



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 603 and 604 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Stephanie Chang (S.B. 603)

Senator Jeremy Moss (S.B. 604)

Committee: Elections and Ethics

Date Completed: 5-14-24

RATIONALE

According to testimony before the Senate Committee on Elections and Ethics, Michigan's current elections recount law is 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.¹ 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.² 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 has been suggested that the law be amended to improve the State's recount process.

CONTENT

Senate Bill 603 (S-1) 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.**
- **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.**
- **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.**

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

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

- **Modify the circumstances under which a recount could not be conducted; however, if a satisfactory 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, 872, 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 (S-1) would amend the sentencing guidelines in the Code of Criminal Procedure to reflect changes proposed by Senate Bill 603 (S-1).

The bills are tie-barred.

Senate Bill 603 (S-1)

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:

Vote differential	Original Fee (per precinct)	Proposed Fee (per precinct)
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 would increase the filing deposits for elections with multiple winning candidates as follows:

Vote differential	Original Fee (per precinct)	New Fee (per precinct)
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

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 several new deposits for statewide elections. Firstly, 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 \$500 for each precinct referred to in the petition.

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

Type of Election	Vote Differential	Deposit Fee (per precinct)
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 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.³ 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.

The bill would specify that a recount conducted by a board of canvassers was 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 would *not* be an investigation or an audit of the conduct of an election, nor would it assess

³ "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

the qualifications of electors participating in an election or the manner in which ballots were applied for or issued to electors.

If a board of canvassers received 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 were applied for or issued to electors, or a petition to do anything other than conduct a recount, the board of canvassers would 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 could be instituted only against the board of county canvassers and only by mandamus.⁴

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.⁵ Under the bill, a candidate could seek a recount only on account of an *error* in the canvass or returns of votes. 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.⁶ 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.

⁴ 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.

⁵ 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.

⁶ "Ballot question committee" would mean 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.

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.

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 would allow ballot question committees to object to recount petitions. 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.

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; however, to be presented at the meeting, written arguments would 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 not later than five business days after the hearing. The bill would change this to four calendar days following the meeting, the deadline to file objections to the recount petition.

Additionally, the bill would remove 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 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 delete references to circumstances under which a recount could *not* be conducted. Currently, a recount may not be conducted under one or more of the following circumstances:

- 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 would have to be properly sealed in a ballot container, in a manner that did not allow a ballot to be added to or removed from the ballot container, and the seal number on the seal was accurately recorded in the poll book, on the ballot container certificate, or on the statement of results. Additionally, one of the following would have to occur:

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

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 SOS, was provided to the board of canvassers by an election inspector, a clerk, or a member of the clerk's staff. An explanation could not be accepted by the board of canvassers as satisfactory unless the explanation documented that the security of the ballots was otherwise preserved. 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.

The only documents that a board of canvassers could use to determine whether a precinct could be recounted would be 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.

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 a recount involved the result of an election as to the electors of President and Vice President of the U.S., the recount would have to be completed and certified before 3 PM on the sixth

day before the date on which the electors convened.⁷ If this were not possible because of a government-declared emergency or court order, the recount would 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 convened.

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

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.

The bill would allow 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 could petition the Board for a recount if the candidate believed that, but for error, a different candidate would have been elected, and the following requirements were met:

- The office was an office for which the votes were canvassed by the Board or was the office of Representative in Congress, State representative, or State senator for a district located wholly within one county.
- The candidate otherwise met the requirements for a petition outlined previously (see Municipal Recount Petitions and Counter Petitions).

⁷ 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 petition for a recount was filed not later than 5 PM of the second day after the day the Board certified the results of an election.⁸
- The petition was filed with the SOS.
- The petition was written or printed and was signed and sworn to by the candidate.

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 5 PM of the second day after the day the Board certified the results of an election. The ballot question committee would have to use the petition form prescribed by the bill. 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.

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

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

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. The bill would change 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 would have to be conducted at any time a State Senate election, other than a State Senate primary election, was 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 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.

The required recount could *not* be conducted if, within 48 hours after an election was certified, the losing candidate or losing ballot question committee filed 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 participated in a ballot question election could 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 would 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 could 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 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.⁹ The candidate or ballot question committee would have to file a petition disagreeing with the resolution of the challenge with the representative designated by the Board. The petition would have to specify the substance of the challenge and request a de novo review by the Board. The Board could accept petitions for a de novo review only of challenges that concerned 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 would have to make an exhibit detailing the resolution of the challenge that included the ballot, which would have to be securely sealed in an exhibit envelope and retained by the representative. The representative would have to provide the county clerk with a receipt for the ballot that was subject to the 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; however, to be presented at the meeting, written arguments would 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 not later than five business days after the hearing. The bill would change this to four calendar days following the meeting, the deadline to file objections to the recount petition.

Additionally, the bill would remove 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.¹⁰ 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 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

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

¹⁰ 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.

the fourteenth day after the election. The bill would require 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 would require the Board to complete the canvass and announce its determination within thirteen days 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.

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 would add to this requirement 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 would require 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 would repeal sections 871a, 872, 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 872 requires a board of canvassers to make a full and complete investigation of any probable fraud, wrongdoing, or violation of the law perpetrated or committed by any person uncovered in the course of conducting a recount.

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.

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 would 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 would increase voter confidence by expanding recount eligibility. Pollworkers or clerks at a precinct that would currently be deemed un-recountable could submit a signed affidavit explaining its imbalance, such as attributing it to human error, and have their ballots recounted. Additionally, the bills would change the definition of "precinct" to allow the recount of early voting sites. They also would expand the offices for which a recount of the votes would be allowed.

Secondly, the bills would 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.¹¹ By raising recount filing fees, the bills would ensure the affordability of recounts. The bills would 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 bill would update the deadline by which recounts could be requested and would have to be completed, ensuring that they would not delay the transmission of election results to Congress. In all, the changes made by the bills would modernize and improve the State's recount process.

Supporting Argument

The bills would reduce frivolous recount requests. Firstly, Senate Bill 603 would require recounts to be requested in good faith. Reportedly, the State's recount process has been used

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

to sow doubt and spread disinformation about the election process and even to delay determining the results of an election to suit a political agenda. Under the bills, to request a recount, a candidate or ballot question committee genuinely would have to believe the candidate or ballot question would have won but for an error. Secondly, the bill would raise recount filing fees. This would 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 was 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; the recount was ended by a Federal judge.¹² Lastly, the bill would expand the list of automatic recounts to include elections for the State Senate and the State House of Representatives; however, it only would require them for *close* races. By discouraging frivolous recounts in these ways, the boards of canvassers' time and resources would be devoted to necessary recounts.

Supporting Argument

The bills would clarify that recounts are administrative, not investigatory. According to testimony before the Senate Committee on Elections and Ethics, it is not the responsibility of the Board or boards of county canvassers to investigate claims of election fraud. Law enforcement 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 would remove reference to fraud as a rationale for requesting and conducting recounts, ensuring that the role of the Board or boards of county canvassers was to retally the results of an election, not to determine whether fraud occurred.

Opposing Argument

The bills would 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 would 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 (S-1) 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 (S-1) 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.

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

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: Joe Carrasco, Jr.
Bobby Canell
Michael Siracuse

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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.