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Senate Bills 603 and 604 (as introduced 10-24-23)  
Sponsor: Senator Stephanie Chang (S.B. 603)  
Senator Jeremy Moss (S.B. 604)  
Committee: Elections and Ethics

Date Completed: 3-11-24

## **INTRODUCTION**

The bills would modify the election recount process at the municipal and statewide level. Generally, they would increase current filing deposit amounts for all recounts and introduce a new deposit for recounts of ballot questions. They would require the Secretary of State (SOS) to adjust these deposit amounts using the Consumer Price Index beginning January 1, 2027, and every four years after. They also would prescribe standard forms for recount and counter petitions for candidates and ballot questions and require a petition or counter petition to be filed within 48 hours of an election's certification or the filing of the original petition, respectively. Under the bills, a candidate for office, a ballot question committee, or an elector concerned with a ballot question in an election for which no ballot question committee was present could request a recount only on account of an *error* in the canvass or return of votes.

The bills would require any recount conducted under the direction, supervision, and control of the Board of State Canvassers (the Board) to be conducted in the same manner as provided for a recount conducted by a board of county canvassers. They also would expand the circumstances under which an automatic recount would have to be conducted. Finally, they would apply a felony charge for *any officer, assistant, clerk, or employee* engaged in the conduct of a recount who willfully interferes with a recount of the votes to *any individual* who willfully interfered with a recount or activities relating to a recount.

## **FISCAL IMPACT**

Senate Bill 603 could have a fiscal impact on the Department of State (DOS) and an indeterminate fiscal impact on local units of government. Recount costs to local governments would be affected to the extent that the increased fees could deter recount requests. Conversely, any additional revenue from the increased fees for requested recounts could still be insufficient to cover the actual cost of a recount. There could be costs for additional State and county canvassers meetings. According to the DOS, a State Canvassers meeting can run as high as \$3,000 per meeting. The actual costs for locals vary by jurisdiction. The impact on the State and local units of government would depend on the number of recounts and the success in overturning an election resulting from that recount.

Senate Bill 604 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions. The bill would have no fiscal impact for local courts.

MCL 168.842 et al. (S.B. 603)  
777.11d (S.B. 604)

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## **CONTENT**

**Senate Bill 603 would amend Chapter XXXIII (Recounts) of the Michigan Election Law to do the following:**

- Increase per-precinct filing deposit amounts for municipal and State-level recount petitions.
- Require the SOS, beginning January 1, 2027, and every four years after, to adjust recount filing deposits according to the Consumer Price Index.
- Modify refund requirements to allow a petitioner or counter petitioner to be refunded a deposit based on whether the result of an election was changed.
- Allow a candidate for office, a ballot question committee, or an elector concerned with a ballot question in an election for which no ballot question committee was present, to request a recount only on account of an error in the canvass or return of votes.
- Prescribe forms for a candidate petition for a recount, a candidate counter petition for a recount, a ballot question committee petition for a recount, and a ballot question committee counter petition.
- Require recount petitions and counter petitions to be filed within 48 hours of the certification of the canvass by the board of county canvassers or the filing of the original petition, respectively.
- Modify the circumstances under which a recount could not be conducted; however, if an explanation of ineligible circumstances in a sworn affidavit were provided to the board of county canvassers, a recount could still be conducted.
- Modify the process of a recount to allow two individuals at each table to check the work of recount clerks, instead of just one watcher and one tallier, among other modifications.
- Allow a recount to be conducted in an alternative manner if the Board approved.
- Require any recount conducted under the direction, supervision, and control of the Board to be conducted in the same manner as provided for a recount conducted by a board of county canvassers.
- Modify the requirements and timeline for a State-level recount petition and counterpetition.
- Expand the circumstances under which an automatic recount would have to be conducted, based on vote differential.
- Apply a felony charge for any officer, assistant, clerk, or employee engaged in the conduct of a recount who willfully interferes with a fair and impartial recount of the votes cast for a contested office, amendment, or proposition at the local or State level to *any* individual who willfully interfered with a recount or activities relating to a recount.
- Repeal Sections 871a, 877, 885, 886, and 891 of the Michigan Election Law; however, the bill would recodify the contents of these Sections elsewhere in the Michigan Election Law, where they would remain in effect.

**Senate Bill 604 would amend the sentencing guidelines in the Code of Criminal Procedure to reflect changes proposed by Senate Bill 603.**

The bills are tie-barred. Senate Bill 603 is described in greater detail below.

All recounts in the State would have to be conducted under the procedures described in the bill. The bill would delete language that conflicted with or was overridden by its contents.

## Petition Deposits

Upon filing a recount petition, a petitioner must pay to the clerk for a municipal recount or to the State Bureau of Elections for a State-level recount a deposit for each precinct referred to in the petition. Generally, for precincts in which the vote differential between the petitioner and the winning candidate is fewer than 50 votes, or 0.5% of the total number of votes cast, this fee is \$25. The bill would increase this fee to \$50 per precinct.

For precincts in which the vote differential is greater than 50 votes, or 0.5% of the total number of votes cast, the deposit is more expensive and varies based on the type of election and the margin of the vote differential. The winning candidate in a primary for a nonpartisan office in which only one candidate is elected is the candidate nominated with the lesser number of votes. The bill would increase the filing deposits for elections with only one winning candidate as follows:

<b>Vote differential</b>	<b>Original Fee (per precinct)</b>	<b>Proposed Fee (per precinct)</b>
More than 75 votes or 5% of the total votes cast, whichever is greater	\$250	\$300
More than 50 votes or 0.5% of the total votes cast, whichever is greater	\$125	\$250

For elections in which more than one candidate is elected to assume office, the vote differential is the number of votes separating the winning candidate who received the least number of votes and the petitioner. The bill would increase the filing deposits for elections with multiple winning candidates as follows:

<b>Vote differential</b>	<b>Original Fee (per precinct)</b>	<b>New Fee (per precinct)</b>
More than 75 votes or 5% of the sum of the number of votes received by the two candidates, whichever is greater	\$250	\$300
More than 50 votes or 0.5% of the sum of the number of votes received by the two candidates, whichever is greater	\$125	\$250

If the vote is on a proposition, which the bill refers to as a ballot question, and the official canvass of votes shows that the number of votes separating the "yes" votes and the "no" votes is more than 50 votes or 0.5% of the total number of votes cast on the ballot question, whichever is greater, the petitioner must deposit with the clerk or State Bureau of Elections the sum of \$125 per precinct referred to in the petition. The bill would increase this deposit to \$250.

Additionally, the bill would prescribe a new deposit. If the vote were on a ballot question and the official canvass of votes showed that the number of votes separating the "yes" votes and the "no" votes was more than 75 votes or 5% of the total number of votes cast on the ballot question, whichever was greater, the petitioner would have to deposit with the clerk or the State Bureau of Elections the sum of \$300 for each precinct referred to in the petition.

Beginning January 1, 2027, and every four years after, the SOS would have to adjust these deposit amounts by comparing the percentage increase or decrease in the Consumer Price Index for the preceding August by the corresponding Consumer Price Index four years earlier.<sup>1</sup> The SOS would have to multiply that percentage change by each deposit amount. It also would have to round up each dollar value adjustment made to the nearest \$10. The SOS would have to announce the adjustments made by December 15 of each year in which an adjustment was made.

Currently, if, by reason of the recount, a petitioner establishes fraud or mistake as set forth in the recount petition to change the result of the election and receives a certificate of election, or establishes sufficient fraud or mistake to change the result upon an amendment or ballot question, the votes for and against which were recounted, the clerk of the board of county canvassers or the State Bureau of Elections must refund the money deposited to the petitioner. Under the bill, a petitioner would have to be refunded if the petitioner established sufficient *error* to change the result of an election. The bill would define "change the result of an election" as electing a different candidate or resulting in an opposite outcome for the ballot question.

The clerk of the board of county canvassers or the SOS must refund to a counter petitioner the money deposited by the counter petitioner if the *original* petitioner failed to establish fraud or receive a certificate of election. The bill would modify this requirement to allow a counter petitioner to be refunded only if the recount did not change the result of an election.

#### Certification by Boards of County Canvassers

The bill would authorize a board of canvassers to conduct postcertification recounts of election results. Generally, boards of county canvassers conduct recounts for elections of county, city, township, village, and school offices, probate judges in single county districts and municipal court judges, and ballot proposals.

Any proceeding intended to restrain, enjoin, modify, control, reverse, or otherwise interfere with the action of a board of county canvassers or any representative operating under the supervision of a board of county canvassers could be instituted only against the board of county canvassers and only by mandamus.<sup>2</sup>

#### Municipal Recount Petitions and Counter Petitions

Generally, a candidate for office who believes the candidate is aggrieved on account of fraud or mistake in the canvass or returns of the votes by the election inspectors may petition for a recount of the votes cast for that office in any precinct or precincts.<sup>3</sup> Under the bill, a candidate could seek a recount only on account of an *error* in the canvass or returns of votes.

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<sup>1</sup> "Consumer Price Index" would mean the most comprehensive index of consumer prices available for the State from the Bureau of Labor Statistics of the United States Department of Labor

<sup>2</sup> Generally, a writ of mandamus is an order from a court to a lesser government official or other body ordering the official or body to fulfill its obligatory or statutory duties.

<sup>3</sup> The bill would define "precinct" as an election day precinct, an absent voter counting board, an election day vote center, or an early voting site.

If a candidate for office filed a recount petition, that candidate would have to file in good faith and the number of votes requested to be recounted would have to, at a minimum, be greater than the difference in votes between the petitioning candidate and the winning candidate.

If a ballot question committee participated in an election in which there was a ballot question on the ballot and that committee believed that, but for error, the outcome of the ballot question would have been the opposite result, that ballot question committee could file a recount petition of the votes cast on that ballot question in any precinct. If the ballot question committee filed a recount petition, that ballot question committee would have to file in good faith and the number of votes requested to be recounted would have to, at a minimum, be greater than the difference between the "yes" votes and the "no" votes on the proposed ballot question. If a ballot question committee did not participate in an election in which there was a ballot question on the ballot, any elector who voted in that election could file a recount petition concerning that ballot question in the same manner as provided for a ballot question committee, which the bill provides.

The bill would replace current provisions for a candidate petition for a recount by prescribing forms for a candidate petition for a recount, a candidate counter petition for a recount, a ballot question committee petition for a recount, and a ballot question committee counter petition. Generally, the forms would require a petitioner to indicate the precincts requested for recount and provide the appropriate deposit. The bill would require the SOS to modify the ballot question committee petition for a recount and a counter petition as appropriate to allow an elector to file either petition.

Currently, recount petitions must be filed with either the SOS or the clerk of the board of county canvassers that originally conducted the canvass within six days after the original canvass has been completed. Instead, the bill would require recount petitions to be filed within 48 hours of the certification of the canvass by the board of county canvassers. It also would delete a provision requiring a copy of the recount petition to be filed with the SOS within two days after the time the original recount petition was filed with the board of county canvassers.

If a petitioner files a recount petition and pays the required deposit (see Recount Petition Deposits), the clerk of the board of county canvassers must give notice of the recount petition to the opposing candidates, or, under the bill, if applicable, ballot question committees, within 24 hours after the filing of the recount petition. Current statute provides that a copy of the recount petition must be delivered to each candidate or, if the candidate cannot be found, by leaving a copy at the candidate's last known place of residence with a member of the candidate's immediate family of suitable age. If a member of the candidate's family cannot be found, the clerk of the board of county canvassers may give notice by posting the recount petition in a conspicuous place at the candidate's last known place of residence. The bill would delete these delivery requirements. Instead, a clerk would have to email a copy of the recount petition to each applicable candidate or ballot question committee. Failure of the clerk of the board of county canvassers or the SOS to give notice to the opposing candidate does not affect the results of the recount; the bill would apply this provision to ballot question committees.

On or before 4 PM of the seventh day after a recount petition has been filed, an opposing candidate may file objections to the recount petition with the appropriate board of county canvassers. The bill would require counter petitions to be filed within 48 hours after the filing of a recount petition. Additionally, it would delete a provision requiring a counter petitioner to file a copy of the counter petition with the SOS within four days after the time the original petition was filed with the appropriate board of county canvassers.

Currently, if the time designated for filing a recount petition falls on a Saturday, Sunday, or legal holiday, the recount petition may be filed on the next succeeding business day; the bill would apply this provision to counter petitions.

Under the bill, a candidate, ballot question committee, or elector could withdraw a recount petition or counter recount petition at any time.

### Municipal Recounts

The clerk of the board of county canvassers may call a meeting to commence a recount if the board determines, by communicating with the SOS, that a petition has not been filed requesting a recount by the Board of ballots cast in the same district. Under the bill, the SOS would have to determine the form and manner of this communication.

Current statute grants boards of county canvassers conducting a recount the power to issue subpoenas requiring the person in charge thereof to bring before the board the ballot boxes used in the election precinct or precincts referred to in the petition, as well as the poll lists, tally sheets, statements of returns, and such other documents or reports as deemed necessary. The bill would instead require the individual in charge of the ballot containers for each precinct referred to in the petition and individuals in charge of other necessary election material to bring these materials to the board *upon the board's request*. Only if an individual in charge of ballots, ballot containers, or election materials failed to deliver those materials to the board could the board subpoena that individual to compel their delivery. If a subpoenaed individual fails to comply, the individual is guilty of a misdemeanor.

Individuals who are required to appear before the board of canvassers must be paid the same fees and mileage as are paid circuit court witnesses in the county. The bill would delete a provision specifying that the political subdivision before whose board of canvassers the individuals appear must pay them.

The bill would amend the circumstances under which a recount could *not* be conducted. For example, a recount may not be conducted if 1) the seal on the transfer case or other ballot container is broken or bears a different number than that recorded on the poll book, 2) the breaking or discrepancy is not explained to the satisfaction of the board of canvassers, and 3) the security of the ballots has not been otherwise preserved. The bill would apply this provision to a ballot container certificate and a statement of results.

If the number of ballots to be recounted and the number of ballots issued on election day as shown on the poll list or the computer printout do not match and the difference is not explained to the satisfaction of the board of canvassers, a recount may not be conducted. The bill would update this language to include the number of ballots issued during early voting. Additionally, it would apply the provision to the number of ballots tabulated as shown on the tabulator tape and the number of ballots cast as shown by the county canvass, replacing reference to the computer printout (of an electronic voting machine).

Currently, if the seal used to seal the ballot label assembly to a voting device in the precinct is broken or bears a different number than that recorded in poll records and the ballot labels or rotation of candidates' names is different than that shown by other voting devices in the precinct and records of the board of election commissioners, a recount may not be conducted. The bill would delete this provision.

These provisions do not prohibit the recounting of absent voter ballots tallied in a precinct using an absent voter counting board or in a precinct in which one or more voting machines

are recountable if the absent voter ballots are securely packaged and sealed. The bill would delete this provision.

Instead, under the bill, if a board of canvassers conducting a recount determined that the ballots of a precinct were not eligible for recount under these provisions, the board of canvassers conducting the recount could still conduct the recount if a satisfactory explanation in a sworn affidavit, in a form as prescribed by the Department of State, was provided to the board of canvassers. The SOS would have to prepare and issue instructions for a board of canvassers to follow when determining if an explanation in a sworn affidavit was satisfactory.

Additionally, under the bill, if the ballot container in which the ballots were stored was not approved by the board of county canvassers before the election, a recount could not be conducted. The board of canvassers would have to maintain a list of unapproved ballot containers and notify the appropriate clerk and the SOS of those unapproved ballot containers. If a board of canvassers conducting a recount determined that the ballots of a precinct were ineligible for a recount because of this, the board of canvassers conducting that recount could still conduct the recount if the board determined that the unapproved ballot container had been properly sealed and the container was intact so that ballots could not have been added to or removed from the ballot container.

The board of canvassers must conduct the recount so that the complete procedure may be observed and noted by the candidates or person interested in the ballot question, their counsel, and not to exceed one watcher and one tallier at each table to check the work of the recount clerks. Instead of one watcher and one tallier, the bill would allow two individuals at each table to check the work of the recount clerks.

The bill would delete the following requirements for the process of conducting a recount:

- The ballots from any given precinct must be counted and the total compared with the number of ballots issued on election day as shown on the poll list; if the first count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, the ballots from that precinct must be counted a second time and the total compared with the number of ballots issued on election day as shown on the poll list; if the second count of the number of ballots and the number of ballots issued on election day as shown on the poll list still do not match, those ballots cannot be recounted; if the second count of the number of ballots and the number of ballots issued on election day as shown on the poll list match, the ballots from that precinct must be counted a third time and the total compared with the number of ballots issued on election day as shown on the poll list; if the third count of the number of ballots and the number of ballots issued on election day as shown on the poll list do not match, those ballots cannot be recounted.
- If the first, second, and third counts match the number of ballots issued on election day, the ballots must be placed face up on the table and one recount clerk must call the votes for each candidate or ballot question involved in the recount.

Instead, under the bill, one recount clerk would have to call the votes for each candidate or ballot question involved in the recount. Two tally clerks would have to simultaneously record the called votes on forms provided for that purpose. A recount could be conducted in an alternative manner if approved by the Board. The candidates or ballot question committees, their counsel, and the other individuals present would have to be allowed to observe each ballot as it was called, challenge the tabulation of a ballot, and take notes as desired for recordkeeping purposes. The board of canvassers would have to identify by an exhibit number a ballot counted or rejected under challenge, keep a record of the challenge, and make a decision on all challenges before the conclusion of the recount.

If it appears to the board of canvassers conducting a recount that there is evidence of fraud, wrongdoing, or a violation of the election in question, the board must make a written report of their findings to the prosecuting attorney and to the circuit judge or judges of the county where the petitioner resides for a county, city, township or village election, and to the Attorney General (AG) and the circuit judge of Ingham county if it is a district or State election. The bill would remove the requirement that this written report be submitted to the circuit judge or judges of Ingham or another county. The SOS would have to receive all written reports.

Currently, the board of canvassers must carefully preserve and safeguard the ballots and ballot box containers until an order of the court, to which the report was submitted, is made authorizing the disposition of the same. Any action taken in such investigation does not preclude any official recount of the ballots cast at any such election, if otherwise allowed by the general election laws. The powers of investigation terminates with the completion of the recount. The bill would delete these provisions. Instead, the board of canvassers would have to preserve and safeguard the ballots and ballot box containers until directed by the prosecuting attorney or the AG.

#### Certification by the Board of State Canvassers

The Board has authority over recounts concerning all Statewide offices and ballot proposals, as well as for the offices of U.S. Senator and U.S. Representative in Congress. Under the bill, any recount currently under the jurisdiction of the Board (generally, Section 878 to Section 894 of the Michigan Election Law) would have to be conducted by the boards of county canvassers, subject to the direction, supervision, and control of the Board.

The bill would require any recount conducted under the direction, supervision, and control of the Board to be conducted in the same manner as provided for a recount conducted by a board of county canvassers.

The certification of any election result by the Board would be final and subject only to either of the following:

- A postcertification recount of the votes cast in that election that was supervised by the Board under the procedures described in the bill.
- A postcertification court order.

#### State-level Recount Petitions

A candidate voted for at a primary election for an office may petition the Board for a recount if the following requirements are met:

- The office is an office for which the votes are canvassed by the Board or is the office of Representative in Congress, State representative, or State senator for a district located wholly within one county.
- The candidate otherwise meets the requirements for a petition outlined previously (see Municipal Recount Petitions and Counter Petitions).
- The petition for a recount is filed not later than 48 hours following the adjournment of the meeting of the Board, during which the Board canvasses returns and determines the result of an election.<sup>4</sup>
- The petition is filed with the SOS.
- The petition is written or printed and is signed and sworn to by the candidate.

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<sup>4</sup> Generally, this meeting takes place at the office of the SOS on or before the twentieth day after an election.



The candidate would have to use the petition form prescribed by the bill. Additionally, the bill would delete the following requirements for a recount petition:

- The petition specifies the counties, cities, townships, and precincts in which the recount is requested.
- If the office is the office of State representative, a copy of the petition is filed with the Clerk of the House of Representatives.
- If the office is the office of State senator, a copy of the petition is filed with the Secretary of the Senate.

If a State senatorial race is determined by a vote differential of 500 votes or less or a State representative race is determined by a vote differential of 200 votes or less, the chairperson of a State political party may petition for a recount of the votes on behalf of a candidate in that race. This petition does not need to allege fraud or mistake. The bill would delete the latter provision. Additionally, the bill would amend a requirement that the Board send a report and certification of the results of a recount for a legislative office to the appropriate legislative body to apply only to Federal and State legislative offices.

Currently, the ballots in a precinct petitioned for recount in a legislative contest must be recounted for that office by the Board and preserved until the contest is disposed of under the rules of the legislative body that takes office beginning in January following the contested general election. In legislative recounts of a special general election, ballots in a precinct petitioned for recount must be preserved until the contest is disposed of under the rules of the legislative body serving at the time the required report is filed. The bill would delete this requirement.

If a ballot question committee that participated in a Statewide ballot question believed that, but for error, the outcome of the ballot question would have been the opposite, that ballot question committee could, not later than two days after the adjournment of the meeting of the Board, file a good faith recount petition with the SOS. The ballot question committee would have to use the petition form prescribed by the bill.

A candidate voted for at a primary election for an office or a ballot question committee that participated in a Statewide ballot question must file the petition with the State Bureau of Elections.

If a candidate has filed a recount petition and paid the required deposit, the SOS must give notice of the recount petition to each opposing candidate within 48 hours after the filing of the petition by delivering to each candidate a copy of the recount petition. The bill would apply this provision to ballot question committees and require the SOS to deliver a copy of a recount petition to each opposing candidate and ballot question committee within 24 hours. Additionally, it would delete a provision allowing the SOS to leave a copy of the petition at the candidate's last known place of residence with a member of the candidate's immediate family of suitable age if the candidate cannot be found or, if a member of the candidate's family cannot be found, by posting the recount petition in a conspicuous place at the candidate's last known place of residence.

A candidate may file a counter petition in the same manner as the original petition not later than 48 hours after the original recount petition is filed with the SOS. The bill would also apply this provision to ballot question committees.

The bill would allow, if the time designated for filing a recount petition or counter recount petition fell on a Saturday, Sunday, or legal holiday, the recount petition or counter recount petition to be filed on the next succeeding business day. Failure of the SOS to give notice to

the opposing candidate or ballot question committee would not affect the results of the recount. A candidate, ballot question committee, or elector could withdraw a recount petition or counter recount petition at any time.

### Automatic Recounts

Currently, a recount of all precincts in the State must be conducted at any time a statewide primary or election is certified by the Board as having been determined by a vote differential of 2,000 votes or fewer; however, this section does not apply to partisan offices to which more than one person is to be elected. The bill would exempt statewide primary elections from this automatic recount requirement.

Additionally, the bill would require a recount of all precincts in the State to occur at any time a statewide primary election was certified by the Board as having been determined by a vote differential of 700 votes or fewer; however, this provision would not apply to partisan offices to which more than one individual was to be elected.

A recount of all precincts in a State Senate district would have to be conducted at any time a State Senate election, other than a State Senate primary election, was certified by the Board as having been determined by a vote differential of 75 votes or fewer.

A recount of all precincts in a State representative district would have to be conducted at any time a State representative election, other than a State representative primary election, was certified by the Board or a board of county canvassers as having been determined by a vote differential of 25 votes or fewer.

Currently, if an election required to be recounted involves a proposition, the Board must meet on the seventh day following certification at the office of the SOS for the purpose of determining procedures for a recount. The bill would delete this language. Instead, if an election involved a ballot question, the Board would have to, as soon as practicable, notify each ballot question committee that participated in the election that a recount was required and of the time and place the Board planned to meet to determine recount procedures.

### Recount Challenges

Under the bill, if a proper challenge were raised by a candidate or a ballot question committee that participated in a ballot question during a recount being conducted by the Board, a member of the Board or a representative designated by the Board would have to resolve that challenge before the recount was completed in that county. A candidate or ballot question committee that participated in a ballot question that was involved in the recount and that disagreed with the resolution of the challenge could petition the Board for a de novo review of the challenge.<sup>5</sup> The candidate or ballot question committee would have to file a petition disagreeing with the resolution of a challenge not later than 48 hours after the Board gave notice that the recount had been completed to the candidates or ballot question committees. Upon receiving a petition disagreeing with the resolution of a challenge, the Board would have to notify all candidates and ballot question committees involved in the recount of the date of the meeting of the Board to consider the petition. The Board could allow the candidates and ballot question committees involved in the recount to present arguments, oral, written, or both, on the challenge at the meeting. The Board would have to rule on the challenge at that meeting.

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<sup>5</sup> Generally, a de novo review occurs when a court decides an issue without deference to a previous court's opinion.

## Felony Charges

Currently, any officer, assistant, clerk, or employee engaged in the conduct of a recount who willfully interferes with a fair and impartial recount of the votes cast for a contested office, amendment, or proposition at the local or State level is guilty of a felony.<sup>6</sup> Under the bill, these felonies would apply to any individual who willfully interfered with a recount or activities relating to a recount.

## Statewide Primary Recounts

Currently, if the unofficial returns of an election show that the election of electors of President and Vice President is determined by a vote differential between the first place and second place candidates of fewer than 25,000 votes, the SOS must direct the boards of county canvassers to canvass returns for electors of President and Vice President of the United States on an expedited schedule. The SOS may appoint the day for the expedited canvass, which must be as soon as practicable after the receipt of returns from the board of county canvassers but no later than the twentieth day after the election.

Under the bill, if any statewide primary election had an unofficial vote differential of 1,500 votes or fewer, the SOS would have to direct the Board to canvass the returns of that statewide primary election on an expedited schedule and appoint the day for the Board to conduct the expedited canvass.

## Repeals

The bill would repeal sections 871a, 877, 885, 886, and 891 of the Michigan Election Law.

Section 871a requires the Board to resolve a challenge raised by a candidate or an elector interested in a ballot question during a recount being conducted by the Board before the recount is completed in that county. Section 885 grants the Board or any member or representative of the Board and the county boards of canvassers the right to subpoena any inspector of election, county officer or other person to appear before it or them for any purpose as may be desired in connection with the matter of a recount. Section 886 requires persons subpoenaed to appear to receive the same compensation and mileage as is prescribed by law for witnesses in the circuit courts of the State. Section 891 requires any recount conducted under the direction, supervision, and control of the Board, unless otherwise provided, to be conducted in the same manner as is provided for the conduct of recounts by county boards of canvassers, so far as those provisions are applicable. Generally, the bill would reorganize the content of these sections into other parts of the Michigan Election Law that would remain in effect.

Section 877 allows any candidate for a county, city, ward, township, or village office not receiving a certificate of election, or any qualified and registered elector voting at the last preceding election when any amendment or proposition has been voted on, to, for error apparent upon the face of the returns, have them examined and corrected upon certiorari to the circuit court of the county.

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<sup>6</sup> Specifically, under the Code of Criminal Procedure, this offence is a Class E felony against the Public Trust, punishable by up to five years' imprisonment.

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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.