

RECOUNT DEPOSIT

House Bill 4801 (Substitute H-3)

Sponsor: Rep. David Law

Committee: House Oversight, Elections, and Ethics

First Analysis (6-15-05)

BRIEF SUMMARY: The bill would increase the recount deposit from \$10 to \$100 per precinct, unless the vote differential were more than one-half of one percent, or 50 votes (whichever was greater), in which case the deposit would have to equal 100 percent of the estimated cost of the recount.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

To file an application to recount the vote following an election, a filer must pay the official election coordinator (generally, a county or township clerk) \$10 for each precinct that will be recounted. If the election outcome is reversed, the money is refunded.

According to committee testimony, frivolous recounts of election results are sought by losing candidates or campaign committees in several regions of the state, with quixotic attempts most apparent in two counties—Oakland and Saginaw.

For example, in Springfield Township located in Oakland County, so-called "spite" recounts have occurred even when winning candidates have out-pollled their opponents by margins of 60 percent to 40 percent, 63 percent to 37 percent, and 54 percent to 46 percent. Following the November 2004 election, one recount was undertaken, despite a 2,000-vote margin between the winner and loser. These and other recounts have cost taxpayers an estimated \$5000, since a candidate pays only \$210 to re-tally all 21 precincts, a fee that does not cover the costs of a ballot-by-ballot hand recount that is undertaken once an application is filed.

In Saginaw County, 11 recounts have been undertaken between 2001 and 2004. Vote differentials in the recounted elections range from a single vote (three election recounts), to 2,091 votes (one election recount), while the median vote differential for the 11 recounts was eight votes. In two of the three elections having a one-vote margin, the recount resulted in a tie-vote. (In one of those, the coin-flip changed the election result, in another it did not.) The vote-tallies did not change following the other nine recounts. The total municipal costs for the eleven recounts amounted to more than \$4,500 *not* including the wages for any county or township employees.

In order to assist local governments recoup the costs of recount elections, legislation has been introduced to increase the fees that filers must pay.

THE CONTENT OF THE BILL:

House Bill 4801 would amend the Michigan Election Law to increase the recount deposit from \$10 to \$100 per precinct. However, if the initial canvass of votes resulted in a vote differential of more than 0.5 percent, or 50 votes, whichever was greater, a filer seeking a recount would have to deposit with the clerk a sum equal to 100 percent of the estimated cost of the recount for each precinct referred to in the petition.

Currently under the law, a candidate or elector who files a recount petition, either with the clerk of the appropriate board of canvassers (for local elections), or with the state Bureau of Elections (for state elections), must deposit a sum of \$10 for each precinct referred to in the recount petition. If the petitioner establishes fraud or mistakes and receives a certificate of election, then the money is refunded. House Bill 4801 would retain the provision assuring a refund; however, the petitioner would be required to deposit \$100 per precinct, or if the vote differential was more than half a percent of votes cast, or 50 votes, whichever was greater, then a sum equal to 100 percent of the estimated cost of the recount.

Under the bill, the county board of canvassers in the county in which the votes were to be recounted would determine the estimated cost of a recount. The cost could not be less than \$100, or greater than the recount's actual cost.

MCL 168.867 and 168.881

ARGUMENTS:

For:

Some county officials report an increase in the number of applications for frivolous recounts of local election results. For a small fee—only \$10 a precinct—a losing candidate or campaign committee can apply to have the vote recounted, by hand. This fee does not begin to cover the costs of any recount—serious or frivolous—and it should be raised to \$100 per precinct. What's more, to deter requests for unrealistic recounts—those having little chance of reversing the election results—a filer should have to pay all the costs of the recount.

Against:

While recounts can be onerous and costly—analogueous to a root canal, according to the director of elections—they are an important component of our system of fair and efficient elections. A recount provides an "audit trail," making apparent any irregularities in the election process, and at times, the election result is overturned. The cost of a recount to a filer should not be prohibitive, as this bill proposes. A better fee is, perhaps, \$25 dollars per precinct. Whatever the appropriate fee level, those currently proposed—that is, either \$100 per precinct, or assuming all costs—are far too high. For example, at \$100 a precinct, a statewide recount would cost \$525,000 (there being 5,200 precincts in the state of Michigan), while an average recount in a state House of Representatives district would cost \$7,500.

Response:

Statewide recounts are extraordinarily rare, and the legislature should not set the recount fee increase based on so rare an event.

Reply:

While the last statewide recount was undertaken during the 1970s, the November 5, 2002 general election for attorney general in which 5,200 votes separated the winner from the loser—equal to a one-vote margin in each of Michigan's 5,200 precincts—very nearly prompted a recount. [The final vote was 1,499,066 to 1,493,866.]

POSITIONS:

The Department of State supports the bill with amendments. (6-8-05)

The Michigan Association of Counties supports the bill in concept. (6-8-05)

The Michigan Townships Association supports the bill with amendments. (6-8-05)

The Michigan Association of County Clerks is neutral on the bill. (6-8-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.