



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 290 (as enacted)
Sponsor: Senator Dave Robertson
Senate Committee: Elections and Government Reform
House Committee: Elections and Ethics

PUBLIC ACT 130 of 2018

Date Completed: 2-1-19

RATIONALE

Generally, the Michigan Election Law requires a candidate filing a recount petition to deposit with the clerk of the board of county canvassers or the State Bureau of Elections \$25 for each precinct referred to in his or her recount petition, or \$125 per precinct if the petitioner lost the election by more than 50 votes or 0.5% of the total votes cast. Reportedly, the required amount did not substantially cover the many incidental costs of an election recount. In close elections, winners and losers are separated by a few votes and a recount may be necessary to assure a fair and accurate outcome. However, some believed that recount petitions were sometimes filed for frivolous reasons or requested by people angry with the election outcome, and that the burden of the cost of a recount that has virtually no chance of success should not fall to the taxpayers. To address this concern, it had been suggested that a higher fee should be charged when there is a relatively wide margin between the winning candidate and the person requesting a recount.

CONTENT

The bill amended the Michigan Election Law to require the petitioner of an election recount to deposit with the clerk of the board of county canvassers or the Elections Bureau \$250 per precinct under the following circumstances:

- **If one candidate is to be elected and the number of votes separating the winning candidate and the petitioner is more than 75 votes or 5.0% of the total number of votes cast in an election, whichever is greater.**
- **If more than one candidate is to be elected and the number of votes separating the winning candidate who received the least number of votes and the petitioner is more than 75 votes or 5.0% of the total number of votes cast in the election, whichever is greater.**

The bill took effect on August 1, 2018.

Under the Law, if a candidate for office believes that he or she is aggrieved due to fraud or mistake in the canvass or returns of the votes by the election inspectors, the board of county canvassers or the Board of State Canvassers, the candidate may petition for a recount of the votes cast for that office in any precinct or precincts.

The petitioner must file the petition with the clerk of the appropriate board of county canvassers, or with the State Bureau of Elections, depending on the election and the recount sought. Previously, at the time of filing, the petitioner was required to deposit \$25 for each precinct referred to in the petition.

If one candidate was to be elected and the official canvass of votes showed that the number of votes separating the winning candidate and the petitioner was more than 50 votes or 0.5% of the

total number of votes cast, whichever was greater, the petitioner was required to deposit \$125 for each precinct referred to in his or her petition. For the purposes of this provision, "the winning candidate" in a primary for a nonpartisan office where only one candidate is to be elected means the candidate nominated with the lesser number of votes.

Under the bill, if one candidate is to be elected to the office and the official canvass of votes showed that the number of votes separating the winning candidate and the petitioner is more than 75 votes or 5.0% of the total number of votes cast in the race, whichever is greater, the petitioner must deposit with the clerk or the Elections Bureau \$250 for each precinct referred to in his or her petition. For the purposes of this provision, "the winning candidate" in a primary for a nonpartisan office where only candidate is elected means the candidate nominated with the lesser number of votes.

Previously, the petitioner was required to deposit \$125 for each precinct referred to in the petition if more than one candidate was to be elected and the official canvass showed that the number of votes separating the winning candidate who received the least number of votes and the petitioner was more than 50 votes or 0.5% of the sum of the number of votes received by the two candidates, whichever was greater.

Under the bill, if more than one candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate who received the least number of 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, whichever is greater, the petitioner must deposit with the clerk or the Elections Bureau \$250 for each precinct referred to in his or her petition.

MCL 168.867 & 168.881

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The recounts that took place in Michigan following the 2016 presidential election showed that the previous structure of fees was too low to adequately pay for the costs of a recount. These costs often include paying for the trucking of ballots to different locations within a county and renting facilities able to accommodate the recount process. Additional expenses include the costs of overtime, travel, and security. According to the Secretary of State, there is no way of knowing how much an election recount will cost in advance.¹ After the 2016 presidential election, Jill Stein, the Green Party candidate who received less than 2.0% of the vote in Michigan, requested a recount of the State's ballots. The Michigan Election Law would have required her to pay \$973,250 to cover the \$125 per-precinct fee and the cost of absentee ballot precincts; however, the Secretary of State estimated that the actual cost of the recount would have been almost \$2.0 million.² According to the Michigan Elections Director, the taxpayer at the county level would bear any cost beyond the \$125 per precinct, which was estimated to amount to an \$827,000 tax burden.³ According to the Midland County Clerk, Midland County anticipated about \$5,600 in reimbursement from the State but expected the actual costs to be about \$10,000.⁴ (Ultimately, the recount requested by Stein was not performed.) The bill creates a third tier in the fee structure to protect taxpayers from the cost of election recounts that have little or no chance of changing the election results, regardless of the petitioner's motivation. The higher per-precinct fee may deter some would-be petitioners or generate additional revenue to cover the recount costs.

¹ Egan, Paul, "Michigan Presidential Recount Could Cost Taxpayers Nearly \$1M", *Detroit Free Press*, 11-29-2016.

² Livengood, Chad, "GOP Warns Recount Puts Michigan's Electors At Risk", *Detroit News*, 11-29-2016.

³ Egan, n. 1.

⁴ Egan, n. 1.

FISCAL IMPACT

The bill will have no impact on the Department of State and a positive indeterminate impact on local units of government. Recount costs to local units are affected to the extent that the \$250 per precinct fee deters recounts, and will bring in additional revenue for those still requested.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.