

DEFINITION OF AGGRIEVED CANDIDATE FOR PURPOSES OF RECOUNT

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House Bill 5012 as introduced
Sponsor: Rep. Jim Lilly
Committee: Elections and Ethics
Complete to 10-4-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5012 would amend the Michigan Election Law to limit aggrieved candidates eligible to petition for a recount of votes because of fraud or mistake to those who have a good faith belief that, but for the fraud or mistake, they would have had a reasonable chance of winning the election.

The bill would amend section 862 of the Law, which applies to county, city, township, and village boards of canvassers, and section 879, which pertains to state canvassers, to make complimentary changes. In both instances, the Law currently allows candidates to petition for a recount if they believe they are aggrieved on account of fraud or mistake in the canvass or returns. However, an "aggrieved" candidate is not defined in statute; this bill would provide that definition.

MCL 168.862 and 168.879

BACKGROUND:

This bill is understood as an attempt to clarify the definition of an "aggrieved" candidate, and the resulting standing of that candidate to secure a recount of ballots. In 2016, Green Party presidential candidate Jill Stein requested a recount of ballots in Michigan. Following parallel proceedings in federal and state court, the recount was ultimately stopped. In its ruling, Michigan Court of Appeals held that the recount should never have been initiated in the first place, because Stein was not an "aggrieved candidate" as required to initiate a recount under Mich. Comp. Laws §168.879.

The court went on to say that in order to meet the "aggrieved" candidate status, "the candidate must be able to allege a good faith belief that but for mistake or fraud, the candidate would have had a reasonable chance of winning the election."¹

That language is replicated in House Bill 5012.

¹ *Attorney Gen v Bd of State Canvassers*, 12/6/2016 Op & Order, Case Nos 335947 & 335958 (Mich Ct App Dec 6, 2016) <http://cases.justia.com/michigan/court-of-appeals-published/2016-335947.pdf?ts=1481119217>

FISCAL IMPACT:

The bill would have a minimal fiscal impact to the State and a substantial fiscal impact on counties. The bill would achieve cost savings to the extent in which it indeed prevents future recounts by petitioners who do not meet the bill's definition of "aggrieved candidate".

The amount of potential savings to counties would vary significantly according to the size of the recount and the conditions in which it is conducted. For example, a machine recount of 10,000 ballots with a more relaxed time frame petitioned by a candidate with a greater than 5.0% vote differential between he or she and the elected winner would have significantly lower costs *per county* than a statewide hand recount of 4.8 million ballots under highly limited time requirements by a candidate with a vote differential of less than 0.5%. This latter scenario resembles the recount that would have occurred in the 2016 Presidential recount petitioned by Presidential candidate, Jill Stein, with the exception of the much higher vote differential between her and the winner.

Assuming the bill was a determining factor in preventing a recount similar to the recount petitioned for the 2016 Michigan Presidential election, it would result in an estimated total statewide county savings of approximately \$2.2 million for an estimated average county savings of \$27,000. These estimates are based on final reported costs of Wisconsin's completed statewide Presidential recount which was carried out using counts performed both by hand and optical scanner machines. The estimate is adjusted according to the difference between the states in the numbers of ballots cast and accounts for the \$125 per precinct fee paid to the state by the petitioner as required under current law.

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