator tapes. *Delete*

*Reports*



(5) If a precinct is not eligible for a recount, the original return of the votes for that precinct must be taken as correct.

R 168.911 Recounting absent voters' ballots.

Rule 11. (1) Absent voters' ballots, including absent voter ballots cast at absent voter counting board precincts and combined absent voter counting board precincts, shall must be recounted in the manner hereafter described provided under these rules for counting paper ballots cast on election day.

Commented [LSB1]: This rule uses both "absent voters' ballots" and "absent voter ballots"; the use of terms should be consistent throughout

(2) Absent voters' ballots in original sealed envelopes shall must be counted as the same should have been if they were voted if the recount board determines they are eligible for voting.

(3) Absent voters' ballots which that have been voted shall must be recounted to determine whether the ballots were validly marked.

(4) Validly marked ballots found not to have been voted shall must be counted as the same should have been if they were voted.

(5) Invalidly marked ballots found to have been voted must shall be rejected.

(6) Appropriate additions and deductions must shall be made to or from the precinct count.

(7) Unless clearly shown to the contrary, there is a presumption of regularity of action by precinct inspectors shall obtain. To determine facts required for decision of issues under this rule, precinct inspectors may, if necessary, be called and sworn to give evidence.

(8) In communities using absent voter counting precincts, absent voter ballots shall be recounted as provided in the rules for paper ballots.

*Delete*

R 168.912 Opportunity to observe reading of counters Recounting ballots cast at early voting sites.

Rule 12. The representatives of each interested party shall be afforded an opportunity to observe the reading of the individual candidates or proposition counters and each absent voter's ballot, if any, as the votes are called and to make such notations on their private records as they may desire. (1) Ballots cast at early voting sites must be recounted in the same manner provided under these rules for ballots cast on election day.

(2) If a ballot container from an early voting site contains ballots from multiple precincts and 1 or more of those precincts is subject to a recount, each ballot container must be opened, and the ballots must be sorted by precinct to identify and segregate the ballots subject to the recount.

(3) Unless clearly shown to the contrary, there is a presumption of regularity of action by early voting site precinct inspectors. To determine facts required for decision of issues under this rule, early voting site precinct inspectors may, if necessary, be called and sworn to give evidence.

R 168.913 Record of recount proceedings Rescinded.

Rule 13. All proceedings taken in the recount of any voting machines shall be recorded as above provided by the stenographer provided by the board of county canvassers. Representatives of all interested parties shall be afforded an opportunity to make a full



~~and complete stenographic record of any challenges or objections to the proceedings. Upon request of the board of state canvassers, such record shall be transcribed and a copy furnished to the board of state canvassers at the cost of the county. Upon request by any other party, the cost of transcription shall be borne by the party requesting the transcription. Cost of copies of the transcription shall be borne by the recipients.~~

R 168.914 ~~Challenges or objections to recount of voting machines~~ **Rescinded.**

~~Rule 14. (1) Upon completion of the recount of all voting machines in a precinct, all challenges or objections shall be presented to the board of county canvassers for its decision. Upon request by the board of county canvassers, the stenographic record of such challenges or objections shall be read to the board of county canvassers. Representatives of each interested party shall be afforded an opportunity to submit authorities and argument to the board of county canvassers for and against such challenges or objections and to make a full and complete stenographic record thereof, including the decision of the board of county canvassers and its grounds therefor. Nothing herein contained shall limit the right of the board of county canvassers to examine any voting machine against the recount of which challenges or objections have been made. Any interested party who considers himself aggrieved by the decision of the board of county canvassers may at the time the decision is rendered appeal such decision to the representatives of the board of state canvassers in the same manner as hereinabove provided for presenting challenges or objections to the recount of voting machines to the board of county canvassers.~~

~~(2) The decisions of the board of county canvassers may be confirmed, set aside, or modified by the representative of the board of state canvassers.~~

~~(3) At the conclusion of the recount in the several counties, the board of state canvassers shall notify each interested party that such county recounts have been completed. Such notice shall be by registered mail, return receipt demanded, at the address furnished to the secretary of state by the interested parties.~~

~~(4) The decisions of the representatives of the board of state canvassers may be confirmed, set aside, or modified by the board of state canvassers upon review by written petition therefor setting forth the grounds in detail by any interested party or upon its own motion. Such petition shall be filed with the board of state canvassers not later than 5 days after the mailing of the notice above provide for, Saturdays, Sundays, and legal holidays excluded.~~

#### PAPER BALLOTS

R 168.915 ~~Providing tables, recount clerks, and tally clerks~~ **Recount staff.**

~~Rule 15. The boards of county canvassers shall provide 1 table where all ballot boxes in each county shall be opened in the manner hereinafter provided and as many other tables as shall be necessary to efficiently recount the ballots in the manner hereinafter provided. The boards of county canvassers shall also provide 1 recount clerk and 2 tally clerks for duty at each such table whenever a ballot box is opened or ballots are recounted. At each table where ballot containers are opened, the boards of county canvassers shall provide at least 2 recount clerks to conduct the recounting of ballots.~~



R 168.916 Candidate and ~~petitioner~~ ballot question committee representatives; powers; identification.

Rule 16. (1) ~~Each candidate for the office or offices the votes for which are being recounted and each of the petitioners in the case of a recount of a proposition shall be entitled to have not to exceed or~~ ballot question committee representative is entitled to observe the recount and have their counsel and not more than 2 representatives additional individuals present at each table where ballot boxes-containers are being opened or ballots are being recounted, ~~and they~~

(2) The individuals in subrule (1) of this rule shall be afforded an opportunity to observe the opening of ballot boxes-containers and each ballot as the votes are called, challenge the tabulation of a ballot, and take notes as desired for recordkeeping purposes and to make such notations on their private records as they may desire.

(3) Each individual representing a candidate or ballot question committee shall have written identification provided by the candidate, the candidate's political party, the ballot question committee, or a proponent or opponent of the ballot question if there is no ballot question committee involved in the recount.

(4) For a recount for a ballot question, the treasurer of a ballot question committee involved in the recount shall appoint no more than 1 lead representative for each recount center. The lead representative ~~shall be~~ is responsible for the individuals present at each table where ballot containers are being opened or ballots are being recounted. Once designated, the lead representative may not be changed during the course of the recount.

R 168.917 Board of county canvassers and of state canvasser representatives; duties.

Rule 17. (1) A representative of the board of county canvassers and of the board of state canvassers shall be present during the opening of ~~such all~~ ballot boxes-containers. A representative of the board of county canvassers shall dictate for the record, any part of which may be on forms provided by the board of state canvassers, the following:

- (a) The precinct being recounted.
- (b) Any unusual conditions relative to the ballot boxes-container.
- (c) The manner in which way the ballot boxes-container is sealed.
- (d) ~~Its~~ The ballot container's seal number.
- (e) The condition of the seal.
- (f) The name and official position of the person individual who unseals and opens the ballot boxes-container.
- (g) A description of any ballot package, ballot bag, or roll of ballots which is, may be, or is claimed to be involved in the recount, including the way the bag is sealed and the number on the seal. The description shall include a description of the manner in which the ballot packages or rolls are wrapped, tied, sealed, and endorsed. If ballot bags are used in lieu of packages or rolls, the description shall set forth the manner in which the bag is sealed and the number on the seal.

(2) ~~Such~~ The representative of the board of county canvassers shall also dictate for the record the entries contained in the poll book and statement book relative to the number of



voters who voted at the election and the seal numbers with which ballot boxes containers and ballot bags, if used, were sealed.

(3) A representative of any interested party or of the board of state canvassers has shall have the right to dictate any objection, proposed correction, or additional information into the stenographic record, any objection, proposed correction, or addition to such information.

R 168.918 Recounting ballots where ballot box locked and sealed: Rescinded.

—Rule 18. If the ballot box is locked and sealed in such manner as to render it impossible to open it without breaking such seal, and if the ballots therein contained are properly wrapped, tied, and sealed, the ballots shall be recounted; but if the ballots are not properly wrapped, tied, and sealed or if the seal, tape, or wrapper shall have been loosened or broken, such ballots shall be recounted only if they correspond in number with the poll list delivered to the county clerk.

R 168.919 Recounting ballots where ballot box not locked and sealed: Rescinded.

—Rule 19. If the ballot box is not locked and sealed in such manner as to render it impossible to open it without breaking such seal, the ballots therein contained shall be recounted if they are properly wrapped, tied, and sealed in such manner as to render it impossible to open such package or roll or remove any of the contents thereof without breaking said seal, but only if they correspond in number with the poll list delivered to the county clerk.

R 168.920 Recount where ballots in ballot box must correspond in number with poll book: procedure: Rescinded.

—Rule 20. If ballots in a ballot box must correspond in number with the poll book as above provided before they may be recounted, such ballots shall be returned to their ballot box and assigned to a recount table for a physical count. The recount clerk shall remove such ballots from their wrappers, place them face down upon the recount table, and count the number of ballots. If there are the proper number of ballots, such ballots shall be recounted in the manner hereinafter provided; if such ballots do not correspond in number with the poll book as above provided, such ballots shall not be recounted and the recount clerk shall report such fact to the representative of the board of county canvassers at the ballot box opening table for instructions as to the disposition of said ballots. With reference to such precinct, the original return of the inspectors of election shall stand.

R 168.921 Recount where correspondence in number between ballot box and poll list not required: procedure: Rescinded.

—Rule 21. If any ballots are subject to recount regardless of their corresponding in number with the poll list, such ballots shall be returned to their ballot box and assigned to a table for recount. The recount clerk shall remove such ballots from their wrappers, place them face down upon the count table, and count the number of ballots. If the number of ballots is equal to or less than the number of ballots issued on election day, as shown by the poll list, such ballots shall be recounted in the manner hereinafter



provided. If the number of ballots is in excess of the number of ballots issued on election day, as shown by the poll list, the ballots shall be turned face up and so many blank ballots or ballots upon which there is no attempted vote for the office or offices or for the proposition or propositions being recounted shall first be withdrawn as shall be equal to the excess. If there are not sufficient blank ballots or ballots upon which there is no such attempted vote to equal such excess, the remaining ballots shall be shuffled and mixed and replaced in the ballot box and the recount clerk shall then draw out so many ballots therefrom as shall be equal to the excess remaining. All such ballots withdrawn shall be publicly destroyed by the recount clerk and the remaining ballots shall be recounted in the manner hereinafter provided. Such ballots shall be laid aside but not destroyed in case a recount of another office or proposition involving the same ballots is being conducted or is pending.

R 168.922 Recounting ballots; procedure.

Rule 22. (1) The ballots shall ~~must~~ be placed face up on the recount table ~~and, if where~~ applicable, separated by the recount clerk into piles of straight party vote ballots, split party vote ballots, and special proposition ballot question ballots. Where applicable, the recount clerk shall take each pile of ballots separately and count the straight ballots first. The total straights for each candidate shall then be entered in the proper place on the tally sheet. The split and mixed votes for each office involved in the recount shall then be tallied. When votes are called, they shall be recorded simultaneously by the 2 tally clerks on proper forms provided for that purpose. Votes for and against each proposition involved in the recount shall be separated into piles and then counted. The counting shall be done at least twice and by different people. The whole number of votes cast for each candidate and for and against each proposition shall be recorded.

(2) The recount staff shall count 1 pile of ballots at a time. One recount clerk shall call the votes, and 1 clerk shall confirm the called votes. The 2 recount clerks shall record the votes on proper forms provided for that purpose.

(3) The whole number of votes cast for each candidate, and for and against each ballot question, must be recorded.

(4) The board of ~~state~~ canvassers may approve an alternative manner of conducting the recount. ~~State~~

R 168.923 Rules governing recounting of votes-Determining the validity of ballot markings.

Rule 23. The following rules shall govern the recounting of votes: (1) A vote on a ballot is indicated by making a mark within the predefined target area designated for casting a vote. A vote is valid and must be counted if there is a mark within the predefined area for casting a vote.

(2) The following is a non-exhaustive list of examples of valid votes:

(a) A circle of the predefined area that goes through the inside of the predefined area designated for casting a vote and meant to be filled in by the voter.

(b) A check mark, cross, or "x" that is inside any part of the predefined area designated for casting a vote and meant to be filled in by the voter, even if part of the mark extends outside the predefined area designated for casting a vote.

*Delete*



(c) The word "yes" written inside the predefined area designated for casting a vote and meant to be filled in by the voter.

(d) If the predefined area has a mark inside of it, but there is also a correction that causes a false tabulator read, such as a filled in oval or square that is crossed out or labeled as a "mistake" or similar description.

(3) The following is a non-exhaustive list of examples of invalid votes:

(a) A circle of the predefined area designated for casting a vote that goes around the area, but does not intersect the inside of the predefined area designated for casting a vote.

(b) A check mark, cross, or "x" along the side, top, or bottom of the outside edge of the predefined area designated for casting a vote.

(c) The word "yes" written along the side, top, or bottom of the outside edge of the predefined area designated for casting a vote, regardless of any arrows pointing to the predefined area.

(4) A stray mark within the predefined target area is not a mark indicating a valid vote. The following apply to the evaluation of marks:

(a) To determine whether a mark within a predefined area is a stray mark compare the mark with other marks appearing on the ballot.

(b) A check mark or cross appearing within the predefined area is not considered a stray mark and is a valid vote even if the voter does not consistently mark the entire ballot with the check mark or cross.

(a5) ~~Where~~ If it is clearly evident from an examination of any ballot that the same is ~~has~~ been mutilated for the purpose of distinguishing it or ~~that there has been placed thereon~~ some mark, printing, or writing for the purpose of distinguishing it, ~~then such the~~ ballot shall ~~must~~ be void and shall not be counted. The following criteria must be met to find a mark or mutilation to be distinguishing:

(ia) ~~It~~ The mark or mutilation must be clearly evident.

(ib) ~~That the~~ The mark or mutilation was placed on the ballot by the voter.

(ic) ~~The mark or mutilation was for~~ For the purposes of distinguishing it.

~~(b) A cross, the intersection of which shall be within or on the line of the proper circle or square, shall be valid. Crosses otherwise located on the ballot shall be void;~~

~~(c) Marks other than crosses used to designate the intention of the voter shall not be counted;~~

~~(d) A cross shall be valid even though 1 or both lines thereof shall be duplicated, provided that the lines intersect within or on the line of the square or circle;~~

~~(e) Two lines meeting within or on the line of the square or circle, although not crossing each other, shall be deemed to be a valid cross where it is apparent that the voter intended to make a cross. This provision shall not be construed as validating so-called "check marks";~~

(f6) A failure to properly mark a ballot as to 1 or more candidates shall ~~does not of itself~~ invalidate the entire ballot if the ~~same ballot has been~~ is properly marked as to other candidates, unless ~~such the~~ improper marking shall constitute a distinguishing mark as herein defined; **under subrule (5) of this rule.**

(g7) Erasures and corrections on a ballot made by the elector in a manner frequently used for such purpose shall ~~be determined to be not be deemed~~ distinguishing marks or mutilations; **under subrule (5) of this rule.**

*Delete*



(h8) Any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidate shall be void as to the candidate or candidates thereby affected.

(i9) ~~Any votes cast for a deceased candidate shall be void and not counted.~~

(j10) All ballots cast which that are not counted shall be ~~are marked by the inspector "not counted,"~~ kept maintained separate from the others by being tied or held in 1 package, and placed in the ballot box container with the counted ballots; and.

(k) No vote shall be counted for any candidate unless a cross has been placed by the voter in the circle at the head of the party ticket, if any, on which the name of the candidate has been printed, written or placed or unless a cross has been placed by the voter in the square before the space in which the name of the candidate has been printed, written, or placed.

R 168,924 Determining how ballot recounted; rules Rescinded.

Rule 24. The following rules as set forth in S168.737 of the Michigan Compiled Laws, as amended, together with applicable court decisions, shall be followed in determining how a ballot shall be recounted.

—(a) If the elector makes a cross (x) in the circle under the name of his party at the head of the ballot and does nothing further, he has voted a straight ticket.

—(b) Where only 1 candidate is to be elected to an office, to vote for a candidate not on his party ticket, the elector should make a cross (x) in the circle under the name of his party, and also make a cross (x) in the square before the name of the candidate for whom he desires to vote on the other ticket. In such case, it shall not be necessary to cross off the name of the candidate on his party ticket. If the elector votes for more than 1 candidate for the same office where only 1 candidate is to be elected to said office, said ballot shall not be counted for either of such candidates, but shall be as to them null and void.

—(c) When 2 or more candidates are to be elected to the same or like office, such as coroners, to vote for a candidate or candidates not on his party ticket for such office, the elector should mark a cross (x) in the circle under his party name, and mark a cross (x) in the square before the name or names of the candidate or candidates for whom he desires to vote on the other ticket or tickets, and also cross off an equal number of names of the candidates for such office on his party ticket; but if such elector shall not have crossed off the names of an equal number of candidates for such office on his party ticket, he shall be deemed to have crossed off the name of each candidate for such office which is printed on his party ballot opposite the name of the candidate on some other party ticket in front of which name he has made a cross (x);

—(d) To vote for a candidate not on any ticket, the elector should write or place the name of such candidate on his ticket opposite the name of the office and make a cross (x) in the circle under the party name;

—(e) A ticket marked with a cross (x) in a circle under a party name shall be deemed a vote for each of the candidates named in such party column whose name is not crossed off, except those candidates where a cross (x) is placed in the square before the name of some opposing candidate on another ticket, or where there is written or pasted on the party ticket a name which is not printed on any party ticket;

—(f) If the name of any person who is not a candidate on any ticket is written or placed on the party ticket opposite the name of the office and there is a cross (x) in the circle under the party name, the name so written or placed shall be counted 1 vote for such

*Delete*



person, whether the original name on the party ticket is erased or not, excepting cases where there is a cross (x) in the square before the name of some opposite candidate on some other party ticket;

—(g) If no cross (x) is placed in the circle under the party name, a cross (x) in the square before the name of any candidate shall be deemed a vote for such candidate except in cases where the elector votes for more candidates for the same office than are to be elected; and

—(h) Such elector shall indicate his preference on any constitutional amendment or other submitted question by making a cross (x) in the square opposite the word "Yes" or in the square opposite the word "No" opposite or below such question on the proper ballots.

#### R 168.925 Challenged B-ballots counted or rejected for recount under protest; appeals.

Rule 25. (1) Any ballot counted or rejected for recount by the recount clerk under protest made by any interested party's representative shall be identified by a numbered exhibit card stapled to the challenged ballot. Upon completion of the recount of all ballots in a precinct, all challenged ballots shall be presented to the board of county canvassers for its decision. Representatives of each interested party shall be afforded an opportunity to submit authorities and argument to the board of county canvassers for counting or rejecting each such challenged ballot and to make a full and complete stenographic record thereof, including the decision of the board of county canvassers and its grounds therefor. Any interested party who considers himself aggrieved by the decision of the board of county canvassers may at the time the decision is rendered appeal such decision to the representatives of the board of state canvassers in the same manner as hereinabove provided for presenting challenged ballots to the board of county canvassers. An interested party may make a challenge to the board of county canvassers of a determination to count or not count a specific vote on a ballot for a candidate or for or against a ballot question subject to the recount.

(2) The decisions of the board of county canvassers may be confirmed, set aside, or modified by the representative of the board of state canvassers. Any challenged ballot counted or rejected for recount must be identified by a numbered exhibit card *or envelope* logically associated with the challenged ballot.

(3) At the conclusion of the recount in the several counties, the board of state canvassers shall notify each interested party that such county recounts have been completed. Such notice shall be by registered mail, return receipt demanded, at the address furnished to the secretary of state by the interested parties. The board of canvassers shall keep a record of the challenge, and representatives of all interested parties shall be afforded an opportunity to make a full and complete record of challenges to the proceedings.

(4) The decisions of the representatives of the board of state canvassers may be confirmed, set aside, or modified by the board of state canvassers upon review by written petition therefor, setting forth the grounds in detail by any interested party or upon its own motion. Such petition shall be filed with the board of state canvassers not later than 5 days after the mailing of the notice above provided for, Saturdays, Sundays, and legal holidays excluded. After the recount of all ballots in a precinct, but before the recount proceeding itself is completed, all challenged ballots must be presented to the board of county



canvassers, which will hear arguments on the challenge and decide whether to accept or reject the challenge.

(5) ~~Challenged ballots shall not be disposed of as provide in R 168.929, but shall be placed in envelopes provided by the board of county canvassers for that purpose. The contents of such envelopes shall be identified as required on forms provided by the board of state canvassers. Such envelopes shall be sealed with a state election seal, initialed by at least 2 members of the board of county canvassers and delivered to the county clerk for safekeeping. An interested party can appeal the decision of the board of county canvassers to the representative of the board of state canvassers, who may confirm, reject, or modify the decision of the board of county canvassers.~~

(6) An interested party can petition the board of state canvassers for a de novo review of the decision of the representative of the board of state canvassers. The petition for de novo review must be filed before the completion of the recount by the board of county canvassers and specify the substance of the challenge and request a de novo review by the board of state canvassers.

(7) The board of state canvassers shall accept petitions for a de novo review only for 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.

(8) Once the board of state canvassers receives a petition for de novo review its representative shall make an exhibit detailing the resolution of the challenge that includes the ballot, which must be securely sealed in an exhibit envelope and retained by the board or its representative. The representative shall provide the clerk responsible for the election with a receipt for the ballot that is subject to challenge.

(9) In the same manner that notice of the recount was given under section 868 of the act, MCL 168.868, the board of state canvassers shall notify all interested parties of the date of the meeting where the board of state canvassers will consider the petition for a de novo review.

(10) The interested parties are allowed to present oral and written arguments on the challenges at the meeting where the board of state canvassers will consider the petition. The arguments presented to the board of state canvassers must be limited to arguments made to the board of county canvassers.

(11) The board of state canvassers shall hear and rule on the challenge at the meeting only if the total number of challenges submitted to it could change the result of the election.

(12) The board of county canvassers or the representative of the board of state canvassers may determine a challenge is frivolous. If a challenge is determined to be frivolous, the board of state canvassers may decline to consider the challenge. A challenge may only be determined to be frivolous if any of the following apply:

(a) The challenge is based on a procedure already approved by the board of state canvassers.

(b) The challenge is not related to the tabulation of a specific, individual ballot.

(c) The observer does not provide an explanation for the challenge.

(d) The observer issues multiple challenges at 1 time or otherwise issues challenges designed to delay or interfere with the recount.

R 168.925a Ballot bags used in lieu of ballot packages; references; tags. Rescinded.

*appeal*



~~Rule 25a. Where ballot bags are used in lieu of ballot packages, all references to ballot packages shall be deemed to include ballot bags, except that references to seals shall be to metal rather than paper seals.~~

#### GENERAL PROVISIONS

R 168.925b Withdrawal of petition; discontinuance of recount.

Rule 25b. (1) ~~If the person individual petitioning for a recount shall withdraws his-the petition or discontinues the recount before the its completion, of the recount of the precincts for which he petitioned, then in such event the original return shall be is deemed determined to be correct regardless of any change shown by the recount of the precincts. he or the counter petitioner petitioned to be recounted. In the event of such withdrawal by the petitioner, it shall not be It is not necessary for the any counter petitioner to withdraw or ask for a discontinuance after a petitioner withdraws.~~

(2) ~~If the counter petitioner for a recount shall withdraws his-the petition or discontinues the recount of the precincts he petitioned to have recounted, then the original returns for all precincts for which he requested a recount shall be involved are determined deemed to be correct regardless of any changes shown by the recount at the time of the withdrawal. A counter petitioner shall not be permitted-allowed to withdraw if all precincts for which he-the counter petitioner petitioned have been recounted. In the event that If a counter petitioner withdraws, the recount as to the-of precincts petitioned for by the original petitioner shall must continue until the completion thereof or until such time as he-the original petitioner withdraws.~~

(3) All withdrawals must be in writing signed by the petitioning party.

R 168.926 ~~Candidate and petitioner representatives; identification. Rescinded.~~

~~Rule 26. Each candidate for the office or offices the votes for which are being recounted and each of the petitioners in case of a recount of a proposition shall be entitled to have present at the recount not to exceed 1 representative for every table at which ballot boxes are being opened or ballots recounted, and for every voting machine which is being recounted and not to exceed 1 watcher and tallier at each such table and voting machine provided for in R 168.907 and R 168.916 hereof. Every such representative shall be furnished written identification by the candidate he represents, or the candidate's political party, or by the proponents or opponents of a proposition whom he represents.~~

R 168.927 Public observance of recounts; handling of ballots.

Rule 27. (1) ~~Provision shall be made for public observance of the conduct of recounts. The recount must be open to the public for observation, but the public shall not be is not allowed within the confines of the actual working area; and no individual may vocally or otherwise disturb the recount staff or interfere with the recount process, nor shall vocal or other disturbance of the recount staff by the public be permitted. Violation of this rule results in removal from the recount area by law enforcement.~~

(2) Only the recount staff, the county board of canvassers, the state board of canvassers or its representative, or a clerk responsible for maintaining the custody of election materials may handle ballots. No member of the public, observer, candidate



or the candidate's representative, or a representative of a ballot question committee may touch or otherwise handle a ballot or other election materials.

R 168.928 Designated representative of board of state canvassers.

Rule 28. (1) The board of state canvassers may designate 1 or more representatives in each county or recount center to supervise in its behalf the conduct of recounts on the board of state canvasser's behalf, as above set forth.

(2) In those counties designated by the board of state canvassers, at least 1 such representative shall be on duty at all times and the decisions of the representative on duty shall prevail. The representative of the board shall be an employee of the department of state, a county clerk, or a staff member of the county clerk, and must have knowledge and experience in conducting a recount.

(3) In those counties so designated by the board of state canvassers, at least 2 representatives shall be on duty at all times and any 2 representatives concurring shall have the power to make decisions. In any such county designated by the board of state canvassers, such representatives shall be divided into teams of 3 representatives each, 1 such team to be on duty at all times and a majority decision of the team shall prevail. If more than 1 representative is present at a recount, the representatives present shall designate a lead representative.

R 168.929 Completion of recount; procedure.

Rule 29. (1) Upon completion of the recount of any precinct, all ballots shall must be properly wrapped by the recount clerk with a statement of the number and kind of ballots included in each such package, and placed in the voting machine or ballot box container. The ballot boxes containers and voting machines shall must then be properly locked and the ballot boxes sealed with a state seal to be supplied by the board of state canvassers, and delivered, together with the lock keys, to the respective officers having the care and custody thereof. The ballot containers must be returned to the officers charged with their care and custody under R 168.902. The recount staff shall record the new seal number on the ballot container certificate.

(2) At the conclusion of the recount, the board of state canvassers shall notify each interested party that the recount is complete. The board of state canvassers shall provide notice by mail or email.

R 168.930 Certificate of recount results.

Rule 30. The results of the recount for each county shall must then be entered upon a certificate provided for that purpose by the board of state canvassers, signed by the board of county canvassers and representative of the board of state canvassers. The county clerk shall certify that the individuals persons signing the certificate as members of the board of county canvassers are such members of that county. The certificate shall must then be forthwith delivered to the board of state canvassers at Lansing, Michigan, which shall then compile said the returns from each county and certify the result.