



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 290 (as passed by the Senate)
Sponsor: Senator Dave Robertson
Committee: Elections and Government Reform

Date Completed: 5-23-17

RATIONALE

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. Evidently, the required amount does 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 believe that recount petitions are 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 has 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 would amend 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 were to be elected and the percentage differential separating the winning candidate and the petitioner were more than 5.0% of the total number of votes cast in an election.**
- If more than one candidate were to be elected and the percentage differential separating the winning candidate who received the least number of votes and the petitioner were more than 5.0% of the total number of votes cast in the election.**

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. At the time of filing, the petitioner must deposit \$25 for each precinct referred to in the petition.

If one candidate is to be elected and the official canvass of votes shows that the number of votes separating the winning candidate and the petitioner is more than 50 votes or 0.5% of the total number of votes cast, whichever is greater, the petitioner must 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 candidate will be elected means the candidate nominated with the lesser number of votes.

Under the bill, if one candidate were to be elected to the office and the official canvass of votes showed that the percentage differential separating the winning candidate and the petitioner was more than 5.0% of the total number of votes cast in the race, the petitioner would have to 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 would be elected would mean the candidate nominated with the lesser number of votes.

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

Under the bill, if more than one candidate were to be elected to the office and the official canvass of votes showed that the percentage differential separating the winning candidate who received the least number of votes and the petitioner was more than 5.0% of the sum of the number of votes received by the two candidates, the petitioner would have to deposit with the clerk or the Elections Bureau \$250 for each precinct referred to in his or her petition.

The bill would take effect 90 days after its enactment.

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 current structure of fees is 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 required her to pay \$973,250 to cover the \$125 per-precinct fee and the cost of absentee ballot precincts. The Secretary of State estimated that the actual cost of the recount would be 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 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 The bill would create 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 could deter some would-be petitioners or generate additional revenue to cover the recount costs.

Legislative Analyst: Nathan Leaman

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

Fiscal Analyst: Joe Carrasco

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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.