

INCREASE FEES FOR ELECTION RECOUNTS

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Senate Bill 290 (H-1) as reported from House committee

Sponsor: Sen. David Robertson

House Committee: Elections and Ethics

Senate Committee: Elections and Government Reform

Complete to 10-30-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 130 of 2018)

BRIEF SUMMARY:

Senate Bill 290 would amend two sections of the Michigan Election Law that pertain to state and local election recounts. It would raise the per-precinct deposit fee to be paid by a petitioner for a recount from \$125 to \$250 if the recount is unlikely to reverse the election result.

FISCAL IMPACT:

The bill would have no direct fiscal impact to the Department of State and a potentially significant fiscal impact to county governments to the extent that the bill actually either deters a recount being petitioned by a candidate separated from the winning candidate by more than 75 votes or more than 5.0% of the total number of votes cast, whichever is greater, or reimburses counties at the higher rate if such a recount does occur. (See *Fiscal Information*, below, for a more detailed analysis)

THE APPARENT PROBLEM:

In 2016, Green Party presidential candidate Jill Stein requested a recount of ballots in Michigan, even though she received approximately 1.07% of the vote in the state. Because she was separated from the winner by more than 0.5% of the votes cast, she would have had to pay \$973,250 for the recount of Michigan's 7,786 precincts, with the state picking up the remainder of the approximately \$2 million cost of the recount. Some believe that candidates with no viable chance of winning the election should be required to bear more of the cost of a requested recount.

THE CONTENT OF THE BILL:

Current law provides for a candidate or elector to file a recount petition with the appropriate board of county canvassers clerk (for local elections) or State Bureau of Elections (for state elections). Additionally, the petitioner must deposit \$25 for each precinct for which a recount is requested. If, however, the number of votes separating the presumptive winner and the petitioner is more than 50 votes or 0.5% of the total number of votes cast in the race, whichever is greater, the petitioner must deposit \$125 for each precinct.

The bill would add an additional tier of fees—\$250 per precinct—when the number of votes between the presumptive winner and the petitioner is more than 75 votes or 5.0% of

the total number of votes cast. It would also provide that, if more than one candidate is to be elected to the office, the petitioner must deposit \$250 if the number of votes for the presumptive winner with the least votes and the petitioner is more than 75 votes or 5.0% of the sum of the number of votes received by the two candidates.

Now and under the bill, if the precinct referred to in the petition is determined “not recountable,” or is not recounted because the petition is withdrawn, then the money deposited for the recount would be refunded to the petitioner. However, if a petition is withdrawn after the votes cast in a precinct have been recounted, then the deposit would not be refunded.

MCL 168.867 and 168.881

HOUSE COMMITTEE ACTION:

As introduced, the bill applied the third tier of fees only when the percentage differential between the presumptive winner and petitioner was more than 5.0% of the total number of votes cast. The House Elections and Ethics committee adopted an (H-1) substitute, which would apply those fees either when the winner and petitioner are separated by 5.0% of the total or 75 votes, whichever is greater. This change was made out of a concern that, in local elections, the number of votes is so low that “more than 5.0%” could represent only a few votes (for example, 6 votes if 100 are cast), and trigger the higher fees at a higher rate than was intended. Reportedly, this amendment was introduced at the Secretary of State’s suggestion.

BACKGROUND INFORMATION:

The fee schedule for these recounts was last amended by Public Act 406 of 2014 (House Bill 4833).¹ At that time, the precinct deposit fee had not been raised since the fee was set at \$10 per precinct in 1963. Consequently, PA 406 raised the deposit fee to \$25 and created a second tier of recount fees—\$125 per precinct—if the winner and loser (as determined by the official canvass of votes) were separated by more than 50 votes or 0.5% of the total number of votes cast, whichever was greater.

Senate Bill 290 would create a third tier of recount fees when the number of votes between the presumptive winner and the candidate seeking a recount is still greater—more than 75 votes or 5.0%.

FISCAL INFORMATION:

The amount of potential savings to counties would vary significantly according to the size of the recount and the conditions in which it is conducted. For example, a machine recount of 10,000 ballots conducted under lenient time restraints would have significantly lower costs per county than a statewide hand recount of 4.8 million ballots under demanding time

¹ House Fiscal Agency analysis for HB 4833: <http://www.legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-4833-15B79AE2.pdf>

requirements. This latter scenario resembles the recount that would have occurred in the 2016 Presidential recount petitioned by Presidential candidate, Jill Stein.

Assuming a recount similar to the recount petitioned for the 2016 Michigan Presidential election occurred again, it would result in an estimated total statewide county savings of \$973,000 for an estimated average county savings of \$11,700. This is calculated by multiplying the additional \$125 per precinct by Michigan's 7,786 precincts. This number includes absentee precincts. The remaining total statewide cost to counties would be an estimated \$1.3 million with an average estimated county cost of \$15,200. These estimates are based on final reported costs of Wisconsin's completed statewide Presidential recount which was carried out using counts performed both by hand and optical scanner machines. The estimate is adjusted according to the difference between the states in the numbers of ballots cast.

ARGUMENTS:

For:

Presumably, the variation in fees is intended to deter petitioners from filing frivolous recount petitions, with taxpayers picking up much of the bill. As the number of votes between the likely winner and loser grows, the likelihood that the result will be reversed following a recount shrinks. While the citizenry has an interest in ensuring that close elections are resolved correctly, its interest in recounting ballots in lopsided elections may be less so; accordingly, some feel that the petitioner should bear a larger portion of costs in that case.

Against:

No one testified or voted against the bill in committee.

POSITIONS:

Representatives of the Michigan Association of Municipal Clerks and Council of Election Officials testified in support of the bill. (10-5-17)

The Michigan Townships Association supports the bill. (10-5-17)

A representative of the Michigan Secretary of State testified and indicated a neutral position on the bill. (10-5-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.