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Senate Bills 603 and 604 (as enacted)  
Sponsor: Senator Stephanie Chang (S.B. 603)  
Senator Jeremy Moss (S.B. 604)  
Senate Committee: Elections and Ethics  
House Committee: Elections

## **PUBLIC ACTS 74 & 75 of 2024**

Date Completed: 2-7-25

### **RATIONALE**

According to testimony before the Senate Committee on Elections and Ethics, Michigan's previous elections recount law was inefficient and inaccurate. For example, following the 2017 Detroit City Clerk race, candidate Garlin Gilchrist requested a partial recount of 160 precincts; however, 33 precincts, representing 7,000 votes, were deemed un-recountable.<sup>1</sup> In 2022, the Board of State Canvassers (Board) oversaw a statewide recount of votes for Proposals 22-2 and 22-3, with six and 56 precincts deemed un-recountable, respectively.<sup>2</sup> Generally, precincts are deemed un-recountable if their numbers are unbalanced or because their ballot containers are not properly secured or sealed; however, some believe that these instances may have satisfactory explanations, such as human error, and could be recounted without concern for fraud. Accurate recounts are an important part of the election process, and so it was suggested that the law be amended to improve the State's recount process.

### **CONTENT**

**Senate Bill 603 amends 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.**
- **Prescribe new per-precinct filing deposit amounts for State-level recount petitions.**
- **Require the Secretary of State (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.**
- **Specify the investigative bodies to which a board of canvassers may refer a case of suspected fraud.**
- **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.**

<sup>1</sup> Cwiek, Sarah, "Detroit recount ends with no changed results, lingering questions", *Michigan Public NPR*, December 8, 2017.

<sup>2</sup> Orner, Ben, "Michigan proposal recount ends with few changed votes, many failed challenges", *MLIVE*, December 22, 2022.

- **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 may not be conducted; however, if a satisfactory explanation of ineligible circumstances in a sworn affidavit is provided to the board of county canvassers, a recount may 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 approved by the board of canvassers conducting the recount.**
- **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 must be conducted, based on vote differential.**
- **Prescribe a felony charge for any individual who willfully interferes 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 amends the sentencing guidelines in the Code of Criminal Procedure to reflect changes proposed by Senate Bill 603.**

The bills will take effect April 2, 2025.

Senate Bill 603 is described in detail below.

### **Senate Bill 603**

All recounts in the State will have to be conducted under the procedures described in the bill. The bill deletes language that conflicts with or is overridden by its contents.

The Law requires a *board of canvassers* to make a full and complete investigation of any probable fraud, wrongdoing, or a violation of the law perpetrated or committed by any person uncovered while conducting a recount. The bill removes these and additional provisions that provide for a board's investigatory powers.

Instead, under the bill, if a board of canvassers conducting a recount has good reason to believe that fraud, wrongdoing, or a violation of the law has been committed in the canvass or return of votes, the board of canvassers must refer any matter that warrants investigation to the following:

- For a recount conducted by a board of county canvassers, the prosecuting attorney of the county in which the board of county canvassers is appointed.
- For a recount conducted by the Board, if at least one member of each political party appointed to the Board concurs, the AG.

Any action taken by a prosecuting attorney or the AG does not preclude any official recount of the ballots cast at an election, if otherwise allowed by the general election laws.

## Petition Deposits

Currently, 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. 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 increases 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 increases the filing deposits for elections with only one winning candidate as follows:

<b>Vote differential</b>	<b>Current Fee (per precinct)</b>	<b>New Fee (per precinct)</b>
More than 75 votes or 5% of the total votes cast, whichever is greater	\$250	\$500
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 increases the filing deposits for elections with multiple winning candidates as follows:

<b>Vote differential</b>	<b>Current 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	\$500
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

Currently, 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 increases this deposit to \$250.

Additionally, the bill prescribes several new deposits for statewide elections. Firstly, if the vote is on 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 75 votes or 5% of the total number of votes cast on the ballot question, whichever is greater, the petitioner will have to deposit with the clerk or the State Bureau of Elections the sum of \$500 for each precinct referred to in the petition.

Secondly, the bill prescribes the following deposits, which will have to be paid to the State Bureau of Elections:

<b>Type of Election</b>	<b>Vote Differential</b>	<b>Deposit Fee (per precinct)</b>
A statewide election for a statewide office	Between 2,000 and 4,000	\$250
	More than 4,000 votes	\$500
A statewide primary for a statewide office	Between 700 and 1,400	\$250
	More than 1,400 votes	\$500
A State Senate election, other than a primary	Between 75 and 150 votes	\$250
	More than 150 votes	\$500
A State Representative election, other than a primary	Between 25 and 50 votes	\$250
	More than 50 votes	\$500

Beginning January 1, 2027, and every four years after, the SOS will 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>3</sup> The SOS will have to multiply that percentage change by each deposit amount. It also will have to round up each dollar value adjustment made to the nearest \$10. The SOS will have to announce the adjustments made by December 15 of each year in which an adjustment is 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 are 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 will have to be refunded if the petitioner establishes sufficient *error* to change the result of an election. The bill defines "change the result of an election" as electing a different candidate or resulting in an opposite outcome for the ballot question.

Currently, 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 modifies this requirement to allow a counter petitioner to be refunded only if the recount does not change the result of an election.

#### Certification by Boards of County Canvassers

The bill authorizes a board of canvassers to conduct postcertification recounts of election

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<sup>3</sup> "Consumer Price Index" means the most comprehensive index of consumer prices available for the State from the Bureau of Labor Statistics of the United States Department of Labor.

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.

The bill specifies that a recount conducted by a board of canvassers 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. It is *not* an investigation or an audit of the conduct of an election, nor can it assess the qualifications of electors participating in an election or the manner in which ballots are applied for or issued to electors.

If a board of 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, the board of canvassers will have to deny that petition.

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 may be instituted only against the board of county canvassers and only by mandamus.<sup>4</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>5</sup> Under the bill, a candidate may seek a recount only on account of an *error* in the canvass or returns of votes. If a candidate for office files a recount petition, that candidate will have to file in good faith and the number of votes requested to be recounted will 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 participates in an election in which there is a ballot question on the ballot and that committee believes that, but for error, the outcome of the ballot question would have been the opposite result, that ballot question committee may file a recount petition of the votes cast on that ballot question in any precinct.<sup>6</sup> If the ballot question committee files a recount petition, that ballot question committee will have to file in good faith and the number of votes requested to be recounted will 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 does not participate in an election in which there is a ballot question on the ballot, any elector who votes in that election may file a recount petition concerning that ballot question in the same manner as provided for a ballot question committee.

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<sup>4</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>5</sup> The bill defines "precinct" as an election day precinct, a precinct at an absent voter counting board, an election day vote center, or an early voting site.

<sup>6</sup> "Ballot question committee" means that term as defined by the Michigan Campaign Finance Act: a committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but that does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate.

The bill replaces 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 will require a petitioner to indicate the precincts requested for recount and provide the appropriate deposit. The bill requires 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 had been completed. Instead, the bill requires recount petitions to be filed within 48 hours of the certification of the canvass by the board of county canvassers. It also deletes 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 is filed with the board of county canvassers.

Under the bill, 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 could not 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 deletes these delivery requirements. Instead, a clerk will 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 applies this provision to ballot question committees as well.

Currently, within 48 hours of the filing of a recount petition, an opposing candidate may file objections to the recount petition with the appropriate board of county canvassers. The bill allows ballot question committees to object to recount petitions. Additionally, it deletes 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 is filed with the appropriate board of county canvassers.

Under the bill, the Board will 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 may allow the candidates and ballot question committees involved in the recount to present arguments, oral, written, or both, on the challenge at the meeting; however, to be presented at the meeting, written arguments must be submitted in writing to the board of county canvassers before the meeting.

Currently, the board of county canvassers must rule on the objections raised to the recount petition not later than *five* business days after the hearing. The bill changes this to four calendar days following the meeting, the deadline to file objections to the recount petition.

Additionally, the bill removed a provision that prohibits a board of county canvassers from beginning a recount unless two or more business days have elapsed since the board ruled on objections to a recount petition.

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 applied this provision to counter petitions.

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

### Municipal Recounts

Under the bill, 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. The SOS will have to determine the form and manner of this communication.

Currently, boards of county canvassers conducting a recount have 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 instead requires the individual in charge of the ballot containers for each precinct referred to in a 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 fails to deliver those materials to the board will the board be able to subpoena that individual to compel their delivery. If a subpoenaed individual fails to comply, the individual is guilty of a misdemeanor.

Currently, 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 deletes a provision specifying that the political subdivision before whose board of canvassers the individuals appear had to pay them.

The bill deletes references to circumstances under which a recount may *not* be conducted. Currently, a recount may not be conducted under one or more of the following circumstances:

- 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 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.
- 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.

Instead, under the bill, to conduct a recount of *all* the ballots of a precinct, the ballots will have to be 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, and the seal number on the seal is accurately recorded in the poll book, on the ballot container certificate, or on the statement of results. Additionally, one of the following will have to occur:

- The precinct is in balance by matching the number of ballots to be recounted and 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.

- The precinct is certified as out of balance during the county canvass and remains out of balance by an identical or fewer number of ballots after review during the recount.

Currently, 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 deletes this provision.

Instead, under the bill, if a board of canvassers conducting a recount determines that the ballots of a precinct are not eligible for recount under these provisions, the board of canvassers conducting the recount may still conduct the recount if a satisfactory explanation in a sworn affidavit, in a form as prescribed by the SOS, is provided to the board of canvassers by an election inspector, a clerk, or a member of the clerk's staff. An explanation may not be accepted by the board of canvassers as satisfactory unless the explanation documented that the security of the ballots has been otherwise preserved. The SOS will have to prepare and issue instructions for a board of canvassers to follow when determining if an explanation in a sworn affidavit is satisfactory.

The only documents that a board of canvassers may use to determine whether a precinct can be recounted is 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 of the number of ballots and electors in a poll book, affidavits, and tabulator tapes.

Currently, 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 allows two individuals at each table to check the work of the recount clerks.

The bill deletes 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 still does not match, those ballots may not 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 *do* 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 may not 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; one recount clerk must call the votes for each candidate or ballot question involved in the recount.

Instead, under the bill, one recount clerk will have to call the votes for each candidate or ballot question involved in the recount. Two tally clerks will have to simultaneously record the called votes on forms provided for that purpose. A recount may be conducted in an alternative manner if approved by the board of canvassers conducting the recount. The candidates or ballot question committees, their counsel, and the other individuals present will have to be allowed to observe each ballot as it is called, challenge the tabulation of a ballot, and take



notes as desired for recordkeeping purposes. The board of canvassers will 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.

Under the bill, if a recount involves the result of an election as to the electors of President and Vice President of the U.S., the recount will have to be completed and certified before 3 PM on the sixth day before the date on which the electors convene.<sup>7</sup> If this is not possible because of a government-declared emergency or court order, the recount will have to be completed as soon as possible but not later than 11:59 PM on the second day before the date on which the electors convene.

Currently, the board must preserve carefully and safeguard the ballots and ballot box containers until an order of the court, to which the report is 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 terminate with the completion of the recount. The bill deletes these provisions. Instead, the board of canvassers will have to preserve and safeguard the ballots and ballot box containers until directed by the prosecuting attorney or the AG.

#### Certification by the Board

Generally, 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. The bill specifies that any recount under the jurisdiction of the Board (generally, Section 878 to Section 894 of the Michigan Election Law) will have to be conducted by the boards of county canvassers, subject to the direction, supervision, and control of the Board. The bill also requires 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 will be final and subject only to either of the following:

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

The bill allows the Board to promulgate rules for counting recounts under the Administrative Procedures Act.

#### State-level Recount Petitions

Under the bill, a candidate voted for at a primary election for an office may petition the Board for a recount if the candidate believes that, but for error, a different candidate would have been elected, and 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.

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<sup>7</sup> Public Act 269 of 2023 requires the electors for President and Vice President to meet on the first Tuesday after the second Wednesday in December instead of the first Monday after the second Wednesday, among other reforms.

- 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 5 PM of the second day after the day the Board certifies the results of an election.<sup>8</sup>
- The petition is filed with the SOS.
- The petition is written or printed and is signed and sworn to by the candidate.

The candidate will have to use the petition form prescribed by the bill. Additionally, the bill deletes the following provisions for a recount petition:

- A requirement that a petition specify the counties, cities, townships, and precincts in which the recount is requested.
- If the petition concerns the office of State representative, a requirement that a copy of the petition be filed with the Clerk of the House of Representatives.
- If the petition concerns the office of State senator, a requirement that a copy of the petition be filed with the Secretary of the Senate.

Current law requires an individual to allege fraud or mistake in order to file a petition; however, 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 *without* needing to allege fraud or mistake. As the bill deletes the requirement that petitioners need to allege fraud or mistake, it also modifies this provision to remove reference to fraud or mistake.

Additionally, the bill modifies 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 are required to 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 are required to 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 deletes these requirements.

If a ballot question committee that participated in a Statewide ballot question believes that, but for error, the outcome of the ballot question would have been the opposite, that ballot question committee may, not later than 5 PM of the second day after the day the Board certified the results of an election, file a recount petition of the votes cast on that ballot question in any precinct. Such a recount will have to be filed in good faith, and the number of votes requested to be recounted will have to be, at a minimum, greater than the difference between the "yes" and "no" votes on the proposed ballot question. The ballot question committee must use the petition form prescribed by the bill.

If a ballot question committee does *not* participate in an election in which there is a ballot question on the ballot, any elector who votes in that election may file a recount petition concerning that ballot question in the same manner as provided for a ballot question committee, which the bill provides.

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<sup>8</sup> Generally, this meeting takes place at the office of the SOS on or before the twentieth day after an election.

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.

Currently, 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 applies this provision to ballot question committees and requires the SOS to deliver a copy of a recount petition to each opposing candidate and ballot question committee within 24 hours. Additionally, it deletes 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.

Currently, 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 also applies this provision to ballot question committees.

The bill allows, if the time designated for filing a recount petition or counter recount petition falls 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 will not affect the results of the recount. A candidate, ballot question committee, or elector may 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. The bill changes this vote differential to 0.1% or less of the total votes cast in that statewide election. This provision does not apply to partisan offices to which more than one person is to be elected.

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

A recount of all precincts in a State representative district will have to be conducted at any time a State representative election, other than a State representative *primary* election, is 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 deletes this language. Instead, if an election involves a ballot question, the Board will have to, as soon as practicable, notify each ballot question committee that participated in the election that a recount is required and of the time and place the Board plans to meet to determine recount procedures.

The required recount may *not* be conducted if, within 48 hours after an election is certified, the losing candidate or losing ballot question committee files a written statement with the SOS requesting that the required recount not be conducted.

## Recount Challenges

Under the bill, a candidate or a ballot question committee that participates in a ballot question election may make a challenge to the board of county canvassers of a determination to count or not to count a specific vote on a ballot for a candidate or for or against a ballot question subject to the recount. Before the completion of the recount in that county, the board of county canvassers will have to hear arguments on the challenge and decide whether to accept or reject the challenge. A candidate or ballot question committee aggrieved by the decision of the board of county canvassers may appeal the decision to the representative designated by the Board. This representative may confirm, reject, or modify the decision of the board of county canvassers.

A candidate or ballot question committee that participates in a ballot question that is involved in the recount and that disagrees with the resolution of the challenge may petition the Board for a de novo review of the challenge.<sup>9</sup> The candidate or ballot question committee will have to file a petition disagreeing with the resolution of the challenge with the representative designated by the Board. The petition will have to specify the substance of the challenge and request a de novo review by the Board. The Board may accept petitions for a de novo review only of challenges that concern the determination of how a specific vote on a ballot for a candidate or for or against a ballot question was counted.

Upon receipt of a petition for a de novo review, the representative of the Board will have to make an exhibit detailing the resolution of the challenge that includes the ballot, which will have to be securely sealed in an exhibit envelope and retained by the representative. The representative will have to provide the county clerk with a receipt for the ballot that is subject to the challenge.

The Board will 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; however, to be presented at the meeting, written arguments will have to be submitted in writing to the board of county canvassers before the meeting.

Currently, the board of county canvassers must rule on the objections raised to the recount petition within five business days after the hearing. The bill changes this to four calendar days following the meeting, the deadline to file objections to the recount petition.

Additionally, the bill removes a provision that prohibits a board of county canvassers from beginning a recount unless two or more business days have elapsed since the board ruled on objections to a recount petition.

## 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>10</sup> Under the bill, these felonies also apply to any individual who willfully interferes with a recount or activities relating to a recount.

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<sup>9</sup> Generally, a de novo review occurs when a court decides an issue without deference to a previous court's opinion.

<sup>10</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.

## Statewide Primary Recounts

Generally, 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. Currently, the SOS may direct the boards of county canvassers to complete and certify the statement of electors by the *seventh* day after the election or by a date before the *fourteenth* day after the election. The bill requires the boards of county canvassers to complete the canvass and certify the statements by the *tenth* day after the election.

The secretary of the Board may appoint the day for the Board to conduct the expedited canvass of the returns and determine the results of that election. The day appointed for the expedited canvass must be as soon as practicable after receipt of the returns from the boards of county canvassers, but the Board must complete the canvass and announce its determination no later than the twentieth day after the election. The bill requires the Board to complete the canvass and announce its determination within 13 days after the election.

Under the bill, if any statewide primary election has an unofficial vote differential of 1,500 votes or fewer, the SOS will 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.

## Certification of Election Results

Upon completion of the canvass, a board of county canvassers must prepare a statement in detail of the number of votes cast for each office, the names of the persons for whom such votes were given, and the number of votes given to each person, as shown by the returns of the boards of inspectors of election of the various voting precincts of the county. The board of county canvassers also must prepare a statement in detail of the number of votes cast on any proposed constitutional amendment or other ballot question submitted to the electors at the election and the number of votes cast in favor of and the number of votes cast against such proposed amendment or other ballot question, as shown by such returns.

If these statements concern the votes for President and Vice President, Senator or Representative in Congress, circuit court judges, State senators and representatives, and any proposed amendment to the Constitution or other question or proposition, the clerk of the board of county canvassers must submit certified copies of each of these statements to the SOS within 24 hours of the completion of the canvass. The bill applies this requirement to statements concerning votes for supreme court justices, court of appeals justices, probate justices, district court judges, members of the State Board of Education, members of the board of regents of the University of Michigan, members of the board of trustees of Michigan State University, and members of the board of governors of Wayne State University.

Additionally, for counties that constitute one or more senatorial or representative districts, the county clerk must submit to the SOS a copy of the certificate of determination for an election, certified by the county clerk and the clerk's seal of office. The bill requires the SOS to specify to these county clerks whether the certificate of determination must be transmitted to the SOS electronically or by mail.

## Repeals

The bill repeals 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 election inspector, county officer, or other person to appear before it or them for any purpose as could 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 provided for the conduct of recounts by county boards of canvassers, so far as those provisions are applicable. Generally, the bill reorganizes the content of these sections into other parts of the Michigan Election Law that 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 had 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.

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

## **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 bills will make the State's recount process more transparent and efficient. According to testimony before the Senate Committee on Elections and Ethics, the inability for some precincts to be recounted under current law contributes to a lack of faith in the elections process. The bills will increase voter confidence by expanding recount eligibility. Poll workers or clerks at a precinct that currently must deem ballots un-recountable may submit a signed affidavit explaining an imbalance, such as attributing it to human error, and have ballots recounted. Additionally, the bills will change the definition of "precinct" to allow the recount of early voting sites and expand the offices for which a recount of the votes is allowed.

Secondly, the bills will make recounts more affordable. Following the 2022 midterm elections, the Bureau of Elections oversaw a 43-county hand recount of nearly 700,000 votes concerning Proposals 2 and 3, which the Department of State (MDOS) estimated would cost up to \$1.0 million.<sup>11</sup> By raising recount filing fees, the bills will ensure the affordability of recounts. The bills will further increase efficiency by standardizing recount request forms and by aligning the recount process with the Federal Electoral Count Reform Act (ECRA). Among other things, the ECRA provided deadlines for each state's executive to certify the State's slate of electors. The bills will update the deadline by which recounts may be requested and must be completed, ensuring that they will not delay the transmission of election results to Congress. In all, the changes made by the bills will modernize and improve the State's recount process.

### **Supporting Argument**

The bills will reduce frivolous recount requests. Firstly, Senate Bill 603 will require recounts to be requested in good faith. Reportedly, the State's recount process has been used to sow doubt and spread disinformation about the election process and even to delay determining

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<sup>11</sup> Orner, Ben, "Michigan proposal recount ends with few changed votes, many failed challenges", *MLIVE*, December 22, 2022.

the results of an election to suit a political agenda. Under the bills, to request a recount, a candidate or ballot question committee genuinely will have to believe the candidate or ballot question would have won but for an error. Secondly, the bills will raise recount filing fees. This will not only help boards of canvassers better afford recounts but discourage candidates and ballot question committees from requesting recounts for elections with wide margins, in which a recount is unlikely to change the result of an election. For example, following the 2016 election, Green Party candidate Jill Stein requested a recount, despite winning only 1% of the vote in Michigan.<sup>12</sup> According to testimony, the Stein campaign paid the required \$973,250 deposit for the recount; however, the MDOS estimated that a statewide recount would cost \$5.0 million. Had a Federal judge not suspended Stein's recount, Michigan taxpayers would have footed the bill. Lastly, the bill will expand the list of automatic recounts to include elections for the State Senate and the State House of Representatives; however, it only will require them for *close* races. By discouraging frivolous recounts in these ways, boards of canvassers' time and resources will be devoted to necessary recounts.

### **Supporting Argument**

The bills will clarify that recounts are administrative, not investigatory. According to testimony before the Senate Committee on Elections and Ethics, it should not be the responsibility of the Board or boards of county canvassers to investigate claims of election fraud, as board members lack the resources and the experience to properly investigate alleged violations of the law. Law enforcement officials and the courts are appropriately prepared to investigate and prosecute instances of election fraud and should have the sole authority to do so. The bills preserve elections officials' ability to report suspected fraud or misconduct to the appropriate authorities. The bills will remove reference to fraud as a rationale for requesting and conducting recounts, ensuring that the role of the Board or boards of county canvassers is to retally the results of an election, not to determine whether fraud has occurred.

### **Opposing Argument**

The bills will hinder the ability of candidates aggrieved by fraud to request recounts, reducing trust in the election process. The recount process is designed to ensure the accuracy and fairness of elections. This includes granting bipartisan boards of county canvassers the ability to investigate claims of fraud while conducting recounts. By eliminating this ability, and references to fraud altogether, the bills will prevent bad actors from being held accountable and erode confidence in the State's election process.

Legislative Analyst: Abby Schneider

### **FISCAL IMPACT**

Senate Bill 603 could have a fiscal impact on the MDOS 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 MDOS, 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.*

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<sup>12</sup> "Michigan recount stopped after judge says Jill Stein has no legal standing", *The Guardian*, December 8, 2016.

*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.

Fiscal Analyst: Bobby Canell  
Joe Carrasco, Jr.  
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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.